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CHAPTER 922

An act to amend Sections 11110 and 12507.1 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Section 11110 of the Vehicle Code, as amended by Section 1 of Chapter 699 of the Statutes of 1994, is amended to read:

11110. The department, after notice and hearing, may suspend or revoke any license issued under this chapter in any of the following cases:

(a) The department finds and determines that the licensee fails to meet the requirements to receive or hold a license under this chapter.

(b) The licensee fails to keep the records required by this chapter.

(c) The licensee permits fraud or engages in fraudulent practices either with reference to the applicant for a driver's license or an all-terrain vehicle safety certificate or the department, or induces or countenances fraud or fraudulent practices on the part of any applicant.

(d) The licensee fails to comply with this chapter or regulation or requirement of the department adopted pursuant thereto.

(e) The licensee represents himself or herself as an agent or employee of the department or uses advertising designed to create the impression, or which would reasonably have the effect of leading persons to believe, that the licensee was in fact an employee or representative of the department; or the licensee makes an advertisement, in any manner or by any means, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

(f) The licensee, or any employee or agent of the licensee, solicits driver training or instruction or all-terrain vehicle safety instruction in, or within 200 feet of, an office of the department.

(g) The licensee is convicted of violating Section 14606, 20001, 20002, 20003, 20004, 20006, 20008, 23103, 23104, 23152, or 23153 of this code or subdivision (c) of Section 192 of the Penal Code. A conviction, after a plea of nolo contendere, is a conviction within the meaning of this section.

(h) The licensee teaches, or permits a student to be taught, the specific tests administered by the department through use of the department's forms or testing facilities.

(i) The licensee conducts training, or permits training by any employee, in an unsafe manner or contrary to safe driving practices.

(j) The licensed school owner or licensed driving school operator teaches, or permits an employee to teach, driving instruction or all-terrain vehicle safety instruction without a valid instructor's license.

(k) The licensed school owner does not have in effect a bond as required by Section 11102.

(*l*) The licensee permits the use of the license by any other person for the purpose of permitting that person to engage in the ownership or operation of a school or in the giving of driving instruction or all-terrain vehicle safety instruction for compensation.

(m) The licensee holds a secondary teaching credential and explicitly or implicitly recruits or attempts to recruit a pupil who is enrolled in a junior or senior high school to be a customer for any business licensed pursuant to this article that is owned by the licensee or for which the licensee is an employee.

(n) The licensee or any employee or agent of the licensee administers driving tests or issues certificates of passage in violation of the terms of an agreement entered into under Section 12507.1 .

(o) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1999, deletes or extends that date.

SEC. 2. Section 11110 of the Vehicle Code, as added by Section 2 of Chapter 699 of the Statutes of 1994, is amended to read:

11110. The department, after notice and hearing, may suspend or revoke any license issued under this chapter in any of the following cases:

(a) The department finds and determines that the licensee fails to meet the requirements to receive or hold a license under this chapter.

(b) The licensee fails to keep the records required by this chapter.

(c) The licensee permits fraud or engages in fraudulent practices either with reference to the applicant for a driver's license or an all-terrain vehicle safety certificate or the department, or induces or countenances fraud or fraudulent practices on the part of any applicant.

(d) The licensee fails to comply with this chapter or regulation or requirement of the department adopted pursuant thereto.

(e) The licensee represents himself or herself as an agent or employee of the department or uses advertising designed to create the impression, or which would reasonably have the effect of leading persons to believe, that the licensee was in fact an employee or representative of the department; or the licensee makes an advertisement, in any manner or by any means, which is untrue or misleading and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

(f) The licensee, or any employee or agent of the licensee, solicits driver training or instruction or all-terrain vehicle safety instruction in, or within 200 feet of, an office of the department.

(g) The licensee is convicted of violating Section 14606, 20001, 20002, 20003, 20004, 20006, 20008, 23103, 23104, 23152, or 23153 of this code or subdivision (c) of Section 192 of the Penal Code. A conviction, after a plea of nolo contendere, is a conviction within the meaning of this section.

(h) The licensee teaches, or permits a student to be taught, the specific tests administered by the department through use of the department's forms or testing facilities.

(i) The licensee conducts training, or permits training by any employee, in an unsafe manner or contrary to safe driving practices.

(j) The licensed school owner or licensed driving school operator teaches, or permits an employee to teach, driving instruction or all-terrain vehicle safety instruction without a valid instructor's license.

(k) The licensed school owner does not have in effect a bond as required by Section 11102.

(*l*) The licensee permits the use of the license by any other person for the purpose of permitting that person to engage in the ownership or operation of a school or in the giving of driving instruction or all-terrain vehicle safety instruction for compensation.

(m) The licensee holds a secondary teaching credential and explicitly or implicitly recruits or attempts to recruit a pupil who is enrolled in a junior or senior high school to be a customer for any business licensed pursuant to this article that is owned by the licensee or for which the licensee is an employee.

(m) This section shall become operative on January 1, 1999.

SEC. 3. Section 12507.1 of the Vehicle Code is amended to read:

12507.1. (a) (1) In enacting this section, it is the intent of the Legislature to implement a pilot program to study the safety and fiscal effects of allowing certain driving schools to conduct the provisional driver's license behind-the-wheel driving test.

(2) The adoption of departmental regulations, training of driving school instructors, and all other functions necessary to prepare for the implementation of the pilot program shall be performed by the department commencing on January 1, 1995.

(b) Commencing on January 1, 1996, the department may allow a driving school that has operated for at least two years in compliance with Chapter 1 (commencing with Section 11100) of Division 5 to administer the behind-the-wheel driving test portion of the examination required by subparagraph (D) of paragraph (1) of subdivision (a) of Section 12804.9 for a provisional driver's license for any person who is 16 years of age or older, but who is less than 18 years of age, if all of the following conditions apply:

(1) The applicant has complied with the requirements of Section 12507.

(2) The tests given by the driving school are the same as those that would otherwise be given by the department.

(3) The driving school enters into an agreement with the department containing, but not limited to, all of the following provisions:

(A) The department shall annually conduct onsite inspections of the testing operations, or more often as the department determines to be necessary.

(B) All driving school examiners shall meet all of the following qualifications:

(i) Have at least 500 hours of instructional experience as a driving school instructor.

(ii) Be at least 25 years of age.

(iii) Have the same qualification and training standards as the department's examiners, to the extent necessary to conduct the driving tests in compliance with department standards.

(C) No driving school examiner shall be qualified to administer the behind-the-wheel test where the individual to be tested has been previously instructed by that examiner in the operation of a vehicle.

(D) No driving school or driving school instructor shall condition the payment of a fee to the school by an applicant for receiving instruction in the operation of a vehicle or the administration of the behind-the-wheel driving test, or both, upon the passage or failure of the behind-the-wheel driving test.

(E) The driving school requires written assurances from an applicant's parent or guardian that the parent or guardian assumes liability for the applicant during the driving test.

(F) The department may cancel, suspend, or revoke the agreement with the driving school, upon giving 15 days' prior written notice of the proposed action to the driving school, if the department determines that the driving school is failing to comply with the standards for the behind-the-wheel driving test or with any other term of the agreement.

(4) A driving school that has had its agreement canceled, suspended, or revoked by order of the department may not administer a behind-the-wheel driving test during the period that the order is in effect.

(5) (A) Any driving school that has had its agreement canceled pursuant to subparagraph (F) of paragraph (3) may apply for a new agreement at any time.

(B) The suspension of an agreement pursuant to subparagraph (F) of paragraph (3) shall be for a term of not more than 12 months, as determined by the department in accordance with regulations adopted by the department. After the period of suspension has expired, the agreement shall be reinstated upon request of the driving school if the driving school is in compliance with this section.

(C) (i) The revocation of an agreement pursuant to subparagraph (F) of paragraph (3) shall be for a term of not less than one year. A driving school may apply for a new agreement after the period of revocation has expired, upon submission of proof to the

department of correction of the deficiencies or violations that resulted in the revocation.

(ii) The department may permanently revoke an agreement pursuant to subparagraph (F) of paragraph (3) for repeated violations or repeated failures to comply with any standard or provision of the agreement.

(6) The department shall monitor the driving schools and evaluate the benefits and effects on traffic safety of the driving school testing program. The department shall periodically choose at random and retest driving school-certified provisional license applicants for the purposes of evaluating the program.

(7) Any provisional driver's license applicant who takes and passes a driving test administered by a driving school pursuant to this section shall provide the department with a certificate satisfactory to the department that the applicant has successfully passed the driving test.

(8) The department shall charge a fee not to exceed five dollars ($5) for each certificate provided to the department by an applicant. The amount of the fee shall be sufficient to pay for the actual costs incurred by the department in connection with the monitoring of driving schools and retesting of license applicants pursuant to paragraph (6).

(9) (A) This paragraph applies only to driving schools that have administered both behind-the-wheel training and behind-the-wheel driving tests for at least 12 months.

(B) The department shall prohibit a driving school from continuing to administer behind-the-wheel driving tests if the department determines that the driving school has administered behind-the-wheel training and behind-the-wheel driving tests to applicants, the majority of whom have subsequently been subject to any of the following provisions:

(i) Paragraph (5) of subdivision (a) of Section 12814.6.

(ii) Paragraph (6) of subdivision (a) of Section 12814.6.

(iii) Paragraph (7) of subdivision (a) of Section 12814.6.

(10) The establishment of driving school behind-the-wheel testing agreements may be implemented by the department on those dates that the department determines to be necessary to accomplish an orderly provisional driver's license testing program pursuant to this section.

(11) During each year of the pilot project authorized by this section, not more than 15,000 applicants for provisional driver's licenses may receive the behind-the-wheel driving test at a driving school that meets the criteria specified in this section.

(12) The department shall submit a report to the Legislature on the progress of the driving school testing program authorized pursuant to this section within three years after the date the program is implemented. The report shall compare subsequent driving records, including accidents, convictions, and failures to appear, for

provisional driver's license applicants who have been tested by the driving schools and tested by the department. The report shall include, but shall not be limited to, an analysis of the costs and benefits of the program and shall include recommendations by the department.

(13) The director may terminate the driving school testing program at any time that the department determines that continued operation of the program would have an adverse effect on traffic safety. The finding upon which that determination is based shall be reported to the Legislature not later than 30 days after the termination of the program.

(c) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

CHAPTER 923

An act to amend Sections 21627, 21638.5, 21641, 21642, and 21647 of, and to add Section 21628.1 to, the Business and Professions Code, to amend Sections 21000, 21301, and 21304 of, and to add Sections 21300.1, 21301.1, and 21307 to, the Financial Code, and to amend Section 484.1 of the Penal Code, relating to tangible personal property.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Section 21627 of the Business and Professions Code is amended to read:

21627. (a) As used in this article, "tangible personal property" includes, but is not limited to, all secondhand tangible personal property which bears a serial number or personalized initials or inscription or which, at the time it is acquired by the secondhand dealer, bears evidence of having had a serial number or personalized initials or inscription.

(b) "Tangible personal property" also includes, but is not limited to, the following:

(1) All tangible personal property, new or used, including motor vehicles, received in pledge as security for a loan by a pawnbroker.

(2) All tangible personal property that bears a serial number or personalized initials or inscription which is purchased by a secondhand dealer or a pawnbroker or which, at the time of such purchase, bears evidence of having had a serial number or personalized initials or inscription.

(3) All personal property commonly sold by secondhand dealers which statistically is found through crime reports to the Attorney General to constitute a significant class of stolen goods. A list of such personal property shall be supplied by the Attorney General to all local law enforcement agencies. Such list shall be reviewed periodically by the Attorney General to insure that it addresses current problems with stolen goods.

(c) As used in this article, "tangible personal property" does not include any new goods or merchandise purchased from a bona fide manufacturer or distributor or wholesaler of such new goods or merchandise by a secondhand dealer. For the purposes of this article, however, a secondhand dealer shall retain for one year from the date of purchase, and shall make available for inspection by any law enforcement officer, any receipt, invoice, bill of sale or other evidence of purchase of such new goods or merchandise.

(d) As used in this article, "tangible personal property" does not include coins, monetized bullion, or commercial grade ingots of gold, silver, or other precious metals. "Commercial grade ingots" means 0.99 fine ingots of gold, silver, or platinum, or 0.925 fine sterling silver art bars and medallions, provided that the ingots, art bars, and medallions are marked by the refiner or fabricator as to their assay fineness.

SEC. 2. Section 21628.1 is added to the Business and Professions Code, to read:

21628.1. Notwithstanding Section 21628, except for firearms, submission of transaction reports are not required to be submitted to the local law enforcement agency if the report of an acquisition of the same property from the same customer has been submitted within the preceding 12 months, except when submission of the reports is specifically requested in writing by the local licensing authority.

SEC. 3. Section 21638.5 of the Business and Professions Code is amended to read:

21638.5. Sections 21636, 21637, and 21638, insofar as they apply to holding periods for personal property, are not applicable to personal property pledged to a pawnbroker with respect to the redemption of personal property by the pledgor.

SEC. 4. Section 21641 of the Business and Professions Code is amended to read:

21641. (a) The chief of police, the sheriff or, where appropriate, the police commission, shall accept an application for and grant a license permitting the licensee to engage in the business of secondhand dealer, as defined in Section 21626, to an applicant who has not been convicted of an attempt to receive stolen property or any other offense involving stolen property. Prior to the granting of a license, the licensing authority shall submit the application to the Department of Justice. If the Department of Justice does not comment on the application within 30 days thereafter, the licensing authority may grant the applicant a license. All forms for application

and licensure, and license renewal, shall be prescribed and provided by the Department of Justice. A fee may be charged to the applicant as specified by the Department of Justice and the local licensing authority for processing the initial license application.

(b) For the purposes of this section, "convicted" means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(c) Notwithstanding subdivisions (a) and (b), no person shall be denied a secondhand dealer's license solely on the grounds that he or she violated any provision contained in Article 4 (commencing with Section 21625) or Article 5 (commencing with Section 21650) of this chapter, or any provision contained in Chapter 2 (commencing with Section 21200) of Division 8 of the Financial Code, unless the violation demonstrates a pattern of conduct.

SEC. 4.1. Section 21641 of the Business and Professions Code is amended to read:

21641. (a) The chief of police, the sheriff or, where appropriate, the police commission, shall accept an application for and grant a license permitting the licensee to engage in the business of secondhand dealer, as defined in Section 21626, to an applicant who has not been convicted of an attempt to receive stolen property or any other offense involving stolen property. Prior to the granting of a license, the licensing authority shall submit the application to the Department of Justice. If the Department of Justice does not comment on the application within 30 days thereafter, the licensing authority may grant the applicant a license. All forms for application and licensure, and license renewal, shall be prescribed and provided by the Department of Justice. A fee may be charged to the applicant as specified by the Department of Justice for processing the initial license application and the local licensing authority.

(b) For the purposes of this section, "convicted" means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(c) Notwithstanding subdivisions (a) and (b), no person shall be denied a secondhand dealer's license solely on the grounds that he or she violated any provision contained in Article 4 (commencing with Section 21625) or Article 5 (commencing with Section 21650) of this chapter, or any provision contained in Chapter 2 (commencing with Section 21200) of Division 8 of the Financial Code, unless the violation demonstrates a pattern of conduct.

(d) Any person licensed as a firearms dealer pursuant to Section 12071 of the Penal Code, who is conducting business at gun shows or events pursuant to subparagraph (B) of paragraph (1) of subdivision (b) of Section 12071 of the Penal Code, and who has a valid secondhand dealer license granted by the appropriate local authorities in the jurisdiction where the firearms dealer license has been granted, shall be authorized to conduct business as a secondhand dealer at any gun show or event, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, without regard to the jurisdiction within this state that issued the

secondhand dealer license pursuant to subdivision (a) of this section. No additional fees or separate secondhand dealer license shall be required by any agency having jurisdiction over the locality where the gun show or event is conducted. However, the person shall otherwise be subject to, and comply with, the requirements of this article when he or she acts as a secondhand dealer at the gun show or event to the same extent as if he or she were licensed as a secondhand dealer in the jurisdiction in which the gun show or event is being conducted.

SEC. 5. Section 21642 of the Business and Professions Code is amended to read:

21642. (a) A license granted pursuant to Section 21641 shall be renewable the second year from the date of issue, and every other year thereafter, upon the filing of a renewal application and the payment of a license renewal fee specified by the licensing authority. The Department of Justice may also charge a fee of not more than twelve dollars ($12) but not to exceed the actual processing costs of the department. After the department establishes a fee sufficient to reimburse the department for processing costs, the fee charged shall increase at a rate not to exceed the legislatively approved annual cost-of-living adjustments for the department's budget. The licensing authority shall collect the fee and transmit the fee and a copy of the renewed license to the Department of Justice.

(b) The license shall be subject to forfeiture by the licensing authority and the licensee's activities as a secondhand dealer shall be subject to being enjoined pursuant to Section 21646 for breach of any of the following conditions:

(1) The business shall be carried on only at the location designated on the license. The license shall designate all locations where property belonging to the business is stored. Property of the business may be stored at locations not designated on the license only with the written consent of the local licensing authority.

(2) The license or a copy thereof, certified by the licensing authority, shall be displayed on the premises in plain view of the public.

(3) The licensee shall not engage in any act which the licensee knows to be in violation of this article.

(4) The licensee shall not be convicted of an attempt to receive stolen property or any other offense involving stolen property. For the purposes of this paragraph, "convicted" means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the chief of police, the sheriff or, where appropriate, the police commission, is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(c) Notwithstanding subdivisions (a) and (b), no person shall have his or her renewal application for a secondhand dealer's license denied, nor shall his or her secondhand dealer's license be forfeited solely on the grounds that he or she violated any provision contained in Article 4 (commencing with Section 21625) or Article 5 (commencing with Section 21650) of this chapter, or any provision contained in Chapter 2 (commencing with Section 21200) of Division 8 of the Financial Code, unless the violation demonstrates a pattern of conduct.

SEC. 6. Section 21647 of the Business and Professions Code is amended to read:

21647. (a) Whenever any peace officer has probable cause to believe that property, except coins, monetized bullion, or "commercial grade ingots" as defined in subdivision (d) of Section 21627, in the possession of a pawnbroker, secondhand dealer, or coin dealer is stolen, the peace officer may place a hold on the property for a period not to exceed 90 days. When a peace officer places a hold on the property, the peace officer shall give the pawnbroker, secondhand dealer, or coin dealer a written notice at the time the hold is placed, describing the item or items to be held. During that period the pawnbroker, secondhand dealer, or coin dealer shall not release or dispose of the property, except pursuant to a court order or upon receipt of a written authorization signed by any peace officer who is a member of the law enforcement agency of which the peace officer placing the hold on the property is a member. A pawnbroker, secondhand property dealer, or coin dealer shall not be subject to civil liability for compliance with this section.

(b) Whenever property that is in the possession of a pawnbroker, secondhand dealer, or coin dealer, whether or not the property has been placed on hold, is required by a peace officer in a criminal investigation, the pawnbroker, secondhand dealer, or coin dealer, upon reasonable notice, shall produce the property at reasonable times and places or may deliver the property to the peace officer upon the request of any peace officer.

(c) Whenever a law enforcement agency has knowledge that property in the possession of a pawnbroker, secondhand dealer, or coin dealer has been reported as lost or stolen, the law enforcement agency shall notify in writing the person who reported the property as lost or stolen of the following:

(1) The name, address, and telephone number of the pawnbroker, secondhand dealer, or coin dealer who reported the acquisition of the property.

(2) That the law neither requires nor prohibits payment of a fee or any other condition in return for the surrender of the property, except that when the person who reported the property lost or stolen does not choose to participate in the prosecution of an identified alleged thief, the person shall pay the pawnbroker, secondhand dealer, or coin dealer the "out-of-pocket" expenses paid in the

acquisition of the property in return for the surrender of the property.

(3) That if the person who reported the property as lost or stolen takes no action to recover the property from the pawnbroker, secondhand dealer, or coin dealer within 60 days of the mailing of the notice, the pawnbroker, secondhand dealer, or coin dealer may treat the property as other property received in the ordinary course of business. During the 60-day notice period, the pawnbroker, secondhand dealer, or coin dealer may not release the property to any other person.

(4) That a copy of the notice, with the address of the person who reported the property as lost or stolen deleted, will be mailed to the pawnbroker, secondhand dealer, or coin dealer who is in possession of the property.

(d) When property that is in the possession of a pawnbroker, secondhand dealer, or coin dealer is subject to a hold as provided in subdivision (a), and the property is no longer required for the purpose of a criminal investigation, the law enforcement agency that placed the hold on the property shall release the hold on the property. When the law enforcement agency has knowledge that the property has been reported lost or stolen, the law enforcement agency shall then make notification to the person who reported the property as lost or stolen pursuant to subdivision (c).

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

(f) Whenever information regarding allegedly lost or stolen property is entered into the Department of Justice automated property system or automated firearms system, and the property is thereafter identified and found to be in the possession of a pawnbroker, secondhand dealer, or coin dealer, and the property is thereafter placed on a hold pursuant to this section and the hold, including any additional hold, is allowed to lapse, or 60 days elapse following the delivery of the notice required to be given by this section to the person who reported the property to be lost or stolen without a claim being made by that person, whichever is later, the pawnbroker, secondhand dealer, or coin dealer may mail under a Certificate of Mailing issued by the United States Post Office, addressed to the law enforcement agency that placed the property on hold, a written request to delete the property listing from the Department of Justice automated property system or automated firearms system, as is applicable. Within 30 days after the request has been mailed, the law enforcement agency shall either cause the property listing to be deleted as requested or place a hold on the property. If no law enforcement agency takes any further action with

respect to the property within 45 days after the mailing of the request, the pawnbroker, secondhand dealer, or coin dealer may presume that the property listing has been deleted as requested and may thereafter deal with the property accordingly, and shall not be subject to liability arising from the failure of the removal of the property listing from the Department of Justice automated property system or automated firearms system.

(g) Nothing in this section shall be construed to alter the authority of a peace officer to seize property pursuant to any other provision of statutory or case law.

SEC. 7. Section 21000 of the Financial Code is amended to read:

21000. Every person engaged in the business of receiving goods, including motor vehicles, in pledge as security for a loan is a pawnbroker within the meaning of this division.

SEC. 8. Section 21300.1 is added to the Financial Code, to read:

21300.1. It is unlawful for any person who is not duly licensed under this section to act as a pawnbroker or represent himself, herself, or a business entity to be a pawnbroker or a pawnbrokerage business entity.

SEC. 9. Section 21301 of the Financial Code is amended to read:

21301. (a) A license granted pursuant to Section 21300 shall be renewable the second year from the date of issue, and every other year thereafter, upon the filing of a renewal application and compliance with the requirements of Section 21303. The Department of Justice and the chief of police, the sheriff, or where appropriate, the police commission may charge a fee for the license renewal not to exceed the actual processing costs. The licensing authority shall collect the fee and transmit the fee and a copy of the renewed license to the Department of Justice.

(b) The license shall be subject to forfeiture by the licensing authority, and the licensee's activities as a pawnbroker shall be subject to being enjoined pursuant to Section 21302, for breach of any of the following conditions:

(1) The business shall be carried on only at the location designated on the license. The license shall designate all locations where property belonging to the business is stored. Property of the business may be stored at locations not designated on the license only with the written consent of the local licensing authority.

(2) The license or a copy thereof, certified by the licensing authority, shall be displayed on the premises in plain view of the public.

(3) The licensee shall not engage in any act which the licensee knows to be in violation of this article.

(4) The licensee shall not be convicted of an attempt to receive stolen property or other offense involving stolen property. For the purposes of this paragraph, "convicted" means a plea or verdict of guilty or a conviction following a plea or nolo contendere. Any action which the chief of police, the sheriff, or, where appropriate, the

police commission, is permitted to take following such a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code.

(c) Notwithstanding subdivisions (a) and (b), no person shall have his or her renewal application for a pawnbroker's license denied, nor shall his or her pawnbroker's license be forfeited solely on the grounds that he or she violated any provision contained in Chapter 1 (commencing with Section 21000) or Chapter 2 (commencing with Section 21200) of this division or Article 4 (commencing with Section 21625) or Article 5 (commencing with Section 21650) of Chapter 9 of Division 8 of the Business and Professions Code unless the violation demonstrates a pattern of conduct.

SEC. 10. Section 21301.1 is added to the Financial Code, to read:

21301.1. It is unlawful for any person to advertise his or her services as a pawnbroker, or to use any words or parts of words in any advertisements that connote a transaction involving the taking of tangible personal property as security for a loan unless the pawnbroker's license number is clearly displayed in the advertisement.

SEC. 11. Section 21304 of the Financial Code is amended to read:

21304. (a) As a condition precedent to the issuing of a pawnbroker's license, the applicant shall file with the issuing authority a financial statement confirming that the applicant has at least one hundred thousand dollars ($100,000) in the form of liquid assets readily available for use in each licensed business for which the application is made, not including real property or in the absence of one hundred thousand dollars ($100,000), an applicant may post a nonrevocable surety bond in the amount of one hundred thousand dollars ($100,000) or the applicant may, in lieu of posting a surety bond, deposit money, certificates, accounts, bonds, or notes, as provided in Section 995.710 of the Code of Civil Procedure. The financial statement shall be filed by the applicant under penalty of perjury and signed by a California certified public accountant verifying that he or she has reviewed the financial statement.

(b) This section is not applicable to any person holding a secondhand dealers license pursuant to Section 21641 or 21642 of the Business and Professions Code and who is actively engaged as a pawnbroker on the effective date of this section.

SEC. 12. Section 21307 is added to the Financial Code, to read:

21307. Except as otherwise specifically provided, the violation of any provision of this chapter under circumstances where a person knows or should have known that a violation was being committed is a misdemeanor.

SEC. 13. Section 484.1 of the Penal Code is amended to read:

484.1. (a) Any person who knowingly gives false information or provides false verification as to the person's true identity or as to the person's ownership interest in property or the person's authority to sell property in order to receive money or other valuable consideration from a pawnbroker or secondhand dealer and who receives money or other valuable consideration from the pawnbroker or secondhand dealer is guilty of theft.

(b) Upon conviction of the offense described in subdivision (a), the court may require, in addition to any sentence or fine imposed, that the defendant make restitution to the pawnbroker or secondhand dealer in an amount not exceeding the actual losses sustained pursuant to the provisions of subdivision (c) of Section 13967 of the Government Code, if the defendant is denied probation, or Section 1203.04 of the Penal Code, if the defendant is granted probation.

(c) Upon the setting of a court hearing date for sentencing of any person convicted under this section, the probation officer, if one is assigned, shall notify the pawnbroker or secondhand dealer or coin dealer of the time and place of the hearing.

SEC. 14. Section 484.1 of the Penal Code is amended to read:

484.1. (a) Any person who knowingly gives false information or provides false verification as to the person's true identity or as to the person's ownership interest in property or the person's authority to sell property in order to receive money or other valuable consideration from a pawnbroker or secondhand dealer and who receives money or other valuable consideration from the pawnbroker or secondhand dealer is guilty of theft.

(b) Upon conviction of the offense described in subdivision (a), the court may require, in addition to any sentence or fine imposed, that the defendant make restitution to the pawnbroker or secondhand dealer in an amount not exceeding the actual losses sustained pursuant to the provisions of subdivision (c) of Section 13967, as operative on or before September 28, 1994, of the Government Code, if the defendant is denied probation, or Section 1203.04, as operative on or before August 2, 1995, if the defendant is granted probation or Section 1202.4.

(c) Upon the setting of a court hearing date for sentencing of any person convicted under this section, the probation officer, if one is assigned, shall notify the pawnbroker or secondhand dealer or coin dealer of the time and place of the hearing.

SEC. 15. Section 4.1 of this bill incorporates amendments to Section 21641 of the Business and Professions Code proposed by both this bill and SB 1374. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 21641 of the Business and Professions Code, and (3) this bill is enacted after SB 1374, in which case Section 4 of this bill shall not become operative.

SEC. 16. Section 14 of this bill incorporates amendments to Section 484.1 of the Penal Code proposed by both this bill and AB 2898. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 484.1 of the Penal Code, and (3) this bill is enacted after AB 2898, in which case Section 13 of this bill shall not become operative.

SEC. 17. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

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

CHAPTER 924

An act to amend Sections 21626, 21628, 21636, and 21641 of the Business and Professions Code, and to amend Section 11106 of the Penal Code, relating to crime.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Section 21626 of the Business and Professions Code is amended to read:

21626. (a) A "secondhand dealer," as used in this article, means and includes any person, copartnership, firm, or corporation whose business includes buying, selling, trading, taking in pawn, accepting for sale on consignment, accepting for auctioning, or auctioning secondhand tangible personal property. A "secondhand dealer" does not include a "coin dealer" or participants at gun shows or events, as defined in Section 178.100 of Title 27 of the Code of Federal

Regulations, or its successor, who are not required to be licensed pursuant to Section 12071 of the Penal Code, who are acting in compliance with the requirements of Section 12070 and subdivision (d) of Section 12072 of the Penal Code, and who are not a "Gun Show Trader," as described in paragraph (5) of subdivision (b) of Section 12070 of the Penal Code.

(b) As used in this section, a "coin dealer" means any person, firm, partnership, or corporation whose principal business is the buying, selling, and trading of coins, monetized bullion, or commercial grade ingots of gold, or silver, or other precious metals.

SEC. 1.5. Section 21628 of the Business and Professions Code is amended to read:

21628. Every secondhand dealer or coin dealer described in Section 21626 shall report daily, or on the first working day after receipt or purchase of the property, on forms either approved or provided at actual cost by the Department of Justice, all tangible personal property which he or she has purchased, taken in trade, taken in pawn, accepted for sale on consignment, or accepted for auctioning, to the chief of police or to the sheriff, in accordance with the provisions of Sections 21630 and 21633. The report shall be legible, prepared in English, completed where applicable, and include, but not be limited to, the following information:

(a) The name and current address of the intended seller or pledgor of the property.

(b) The identification of the intended seller or pledgor. The identification of the seller or pledgor of the property shall be verified by the person taking the information. The verification shall be valid if the person taking the information reasonably relies on any one of the following documents, provided that the document is currently valid or has been issued within five years and contains a photograph or description, or both, of the person named on it, is signed by the person, and bears a serial or other identifying number:

(1) A passport of the United States.

(2) A driver's license issued by any state, or Canada.

(3) An identification card issued by any state.

(4) An identification card issued by the United States.

(5) A passport from any other country in addition to another item of identification bearing an address.

(c) A complete and reasonably accurate description of serialized property, including, but not limited to, the following: serial number and other identifying marks or symbols, owner-applied numbers, manufacturer's named brand, and model name or number. Watches need not be disassembled when special skill or special tools are required to obtain the required information, unless specifically requested to do so by a peace officer. A special tool does not include a penknife, caseknife, or similar instrument and disassembling a watch with a penknife, caseknife, or similar instrument does not constitute a special skill. In all instances where the required

information may be obtained by removal of a watchband, then the watchband shall be removed. The cost associated with opening the watch shall be borne by the pawnbroker, secondhand dealer, or customer.

(d) A complete and reasonably accurate description of nonserialized property, including, but not limited to, the following: size, color, material, manufacturer's pattern name (when known), owner-applied numbers and personalized inscriptions and other identifying marks or symbols. Watches need not be disassembled when special skill or special tools are required to obtain the required information, unless specifically requested to do so by a peace officer. A special tool does not include a penknife, caseknife, or similar instrument and disassembling a watch with a penknife, caseknife, or similar instrument does not constitute a special skill. In all instances where the required information may be obtained by removal of a watchband, then the watchband shall be removed. The cost associated with opening the watch shall be borne by the pawnbroker, secondhand dealer, or customer.

(e) A certification by the intended seller or pledgor that he or she is the owner of the property or has the authority of the owner to sell or pledge the property.

(f) A certification by the intended seller or pledgor that to his or her knowledge and belief the information is true and complete.

(g) A legible fingerprint taken from the intended seller or pledgor, as prescribed by the Department of Justice. This requirement does not apply to a coin dealer, unless required pursuant to local regulation.

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

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

(i) Any person who conducts business as a secondhand dealer at any gun show or event, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, outside the jurisdiction that issued the secondhand dealer license in accordance with subdivision (d) of Section 21641, may be required to submit a duplicate of the transaction report prepared pursuant to this section to the local law enforcement agency where the gun show or event is conducted.

SEC. 1.6. Section 21636 of the Business and Professions Code is amended to read:

21636. (a) Every secondhand dealer and coin dealer shall retain in his or her possession for a period of 30 days all tangible personal property reported under Sections 21628, 21629, and 21630. The 30-day

holding period with respect to this tangible personal property shall commence with the date the report of its acquisition was made to the chief of police or to the sheriff by the secondhand dealer and coin dealer. The chief of police or the sheriff may for good cause, as specified by the Department of Justice, authorize prior disposition of any such property described in a specific report, provided that a secondhand dealer who disposes of tangible personal property pursuant to that authorization shall report the sale thereof to the chief of police or the sheriff.

(b) During the 30-day holding period specified in subdivision (a) every secondhand dealer and coin dealer shall produce any tangible personal property reported under Sections 21628, 21629, and 21630 for inspection by any peace officer or employee designated by the chief of police or sheriff.

(c) Property subject to inspection as specified in subdivision (b) and property held in pawn, which is stored off the business premises of the licensee, shall, upon request for inspection, be produced at the licensee's business premises within one business day of a request.

(d) Any person who conducts business as a secondhand dealer at any gun show or event, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, outside the jurisdiction that issued the secondhand dealer license in accordance with subdivision (d) of Section 21641, may be required to submit for inspection, as specified in subdivision (b), any firearm acquired at a gun show or event within 48 hours of the request of the local law enforcement agency in the jurisdiction where the gun show or event was conducted at a location specified by the local law enforcement agency.

SEC. 2. Section 21641 of the Business and Professions Code is amended to read:

21641. (a) The chief of police, the sheriff or, where appropriate, the police commission, shall accept an application for and grant a license permitting the licensee to engage in the business of secondhand dealer, as defined in Section 21626, to an applicant who has not been convicted of an attempt to receive stolen property or any other offense involving stolen property. Prior to the granting of a license, the licensing authority shall submit the application to the Department of Justice. If the Department of Justice does not comment on the application within 30 days thereafter, the licensing authority may grant the applicant a license. All forms for application and licensure, and license renewal, shall be prescribed and provided by the Department of Justice. A fee may be charged to the applicant as specified by the Department of Justice for processing the initial license application.

(b) For the purposes of this section, "convicted" means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(c) Notwithstanding subdivisions (a) and (b), no person shall be denied a secondhand dealer's license solely on the grounds that he

or she violated any provision contained in Article 4 (commencing with Section 21625) or Article 5 (commencing with Section 21650) of this chapter, or any provision contained in Chapter 2 (commencing with Section 21200) of Division 8 of the Financial Code, unless the violation demonstrates a pattern of conduct.

(d) Any person licensed as a firearms dealer pursuant to Section 12071 of the Penal Code, who is conducting business at gun shows or events pursuant to subparagraph (B) of paragraph (1) of subdivision (b) of Section 12071 of the Penal Code, and who has a valid secondhand dealer license granted by the appropriate local authorities in the jurisdiction where the firearms dealer license has been granted, shall be authorized to conduct business as a secondhand dealer at any gun show or event, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, without regard to the jurisdiction within this state that issued the secondhand dealer license pursuant to subdivision (a) of this section. No additional fees or separate secondhand dealer license shall be required by any agency having jurisdiction over the locality where the gun show or event is conducted. However, the person shall otherwise be subject to, and comply with, the requirements of this article when he or she acts as a secondhand dealer at the gun show or event to the same extent as if he or she were licensed as a secondhand dealer in the jurisdiction in which the gun show or event is being conducted.

SEC. 2.5. Section 21641 of the Business and Professions Code is amended to read:

21641. (a) The chief of police, the sheriff or, where appropriate, the police commission, shall accept an application for and grant a license permitting the licensee to engage in the business of secondhand dealer, as defined in Section 21626, to an applicant who has not been convicted of an attempt to receive stolen property or any other offense involving stolen property. Prior to the granting of a license, the licensing authority shall submit the application to the Department of Justice. If the Department of Justice does not comment on the application within 30 days thereafter, the licensing authority may grant the applicant a license. All forms for application and licensure, and license renewal, shall be prescribed and provided by the Department of Justice. A fee may be charged to the applicant as specified by the Department of Justice and the local licensing authority for processing the initial license application.

(b) For the purposes of this section, "convicted" means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(c) Notwithstanding subdivisions (a) and (b), no person shall be denied a secondhand dealer's license solely on the grounds that he or she violated any provision contained in Article 4 (commencing with Section 21625) or Article 5 (commencing with Section 21650) of this chapter, or any provision contained in Chapter 2

(commencing with Section 21200) of Division 8 of the Financial Code, unless the violation demonstrates a pattern of conduct.

(d) Any person licensed as a firearms dealer pursuant to Section 12071 of the Penal Code, who is conducting business at gun shows or events pursuant to subparagraph (B) of paragraph (1) of subdivision (b) of Section 12071 of the Penal Code, and who has a valid secondhand dealer license granted by the appropriate local authorities in the jurisdiction where the firearms dealer license has been granted, shall be authorized to conduct business as a secondhand dealer at any gun show or event, as defined in Section 178.100 of Title 27 of the Code of Federal Regulations, or its successor, without regard to the jurisdiction within this state that issued the secondhand dealer license pursuant to subdivision (a) of this section. No additional fees or separate secondhand dealer license shall be required by any agency having jurisdiction over the locality where the gun show or event is conducted. However, the person shall otherwise be subject to, and comply with, the requirements of this article when he or she acts as a secondhand dealer at the gun show or event to the same extent as if he or she were licensed as a secondhand dealer in the jurisdiction in which the gun show or event is being conducted.

SEC. 3. Section 11106 of the Penal Code is amended to read:

11106. (a) In order to assist in the investigation of crime, the arrest and prosecution of criminals, and the recovery of lost, stolen, or found property, the Attorney General shall keep and properly file a complete record of all copies of fingerprints, copies of applications for licenses to carry firearms issued pursuant to Section 12050, information reported to the Department of Justice pursuant to Section 12053, dealers' records of sales of firearms, reports provided pursuant to Section 12078, forms provided pursuant to Section 12084, reports provided pursuant to Section 12071 that are not dealers' records of sales of firearms, and reports of stolen, lost, found, pledged, or pawned property in any city or county of this state, and shall, upon proper application therefor, furnish to the officers mentioned in Section 11105, hard copy printouts of those records as photographic, photostatic, and nonerasable optically stored reproductions.

(b) (1) Notwithstanding subdivision (a), the Attorney General shall not retain or compile any information from reports filed pursuant to subdivision (a) of Section 12078 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, from forms submitted pursuant to Section 12084 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, or from dealers' records of sales for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person. All copies of the forms submitted pursuant to Section 12084 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, or of the dealers' records of sales for firearms that are not pistols, revolvers,

or other firearms capable of being concealed upon the person shall be destroyed within five days of the clearance by the Attorney General, unless the purchaser or transferor is ineligible to take possession of the firearm. All copies of the reports filed pursuant to subdivision (a) of Section 12078 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of the receipt by the Attorney General, unless retention is necessary for use in a criminal prosecution.

(2) A peace officer, the Attorney General, a Department of Justice employee designated by the Attorney General, or any authorized local law enforcement employee shall not retain or compile any information from a firearms transaction record, as defined in paragraph (5) of subdivision (c) of Section 12071, for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person unless retention or compilation is necessary for use in a criminal prosecution or in a proceeding to revoke a license issued pursuant to Section 12071.

(3) A violation of this subdivision is a misdemeanor.

(c) (1) The Attorney General shall permanently keep and properly file and maintain all information reported to the Department of Justice pursuant to Sections 12071, 12072, 12078, 12082, and 12084 or any other law, as to pistols, revolvers, or other firearms capable of being concealed upon the person and maintain a registry thereof.

(2) The registry shall consist of all of the following:

(A) The name, address, identification of, place of birth (state or country), complete telephone number, occupation, sex, description, and all legal names and aliases ever used by the owner or person being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person as listed on the information provided to the department on the Record of Sale, the Law Enforcement Firearms Transfer (LEFT), as defined in Section 12084, or reports made to the department pursuant to Section 12078 or any other law.

(B) The name and address of, and other information about, any person (whether a dealer or a private party) from whom the owner acquired or the person being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person and when the firearm was acquired or loaned as listed on the information provided to the department on the Record of Sale, the LEFT, or reports made to the department pursuant to Section 12078 or any other law.

(C) Any waiting period exemption applicable to the transaction which resulted in the owner of or the person being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person acquiring or being loaned that firearm.

(D) The manufacturer's name if stamped on the firearm; model name or number if stamped on the firearm; and, if applicable, the serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, and color of the firearm.

(3) Information in the registry referred to in this subdivision shall, upon proper application therefor, be furnished to the officers referred to in Section 11105 or to the person listed in the registry as the owner or person who is listed as being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person in the form of hard copy printouts of that information as photographic, photostatic, and nonerasable optically stored reproductions.

SEC. 3.5. Section 11106 of the Penal Code is amended to read:

11106. (a) In order to assist in the investigation of crime, the arrest and prosecution of criminals, and the recovery of lost, stolen, or found property, the Attorney General shall keep and properly file a complete record of all copies of fingerprints, copies of applications for licenses to carry firearms issued pursuant to Section 12050, information reported to the Department of Justice pursuant to Section 12053, dealers' records of sales of firearms, reports provided pursuant to Section 12078, forms provided pursuant to Section 12084, reports provided pursuant to Section 12071 that are not dealers' records of sales of firearms, and reports of stolen, lost, found, pledged, or pawned property in any city or county of this state, and shall, upon proper application therefor, furnish to the officers mentioned in Section 11105, hard copy printouts of those records as photographic, photostatic, and nonerasable optically stored reproductions.

(b) (1) Notwithstanding subdivision (a), the Attorney General shall not retain or compile any information from reports filed pursuant to subdivision (a) of Section 12078 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, from forms submitted pursuant to Section 12084 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, or from dealers' records of sales for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person. All copies of the forms submitted, or any information received in electronic form, pursuant to Section 12084 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person, or of the dealers' records of sales for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days of the clearance by the Attorney General, unless the purchaser or transferor is ineligible to take possession of the firearm. All copies of the reports filed, or any information received in electronic form, pursuant to subdivision (a) of Section 12078 for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person shall be destroyed within five days

of the receipt by the Attorney General, unless retention is necessary for use in a criminal prosecution.

(2) A peace officer, the Attorney General, a Department of Justice employee designated by the Attorney General, or any authorized local law enforcement employee shall not retain or compile any information from a firearms transaction record, as defined in paragraph (5) of subdivision (c) of Section 12071, for firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person unless retention or compilation is necessary for use in a criminal prosecution or in a proceeding to revoke a license issued pursuant to Section 12071.

(3) A violation of this subdivision is a misdemeanor.

(c) (1) The Attorney General shall permanently keep and properly file and maintain all information reported to the Department of Justice pursuant to Sections 12071, 12072, 12078, 12082, and 12084 or any other law, as to pistols, revolvers, or other firearms capable of being concealed upon the person and maintain a registry thereof.

(2) The registry shall consist of all of the following:

(A) The name, address, identification of, place of birth (state or country), complete telephone number, occupation, sex, description, and all legal names and aliases ever used by the owner or person being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person as listed on the information provided to the department on the Record of Sale, the Law Enforcement Firearms Transfer (LEFT), as defined in Section 12084, or reports made to the department pursuant to Section 12078 or any other law.

(B) The name and address of, and other information about, any person (whether a dealer or a private party) from whom the owner acquired or the person being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person and when the firearm was acquired or loaned as listed on the information provided to the department on the Record of Sale, the LEFT, or reports made to the department pursuant to Section 12078 or any other law.

(C) Any waiting period exemption applicable to the transaction which resulted in the owner of or the person being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person acquiring or being loaned that firearm.

(D) The manufacturer's name if stamped on the firearm; model name or number if stamped on the firearm; and, if applicable, the serial number, other number (if more than one serial number is stamped on the firearm), caliber, type of firearm, if the firearm is new or used, barrel length, and color of the firearm.

(3) Information in the registry referred to in this subdivision shall, upon proper application therefor, be furnished to the officers referred to in Section 11105 or to the person listed in the registry as

the owner or person who is listed as being loaned the particular pistol, revolver, or other firearm capable of being concealed upon the person in the form of hard copy printouts of that information as photographic, photostatic, and nonerasable optically stored reproductions.

SEC. 4. (a) Subject to the availability of adequate funds to prepare and make the report, the Attorney General shall prepare and submit to the Legislature, on or before June 1, 1997, a report concerning all of the following:

(1) What, if any, requirements provided by paragraph (3) of subsection (a) of Section 922 of Title 18 of the United States Code apply to a person who changes residence from one state to another state.

(2) What, if any, requirements provided by paragraph (3) of subsection (a) of Section 922 of Title 18 of the United States Code apply to a person who, during any year, is a resident of more than one state prior to that person receiving or transporting a firearm into another state of residence.

(3) What specific changes in state firearms statutes are needed to establish an enforceable and convenient procedure to ensure that persons who are residents of this state and bring firearms into this state are subject to the same type of regulatory controls that would apply to those firearms if they are sold or transferred in this state.

(b) The report prepared pursuant to this section shall be signed by the Attorney General.

(c) This section shall remain in effect only until January 1, 1999, and as of that date is repealed.

SEC. 5. It is the intent of the Legislature that the Department of Justice utilize a sum not to exceed sixty thousand dollars ($60,000) from moneys received by the department from private parties as the result of the entry of any judgment, including, but not limited to, an order of dismissal, because of the enactment of Chapter 178 of the Statutes of 1995, to fund the report required pursuant to Section 4 of this act.

SEC. 6. Section 2.5 of this bill incorporates amendments to Section 21641 of the Business and Professions Code proposed by both this bill and AB 2759. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 21641 of the Business and Professions Code, and (3) this bill is enacted after AB 2759, in which case Section 2 of this bill shall not become operative.

SEC. 7. Section 3.5 of this bill incorporates amendments to Section 11106 of the Penal Code proposed by both this bill and SB 671. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1997, (2) each bill amends Section

11106 of the Penal Code, and (3) this bill is enacted after SB 671, in which case Section 3 of this bill shall not become operative.

CHAPTER 925

An act to amend, add, and repeal Section 1102.6 of the Civil Code, to amend Section 18942 of, and to add Article 2.5 (commencing with Section 115920) to Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code, relating to housing.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Section 1102.6 of the Civil Code is amended to read:

1102.6. (a) The disclosures required by this article pertaining to the property proposed to be transferred are set forth in, and shall be made on a copy of, the following disclosure form:

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF _____, COUNTY OF _____, STATE OF CALIFORNIA, DESCRIBED AS _____. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH SECTION 1102 OF THE CIVIL CODE AS OF _____, 19___. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I

COORDINATION WITH OTHER DISCLOSURE FORMS

This Real Estate Transfer Disclosure Statement is made pursuant to Section 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

Substituted Disclosures: The following disclosures have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same:

☐ Inspection reports completed pursuant to the contract of sale or receipt for deposit.

☐ Additional inspection reports or disclosures:

_____

_____

_____

II

SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller __is __is not occupying the property.

A. The subject property has the items checked below (read across):

__Range	__Oven	__Microwave
__Dishwasher	__Trash Compactor	__Garbage Disposal
__Washer/Dryer Hookups	__Window Screens	__Rain Gutters
__Burglar Alarms	__Smoke Detector(s)	__Fire Alarm
__TV Antenna	__Satellite Dish	__Intercom
__Central Heating	__Central Air Cndtng.	__Evaporator Cooler(s)
__Wall/Window Air Cndtng.	__Sprinklers	__Public Sewer System
__Septic Tank	__Sump Pump	__Water Softener
__Patio/Decking	__Built-in Barbecue	__Gazebo
__Sauna	__Pool	__Spa __Hot Tub
__Security Gate(s)	__Automatic Garage Door Opener(s) *	__Number Remote Controls
Garage: __Attached	__Not Attached	__Carport
Pool/Spa Heater: __Gas	__Solar	__Electric
Water Heater: __Gas		__Private Utility or Other_____
Water Supply: __City	__Well	
Gas Supply: __Utility	__Bottled	

Exhaust Fan(s) in _____ 220 Volt Wiring in _____ Fireplace(s) in_____
Gas Starter _____ Roof(s): Type: _____ Age: _____ (approx.)
Other:_____

Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? __Yes __No. If yes, then describe.

(Attach additional sheets if necessary):_____

B. Are you (Seller) aware of any significant defects/malfunctions in any of the following? __Yes __No. If yes, check appropriate space(s) below.

__Interior Walls __Ceilings __Floors __Exterior Walls __Insulation __Roof(s) __Windows __Doors __Foundation __Slab(s) __Driveways __Sidewalks __Walls/Fences __Electrical Systems __Plumbing/Sewers/Septics __Other Structural Components (Describe:_____

_____)

If any of the above is checked, explain. (Attach additional sheets if necessary):_____

* This garage door opener may not be in compliance with the safety standards relating to automatic reversing devices as set forth in Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of the Health and Safety Code.

C. Are you (Seller) aware of any of the following:

1. Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, and contaminated soil or water on the subject property ..... __Yes __No
2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property ..... __Yes __No
3. Any encroachments, easements or similar matters that may affect your interest in the subject property ..... __Yes __No
4. Room additions, structural modifications, or other alterations or repairs made without necessary permits ..... __Yes __No
5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes ..... __Yes __No
6. Fill (compacted or otherwise) on the property or any portion thereof ..... __Yes __No
7. Any settling from any cause, or slippage, sliding, or other soil problems ..... __Yes __No
8. Flooding, drainage or grading problems ..... __Yes __No
9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides ..... __Yes __No
10. Any zoning violations, nonconforming uses, violations of "setback" requirements ..... __Yes __No
11. Neighborhood noise problems or other nuisances ..... __Yes __No
12. CC&R's or other deed restrictions or obligations ..... __Yes __No
13. Homeowners' Association which has any authority over the subject property ..... __Yes __No
14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas coowned in undivided interest with others) ..... __Yes __No
15. Any notices of abatement or citations against the property ..... __Yes __No
16. Any lawsuits by or against the seller threatening to or affecting this real property, including any lawsuits alleging a defect or deficiency in this real property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas coowned in undivided interest with others) ..... __Yes __No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary.): _____

_____

_____

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller_____ Date_____

Seller_____ Date_____

III

AGENT'S INSPECTION DISCLOSURE

(To be completed only if the Seller is represented by an agent in this transaction.)

THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure.

☐ Agent notes the following items:

_____

_____

_____

_____

Agent (Broker Representing Seller)_____ By_____ Date_____
(Please Print) (Associate Licensee or Broker-Signature)

IV

AGENT'S INSPECTION DISCLOSURE

(To be completed only if the agent who has obtained the offer is other than the agent above.)

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure.

☐ Agent notes the following items:

_____

_____

_____

_____

Agent (Broker Obtaining the Offer)_____ By_____ Date_____
(Please Print) (Associate Licensee or Broker-Signature)

V

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller_____ Date_____ Buyer_____ Date_____
Seller_____ Date_____ Buyer_____ Date_____

Agent (Broker
Representing Seller)_____ By_____ Date_____
(Associate Licensee
or Broker-Signature)

Agent (Broker
Obtaining the Offer)_____ By_____ Date_____
(Associate Licensee
or Broker-Signature)

SECTION 1102.3 OF THE CIVIL CODE PROVIDES A BUYER WITH THE RIGHT TO RESCIND A PURCHASE CONTRACT FOR AT LEAST THREE DAYS AFTER THE DELIVERY OF THIS DISCLOSURE IF DELIVERY OCCURS AFTER THE SIGNING OF AN OFFER TO PURCHASE. IF YOU WISH TO RESCIND THE CONTRACT, YOU MUST ACT WITHIN THE PRESCRIBED PERIOD.

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

(b) This section shall remain in effect only until July 1, 1997, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 1997, deletes or extends that date.

SEC. 2. Section 1102.6 is added to the Civil Code, to read:

1102.6. (a) The disclosures required by this article pertaining to the property proposed to be transferred are set forth in, and shall be made on a copy of, the following disclosure form:

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF _____, COUNTY OF _____, STATE OF CALIFORNIA, DESCRIBED AS _____. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH SECTION 1102 OF THE CIVIL CODE AS OF _____, 19___. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I

COORDINATION WITH OTHER DISCLOSURE FORMS

This Real Estate Transfer Disclosure Statement is made pursuant to Section 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

Substituted Disclosures: The following disclosures have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same:

☐ Inspection reports completed pursuant to the contract of sale or receipt for deposit.

☐ Additional inspection reports or disclosures:

_____

_____

_____

II

SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller __is __is not occupying the property.
A. The subject property has the items checked below (read across):

__Range	__Oven	__Microwave
__Dishwasher	__Trash Compactor	__Garbage Disposal
__Washer/Dryer Hookups		__Rain Gutters
__Burglar Alarms	__Smoke Detector(s)	__Fire Alarm
__TV Antenna	__Satellite Dish	__Intercom
__Central Heating	__Central Air Cndtng.	__Evaporator Cooler(s)
__Wall/Window Air Cndtng.	__Sprinklers	__Public Sewer System
__Septic Tank	__Sump Pump	__Water Softener
__Patio/Decking	__Built-in Barbecue	__Gazebo
__Sauna	__Pool__Child Resistant Barrier*	__Spa__Locking Safety Cover
__Hot Tub__Locking Safety Cover		
__Security Gate(s)	__Automatic Garage Door Opener(s)*	__Number Remote Controls
Garage:__Attached	__Not Attached	__Carport
Pool/Spa Heater: __Gas	__Solar	__Electric
Water Heater: __Gas	__Water Heater Anchored, Braced, or Strapped*	__Private Utility or Other_____
Water Supply: __City	__Well	
Gas Supply: __Utility	__Bottled	
__Window Screens	__Window Security Bars__Quick Release Mechanism on Bedroom Windows*	

Exhaust Fan(s) in _____ 220 Volt Wiring in _____ Fireplace(s) in_____
Gas Starter _____ Roof(s): Type: _____ Age: _____ (approx.)
Other:_____
Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? __Yes __No. If yes, then describe.
(Attach additional sheets if necessary):_____
_____
_____
_____

B. Are you (Seller) aware of any significant defects/malfunctions in any of the following? __Yes __No. If yes, check appropriate space(s) below.
__Interior Walls __Ceilings __Floors __Exterior Walls __Insulation __Roof(s)
__Windows __Doors __Foundation __Slab(s) __Driveways __Sidewalks
__Walls/Fences __Electrical Systems __Plumbing/Sewers/Septics __Other Structural Components (Describe:_____
_____)
If any of the above is checked, explain. (Attach additional sheets if necessary):_____
_____
_____

* This garage door opener or child resistant pool barrier may not be in compliance with the safety standards relating to automatic reversing devices as set forth in Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of, or with the pool safety standards of Article 2.5 (commencing with Section 115920) of Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code. The water heater may not be anchored, braced, or strapped in accordance with Section 19211 of the Health and Safety Code. Window security bars may not have quick-release mechanisms in compliance with the 1995 California Building Standards Code.

C. Are you (Seller) aware of any of the following:

1. Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, and contaminated soil or water on the subject property ..... __Yes __No
2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property ..... __Yes __No
3. Any encroachments, easements or similar matters that may affect your interest in the subject property ..... __Yes __No
4. Room additions, structural modifications, or other alterations or repairs made without necessary permits ..... __Yes __No
5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes ..... __Yes __No
6. Fill (compacted or otherwise) on the property or any portion thereof ..... __Yes __No
7. Any settling from any cause, or slippage, sliding, or other soil problems ..... __Yes __No
8. Flooding, drainage or grading problems ..... __Yes __No
9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides ..... __Yes __No
10. Any zoning violations, nonconforming uses, violations of "setback" requirements ..... __Yes __No
11. Neighborhood noise problems or other nuisances ..... __Yes __No
12. CC&R's or other deed restrictions or obligations ..... __Yes __No
13. Homeowners' Association which has any authority over the subject property ..... __Yes __No
14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas coowned in undivided interest with others) ..... __Yes __No
15. Any notices of abatement or citations against the property ..... __Yes __No
16. Any lawsuits by or against the seller threatening to or affecting this real property, including any lawsuits alleging a defect or deficiency in this real property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas coowned in undivided interest with others) ..... __Yes __No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary.): _____

_____

_____

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller_____ Date_____

Seller_____ Date_____

III

AGENT'S INSPECTION DISCLOSURE

(To be completed only if the Seller is represented by an agent in this transaction.)

THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure.

☐ Agent notes the following items:

_____

_____

_____

_____

Agent (Broker Representing Seller)_____ By_____ Date_____
(Please Print) (Associate Licensee or Broker-Signature)

IV

AGENT'S INSPECTION DISCLOSURE

(To be completed only if the agent who has obtained the offer is other than the agent above.)

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure.

☐ Agent notes the following items:

_____

_____

_____

_____

Agent (Broker Obtaining the Offer)_____ By_____ Date_____
(Please Print) (Associate Licensee or Broker-Signature)

V

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/ DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller_____ Date_____ Buyer_____ Date_____
Seller_____ Date_____ Buyer_____ Date_____

Agent (Broker
Representing Seller)_____ By_____ Date_____
(Associate Licensee
or Broker-Signature)

Agent (Broker
Obtaining the Offer)_____ By_____ Date_____
(Associate Licensee
or Broker-Signature)

SECTION 1102.3 OF THE CIVIL CODE PROVIDES A BUYER WITH THE RIGHT TO RESCIND A PURCHASE CONTRACT FOR AT LEAST THREE DAYS AFTER THE DELIVERY OF THIS DISCLOSURE IF DELIVERY OCCURS AFTER THE SIGNING OF AN OFFER TO PURCHASE. IF YOU WISH TO RESCIND THE CONTRACT, YOU MUST ACT WITHIN THE PRESCRIBED PERIOD.

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

(b) This section shall become operative on July 1, 1997.

SEC. 3. Section 18942 of the Health and Safety Code is amended to read:

18942. (a) The commission shall publish, or cause to be published, editions of the code in its entirety once in every three years. In each intervening year the commission shall publish, or cause to be published, supplements as necessary. For emergency building standards defined in subdivision (a) of Section 18913, an emergency building standards supplement shall be published whenever the commission determines it is necessary. The commission shall also publish, for emergency standards defined in subdivision (b) of Section 18913 and for building standards or administrative regulations that apply directly to the implementation or enforcement of building standards approved pursuant to subdivision (b) of Section 142.3 of the Labor Code, a semiannual supplement, or a more frequent supplement if required by federal law.

(b) The commission shall publish the text of Article 2.5 (commencing with Section 115920) of Chapter 5 of Part 10 of Division 104, within the California Code of Regulations, Title 24, Part 2 requirements for single-family residential occupancies, with the following note:

"NOTE: These regulations are subject to local government modification. You should verify the applicable local government requirements at the time of application for a building permit."

(c) The commission may publish, stockpile, and sell at a reasonable price the code and any materials incorporated therein by reference if it deems the latter is insufficiently available to the public, or unavailable at a reasonable price. Each state department concerned and each city, county, or city and county shall have an up-to-date copy of the code available for public inspection.

(d) (1) Each city, county, and city and county, including charter cities, shall obtain and maintain with all revisions on a current basis, at least one copy of the building standards and other state regulations relating to buildings published in Titles 8, 19, 20, 24, and 25 of the California Code of Regulations. These codes shall be maintained in the office of the building official responsible for the administration and enforcement of this part.

(2) This subdivision shall not apply to any city or county which contracts for the administration and enforcement of the provisions of this part with another local government agency which complies with this section.

Article 2.5 (commencing with Section 115920 is added to Chapter 5 of Part 10 of Division 104 of the Health and Safety Code, to read:

Article 2.5. The Swimming Pool Safety Act

115920. This act shall be known and may be cited as the Swimming Pool Safety Act.

115921. As used in this article the following terms have the following meanings:

(a) "Swimming pool" or "pool" means any structure intended for swimming or recreational bathing that contains water over 18 inches deep. "Swimming pool" includes in-ground and above-ground structures and includes, but is not limited to, hot tubs, spas, portable spas, and nonportable wading pools.

(b) "Public swimming pool" means a swimming pool operated for the use of the general public with or without charge, or for the use of the members and guests of a private club. Public swimming pool does not include a swimming pool located on the grounds of a private single-family home.

(c) "Enclosure" means a fence, wall, or other barrier that isolates a swimming pool from access to the home.

(d) "Approved safety pool cover" means a manually or power-operated safety pool cover that meets all of the performance standards of the American Society for Testing and Materials (ASTM), in compliance with standard F1346-91.

(e) "Exit alarms" means devices that make audible, continuous alarm sounds when any door or window, that permits access from the residence to the pool area that is without any intervening enclosure, is opened or is left ajar. Exit alarms may be battery operated or may be connected to the electrical wiring of the building.

115922. Commencing January 1, 1998, except as provided in Section 115925, whenever a construction permit is issued for construction of a new swimming pool at a private, single-family home it shall be equipped with at least one of the following safety features:

(a) The pool shall be isolated from access to a home by an enclosure that meets the requirements of Section 115923.

(b) The pool shall be equipped with an approved safety pool cover.

(c) The residence shall be equipped with exit alarms on those doors providing direct access to the pool.

(d) All doors providing direct access from the home to the swimming pool shall be equipped with a self-closing, self-latching device with a release mechanism placed no lower than 54 inches above the floor.

(e) Other means of protection, if the degree of protection afforded is equal to or greater than that afforded by any of the devices set forth in subdivisions (a) to (d), inclusive, as determined by the building official of the jurisdiction issuing the applicable building permit. Any ordinance governing child access to pools adopted by a political subdivision on or before January 1, 1997, is presumed to

afford protection that is equal to or greater than that afforded by any of the devices set forth in subdivisions (a) to (d), inclusive.

115923. An enclosure shall have all of the following characteristics:

(a) Any access gates through the enclosure open away from the swimming pool, and are self-closing with a self-latching device placed no lower than 60 inches above the ground.

(b) A minimum height of 60 inches.

(c) A maximum vertical clearance from the ground to the bottom of the enclosure of two inches.

(d) Gaps or voids, if any, do not allow passage of a sphere equal to or greater than four inches in diameter.

(e) An outside surface free of protrusions, cavities, or other physical characteristics that would serve as handholds or footholds that could enable a child below the age of five years to climb over.

115924. Any person entering into an agreement to build a swimming pool shall give the consumer notice of the requirements of this article.

115925. The requirements of this article shall not apply to any of the following:

(a) Public swimming pools.

(b) Hot tubs or spas with locking safety covers that comply with the American Society for Testing Materials-Emergency Performance Specification (ASTM-ES 13-89).

(c) Any pool within the jurisdiction of any political subdivision that adopts an ordinance for swimming pool safety that includes requirements that are at least as stringent as this article.

(d) An apartment complex, or any residential setting other than a single-family home.

115926. This article does not apply to any facility regulated by the State Department of Social Services even if the facility is also used as the private residence of the operator. Pool safety in those facilities shall be regulated pursuant to regulations adopted therefor by the State Department of Social Services.

115927. Notwithstanding any other provision of law, this article shall not be subject to further modification or interpretation by any regulatory agency of the state, this authority being reserved exclusively to local jurisdictions, as provided for in subdivision (e) of Section 115922 and subdivision (c) of Section 115924.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative

on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 926

An act to amend Section 1102.6 of, and to add Section 1102.16 to, the Civil Code, and to add Section 17958.4 to, the Health and Safety Code, relating to housing.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Section 1102.6 of the Civil Code is amended to read:

1102.6. The disclosures required by this article pertaining to the property proposed to be transferred are set forth in, and shall be made on a copy of, the following disclosure form:

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF _____, COUNTY OF _____, STATE OF CALIFORNIA, DESCRIBED AS _____. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH SECTION 1102 OF THE CIVIL CODE AS OF _____, 19___. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I

COORDINATION WITH OTHER DISCLOSURE FORMS

This Real Estate Transfer Disclosure Statement is made pursuant to Section 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

Substituted Disclosures: The following disclosures have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same:

☐ Inspection reports completed pursuant to the contract of sale or receipt for deposit.

☐ Additional inspection reports or disclosures:

_____

_____

_____

SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller__is __is not occupying the property.
A. The subject property has the items checked below (read across):

__Range	__Oven	__Microwave
__Dishwasher	__Trash Compactor	__Garbage Disposal
__Washer/Dryer Hookups		__Rain Gutters
__Burglar Alarms	__Smoke Detector(s)	__Fire Alarm
__TV Antenna	__Satellite Dish	__Intercom
__Central Heating	__Central Air Cndtng.	__Evaporator Cooler(s)
__Wall/Window Air Cndtng.	__Sprinklers	__Public Sewer System
__Septic Tank	__Sump Pump	__Water Softener
__Patio/Decking	__Built-in Barbecue	__Gazebo
__Sauna		
__Hot Tub__Locking Safety Cover	__Pool__Child Resistant Barrier	__Spa__Locking Safety Cover
__Security Gate(s)	__Automatic Garage Door Opener(s) *	__Number Remote Controls
Garage:__Attached	__Not Attached	__Carport
Pool/Spa Heater: __Gas	__Solar	__Electric
Water Heater: __Gas	__Water Heater Anchored, Braced, or Strapped *	__Private Utility or Other_____
Water Supply: __City	__Well	
Gas Supply: __Utility	__Bottled	
__Window Screens	__Window Security Bars__Quick Release Mechanism on Bedroom Windows *	

Exhaust Fan(s) in _____ 220 Volt Wiring in _____ Fireplace(s) in_____
Gas Starter _____ Roof(s): Type: _____ Age: _____ (approx.)
Other:_____
Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? __Yes __No. If yes, then describe.
(Attach additional sheets if necessary):_____
_____
_____
_____

B. Are you (Seller) aware of any significant defects/malfunctions in any of the following? __Yes __No. If yes, check appropriate space(s) below.
__Interior Walls __Ceilings __Floors __Exterior Walls __Insulation __Roof(s)
__Windows __Doors __Foundation __Slab(s) __Driveways __Sidewalks
__Walls/Fences __Electrical Systems __Plumbing/Sewers/Septics __Other Structural Components (Describe:_____
_____)
If any of the above is checked, explain. (Attach additional sheets if necessary):_____
_____
_____

* This garage door opener may not be in compliance with the safety standards relating to automatic reversing devices as set forth in Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of the Health and Safety Code. The water heater may not be anchored, braced, or strapped in accordance with Section 19211 of the Health and Safety Code. Window security bars may not have quick-release mechanisms in compliance with the 1995 Edition of the California Building Standards Code.

C. Are you (Seller) aware of any of the following:

1. Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, and contaminated soil or water on the subject property ..... __Yes __No
2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property ..... __Yes __No
3. Any encroachments, easements or similar matters that may affect your interest in the subject property ..... __Yes __No
4. Room additions, structural modifications, or other alterations or repairs made without necessary permits ..... __Yes __No
5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes ..... __Yes __No
6. Fill (compacted or otherwise) on the property or any portion thereof ..... __Yes __No
7. Any settling from any cause, or slippage, sliding, or other soil problems ..... __Yes __No
8. Flooding, drainage or grading problems ..... __Yes __No
9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides ..... __Yes __No
10. Any zoning violations, nonconforming uses, violations of "setback" requirements ..... __Yes __No
11. Neighborhood noise problems or other nuisances ..... __Yes __No
12. CC&R's or other deed restrictions or obligations ..... __Yes __No
13. Homeowners' Association which has any authority over the subject property ..... __Yes __No
14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas coowned in undivided interest with others) ..... __Yes __No
15. Any notices of abatement or citations against the property ..... __Yes __No
16. Any lawsuits by or against the seller threatening to or affecting this real property, including any lawsuits alleging a defect or deficiency in this real property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas coowned in undivided interest with others) ..... __Yes __No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary.): _____

_____

_____

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller_____ Date_____

Seller_____ Date_____

III

AGENT'S INSPECTION DISCLOSURE

(To be completed only if the Seller is represented by an agent in this transaction.)

THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure.

☐ Agent notes the following items:

_____

_____

_____

_____

Agent (Broker Representing Seller)_____ By_____ Date_____
(Please Print) (Associate Licensee or Broker-Signature)

IV

AGENT'S INSPECTION DISCLOSURE

(To be completed only if the agent who has obtained the offer is other than the agent above.)

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure.

☐ Agent notes the following items:

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_____

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Agent (Broker obtaining the Offer)_____ By_____ Date_____
(Please Print) (Associate Licensee or Broker-Signature)

V

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/ DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller_____ Date_____ Buyer_____ Date_____
Seller_____ Date_____ Buyer_____ Date_____

Agent (Broker
Representing Seller)_____ By_____ Date_____
(Associate Licensee
or Broker-Signature)

Agent (Broker
obtaining the Offer)_____ By_____ Date_____
(Associate Licensee
or Broker-Signature)

SECTION 1102.3 OF THE CIVIL CODE PROVIDES A BUYER WITH THE RIGHT TO RESCIND A PURCHASE CONTRACT FOR AT LEAST THREE DAYS AFTER THE DELIVERY OF THIS DISCLOSURE IF DELIVERY OCCURS AFTER THE SIGNING OF AN OFFER TO PURCHASE. IF YOU WISH TO RESCIND THE CONTRACT, YOU MUST ACT WITHIN THE PRESCRIBED PERIOD.

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

SEC. 1.5. Section 1102.6 of the Civil Code is amended to read:

1102.6. The disclosures required by this article pertaining to the property proposed to be transferred are set forth in, and shall be made on a copy of, the following disclosure form:

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY SITUATED IN THE CITY OF _____, COUNTY OF _____, STATE OF CALIFORNIA, DESCRIBED AS _____. THIS STATEMENT IS A DISCLOSURE OF THE CONDITION OF THE ABOVE DESCRIBED PROPERTY IN COMPLIANCE WITH SECTION 1102 OF THE CIVIL CODE AS OF _____, 19___. IT IS NOT A WARRANTY OF ANY KIND BY THE SELLER(S) OR ANY AGENT(S) REPRESENTING ANY PRINCIPAL(S) IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE PRINCIPAL(S) MAY WISH TO OBTAIN.

I

COORDINATION WITH OTHER DISCLOSURE FORMS

This Real Estate Transfer Disclosure Statement is made pursuant to Section 1102 of the Civil Code. Other statutes require disclosures, depending upon the details of the particular real estate transaction (for example: special study zone and purchase-money liens on residential property).

Substituted Disclosures: The following disclosures have or will be made in connection with this real estate transfer, and are intended to satisfy the disclosure obligations on this form, where the subject matter is the same:

☐ Inspection reports completed pursuant to the contract of sale or receipt for deposit.

☐ Additional inspection reports or disclosures:

_____

_____

_____

SELLER'S INFORMATION

The Seller discloses the following information with the knowledge that even though this is not a warranty, prospective Buyers may rely on this information in deciding whether and on what terms to purchase the subject property. Seller hereby authorizes any agent(s) representing any principal(s) in this transaction to provide a copy of this statement to any person or entity in connection with any actual or anticipated sale of the property.

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER(S) AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

Seller__is __is not occupying the property.
A. The subject property has the items checked below (read across):

__Range	__Oven	__Microwave
__Dishwasher	__Trash Compactor	__Garbage Disposal
__Washer/Dryer Hookups		__Rain Gutters
__Burglar Alarms	__Smoke Detector(s)	__Fire Alarm
__TV Antenna	__Satellite Dish	__Intercom
__Central Heating	__Central Air Cndtng.	__Evaporator Cooler(s)
__Wall/Window Air Cndtng.	__Sprinklers	__Public Sewer System
__Septic Tank	__Sump Pump	__Water Softener
__Patio/Decking	__Built-in Barbecue	__Gazebo
__Sauna		
__Hot Tub__Locking Safety Cover *	__Pool__Child Resistant Barrier *	__Spa__Locking Safety Cover *
__Security Gate(s)	__Automatic Garage Door Opener(s) *	__Number Remote Controls
Garage:__Attached	__Not Attached	__Carport
Pool/Spa Heater: __Gas	__Solar	__Electric
Water Heater: __Gas	__Water Heater Anchored, Braced, or Strapped *	__Private Utility or Other_____
Water Supply: __City	__Well	
Gas Supply: __Utility	__Bottled	
__Window Screens	__Window Security Bars__Quick Release Mechanism on Bedroom Windows*	

Exhaust Fan(s) in _____ 220 Volt Wiring in _____ Fireplace(s) in_____
Gas Starter _____ Roof(s): Type: _____ Age: _____ (approx.)
Other:_____
Are there, to the best of your (Seller's) knowledge, any of the above that are not in operating condition? __Yes __No. If yes, then describe.
(Attach additional sheets if necessary):_____
_____
_____
_____

B. Are you (Seller) aware of any significant defects/malfunctions in any of the following? __Yes __No. If yes, check appropriate space(s) below.
__Interior Walls __Ceilings __Floors __Exterior Walls __Insulation __Roof(s)
__Windows __Doors __Foundation __Slab(s) __Driveways __Sidewalks
__Walls/Fences __Electrical Systems __Plumbing/Sewers/Septics __Other Structural Components (Describe:_____
_____)
If any of the above is checked, explain. (Attach additional sheets if necessary):__
_____
_____
_____

* This garage door opener or child resistant pool barrier may not be in compliance with the safety standards relating to automatic reversing devices as set forth in Chapter 12.5 (commencing with Section 19890) of Part 3 of Division 13 of, or with the pool safety standards of Article 2.5 (commencing with Section 115920) of Chapter 5 of Part 10 of Division 104 of, the Health and Safety Code. The water heater may not be anchored, braced, or strapped in accordance with Section 19211 of the Health and Safety Code. Window security bars may not have quick-release mechanisms in compliance with the 1995 Edition of the California Building Standards Code.

C. Are you (Seller) aware of any of the following:

1. Substances, materials, or products which may be an environmental hazard such as, but not limited to, asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, and contaminated soil or water on the subject property ..... __Yes __No
2. Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property ..... __Yes __No
3. Any encroachments, easements or similar matters that may affect your interest in the subject property ..... __Yes __No
4. Room additions, structural modifications, or other alterations or repairs made without necessary permits ..... __Yes __No
5. Room additions, structural modifications, or other alterations or repairs not in compliance with building codes ..... __Yes __No
6. Fill (compacted or otherwise) on the property or any portion thereof ..... __Yes __No
7. Any settling from any cause, or slippage, sliding, or other soil problems ..... __Yes __No
8. Flooding, drainage or grading problems ..... __Yes __No
9. Major damage to the property or any of the structures from fire, earthquake, floods, or landslides ..... __Yes __No
10. Any zoning violations, nonconforming uses, violations of "setback" requirements ..... __Yes __No
11. Neighborhood noise problems or other nuisances ..... __Yes __No
12. CC&R's or other deed restrictions or obligations ..... __Yes __No
13. Homeowners' Association which has any authority over the subject property ..... __Yes __No
14. Any "common area" (facilities such as pools, tennis courts, walkways, or other areas coowned in undivided interest with others) ..... __Yes __No
15. Any notices of abatement or citations against the property ..... __Yes __No
16. Any lawsuits by or against the seller threatening to or affecting this real property, including any lawsuits alleging a defect or deficiency in this real property or "common areas" (facilities such as pools, tennis courts, walkways, or other areas coowned in undivided interest with others) ..... __Yes __No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary.): _____

_____

_____

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller_____ Date_____

Seller_____ Date_____

III

AGENT'S INSPECTION DISCLOSURE

(To be completed only if the Seller is represented by an agent in this transaction.)

THE UNDERSIGNED, BASED ON THE ABOVE INQUIRY OF THE SELLER(S) AS TO THE CONDITION OF THE PROPERTY AND BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY IN CONJUNCTION WITH THAT INQUIRY, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure.

☐ Agent notes the following items:

_____

_____

_____

_____

Agent (Broker Representing Seller)_____ By_____ Date_____
(Please Print) (Associate Licensee or Broker-Signature)

IV

AGENT'S INSPECTION DISCLOSURE

(To be completed only if the agent who has obtained the offer is other than the agent above.)

THE UNDERSIGNED, BASED ON A REASONABLY COMPETENT AND DILIGENT VISUAL INSPECTION OF THE ACCESSIBLE AREAS OF THE PROPERTY, STATES THE FOLLOWING:

☐ Agent notes no items for disclosure.

☐ Agent notes the following items:

_____

_____

_____

_____

Agent (Broker obtaining the Offer)_____ By_____ Date_____
(Please Print) (Associate Licensee or Broker-Signature)

V

BUYER(S) AND SELLER(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND/OR INSPECTIONS OF THE PROPERTY AND TO PROVIDE FOR APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN BUYER AND SELLER(S) WITH RESPECT TO ANY ADVICE/INSPECTIONS/ DEFECTS.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT.

Seller_____ Date_____ Buyer_____ Date_____
Seller_____ Date_____ Buyer_____ Date_____

Agent (Broker
Representing Seller)_____ By_____ Date_____
(Associate Licensee
or Broker-Signature)

Agent (Broker
obtaining the Offer)_____ By_____ Date_____
(Associate Licensee
or Broker-Signature)

SECTION 1102.3 OF THE CIVIL CODE PROVIDES A BUYER WITH THE RIGHT TO RESCIND A PURCHASE CONTRACT FOR AT LEAST THREE DAYS AFTER THE DELIVERY OF THIS DISCLOSURE IF DELIVERY OCCURS AFTER THE SIGNING OF AN OFFER TO PURCHASE. IF YOU WISH TO RESCIND THE CONTRACT, YOU MUST ACT WITHIN THE PRESCRIBED PERIOD.

A REAL ESTATE BROKER IS QUALIFIED TO ADVISE ON REAL ESTATE. IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

SEC. 2. Section 1102.16 is added to the Civil Code, to read:

1102.16. The disclosure of the existence of any window security bars and any safety release mechanism on those window security bars shall be made pursuant to Section 1102.6 or 1106.6a of the Civil Code.

SEC. 3. Section 17958.4 is added to the Health and Safety Code, to read:

17958.4. (a) Any city, county, or city and county, may, by ordinance, establish a date by which all residential real property with security window bars on bedroom windows shall meet current state and local requirements for safety release mechanisms on security window bars consistent with the applicable standards in the 1995 Edition of the California Building Standards Code, and any changes made by the city, county, or city and county pursuant to Section 17958.

(b) Disclosures of the existence of any safety release mechanism on any security window bar shall be made in writing, and may be included in existing transactional documents including, but not limited to, a real estate sales contract or receipt for deposit, or a transfer disclosure statement pursuant to Section 1102.6 or 1106.6a of the Civil Code.

(c) Enforcement of an ordinance adopted pursuant to subdivision (a) shall not apply as a condition of occupancy or at the time of any transfer that is subject to the Documentary Transfer Tax Act, Part 6.7 (commencing with Section 11901) of the Revenue and Taxation Code.

SEC. 4. This act shall become operative on July 1, 1997.

SEC. 5. Section 1.5 of this bill incorporates amendments to Section 1102.6 of the Civil Code proposed by both this bill and AB 3305. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1102.6 of the Civil Code, and (3) this bill is enacted after AB 3305, in which case Section 1 of this bill shall not become operative.

CHAPTER 927

An act to amend Section 704.110 of the Code of Civil Procedure, to amend Sections 20230 and 21263 of the Government Code, and to add Section 11357 to the Welfare and Institutions Code, relating to family law.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Section 704.110 of the Code of Civil Procedure is amended to read:

704.110. (a) As used in this section:

(1) "Public entity" means the state, or a city, city and county, county, or other political subdivision of the state, or a public trust, public corporation, or public board, or the governing body of any of them, but does not include the United States except where expressly so provided.

(2) "Public retirement benefit" means a pension or an annuity, or a retirement, disability, death, or other benefit, paid or payable by a public retirement system.

(3) "Public retirement system" means a system established pursuant to statute by a public entity for retirement, annuity, or pension purposes or payment of disability or death benefits.

(b) All amounts held, controlled, or in process of distribution by a public entity derived from contributions by the public entity or by an officer or employee of the public entity for public retirement benefit purposes, and all rights and benefits accrued or accruing to any person under a public retirement system, are exempt without making a claim.

(c) Notwithstanding subdivision (b), where an amount described in subdivision (b) becomes payable to a person and is sought to be applied to the satisfaction of a judgment for child, family, or spousal support against that person:

(1) Except as provided in paragraphs (2) and (3), the amount is exempt only to the extent that the court determines under subdivision (c) of Section 703.070.

(2) If the amount sought to be applied to the satisfaction of the judgment is payable periodically, the amount payable is subject to an earnings assignment order for support as defined in Section 706.011, or any other applicable enforcement procedure, but the amount to be withheld pursuant to the assignment order or other procedure shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052. The paying entity may deduct from each payment made pursuant to an earnings assignment order under this paragraph an amount reflecting the actual cost of administration caused by the assignment order up to two dollars ($2) for each payment.

(3) If the intercept procedure provided for in Section 11357 of the Welfare and Institutions Code is used for benefits that are payable periodically, the amount to be withheld shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052.

(4) If the amount sought to be applied to the satisfaction of the judgment is payable as a lump-sum distribution, the amount payable is subject to the intercept procedure provided in Section 11357 of the Welfare and Institutions Code or any other applicable enforcement procedure.

(d) All amounts received by any person, a resident of the state, as a public retirement benefit or as a return of contributions and

interest thereon from the United States or a public entity or from a public retirement system are exempt.

SEC. 1.5. Section 704.110 of the Code of Civil Procedure is amended to read:

704.110. (a) As used in this section:

(1) "Public entity" means the state, or a city, city and county, county, or other political subdivision of the state, or a public trust, public corporation, or public board, or the governing body of any of them, but does not include the United States except where expressly so provided.

(2) "Public retirement benefit" means a pension or an annuity, or a retirement, disability, death, or other benefit, paid or payable by a public retirement system.

(3) "Public retirement system" means a system established pursuant to statute by a public entity for retirement, annuity, or pension purposes or payment of disability or death benefits.

(b) All amounts held, controlled, or in process of distribution by a public entity derived from contributions by the public entity or by an officer or employee of the public entity for public retirement benefit purposes, and all rights and benefits accrued or accruing to any person under a public retirement system, are exempt without making a claim.

(c) Notwithstanding subdivision (b), where an amount described in subdivision (b) becomes payable to a person and is sought to be applied to the satisfaction of a judgment for child, family, or spousal support against that person:

(1) Except as provided in paragraphs (2) and (3), the amount is exempt only to the extent that the court determines under subdivision (c) of Section 703.070.

(2) If the amount sought to be applied to the satisfaction of the judgment is payable periodically, the amount payable is subject to an earnings assignment order for support as defined in Section 706.011, or any other applicable enforcement procedure, but the amount to be withheld pursuant to the assignment order or other procedure shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052. The paying entity may deduct from the payment being made to the judgment debtor, for each payment made pursuant to an earnings assignment order under this paragraph, an amount reflecting the actual cost of administration caused by the assignment order of up to two dollars ($2) for each payment.

(3) If the intercept procedure provided for in Section 11357 of the Welfare and Institutions Code is used for benefits that are payable periodically, the amount to be withheld shall not exceed the amount permitted to be withheld on an earnings withholding order for support under Section 706.052.

(4) If the amount sought to be applied to the satisfaction of the judgment is payable as a lump-sum distribution, the amount payable

is subject to the intercept procedure provided in Section 11357 of the Welfare and Institutions Code or any other applicable enforcement procedure.

(d) All amounts received by any person, a resident of the state, as a public retirement benefit or as a return of contributions and interest thereon from the United States or a public entity or from a public retirement system are exempt.

SEC. 2. Section 20230 of the Government Code is amended to read:

20230. Data filed by any member or beneficiary with the board is confidential, and no individual record shall be divulged by any official or employee having access to it to any person other than the member to whom the information relates or his or her authorized representative, the contracting agency or school district by which he or she is employed, any state department or agency, or the university. The information shall be used by the board for the sole purpose of carrying into effect the provisions of this part. Any information that is requested for retirement purposes by any public agency shall be treated as confidential by the agency.

The gross amount of any benefit or any refund of a PERS contribution due to a member or beneficiary is not confidential and may be released upon request to the board.

The board may seek reimbursement for reasonable administrative expenses incurred when providing that information. Except as provided by this section, no member's, beneficiary's or annuitant's address, home telephone number, or other personal information shall be released.

For purposes of this section, "authorized representative" includes the spouse or beneficiary of a member when no contrary appointment has been made and when, in the opinion of the board, the member is prevented from appointing an authorized representative because of mental or physical incapacity or death.

SEC. 3. Section 21263 of the Government Code is amended to read:

21263. Notwithstanding the provisions of Sections 751 and 1100 of the Family Code, whenever payment or refund is made by this system to a member, former member, beneficiary of a member or estate of a member pursuant to any provision of this part, or to the State Department of Social Services under the provisions of the Welfare and Institutions Code, the payment shall fully discharge this system from all adverse claims thereto unless, before the payment or refund is made, this system has received at its office in Sacramento written notice by or on behalf of some other person that the person claims to be entitled to the payment or refund.

SEC. 4. Section 11357 is added to the Welfare and Institutions Code, to read:

11357. (a) As authorized by subdivision (c) of Section 704.110 of the Code of Civil Procedure, the following actions shall be taken in order to enforce support obligations which are not being met:

(1) Within 18 months of implementation of the Statewide Automated Child Support System (SACSS), as prescribed by Section 10815, and certification of SACSS by the United States Department of Health and Human Services, the State Department of Social Services shall compile a file of all support judgments and orders that are being enforced by district attorneys pursuant to Section 11475.1 that have sums overdue by at least 60 days or by an amount equal to 60 days of support.

(2) The file shall contain the name and social security number of the person who owes overdue support, the amount of overdue support as of the date the file is created, the name of the county in which the support obligation is being enforced by the district attorney, and any other information that is deemed necessary by the department and the Public Employees' Retirement System.

(3) The department shall provide the certified file to the Public Employees' Retirement System for the purpose of matching the names in the file with members and beneficiaries of the Public Employees' Retirement System that are entitled to receive Public Employees' Retirement System benefits. The department and the Public Employees' Retirement System shall work cooperatively to develop an interface in order to match the names in their respective electronic data processing systems. The interface required to intercept benefits that are payable periodically shall be done as soon as it is technically feasible.

(4) The department shall update the certified file no less than on a monthly basis to add new cases within the district attorneys' offices or existing cases that become delinquent and to delete persons who are no longer delinquent. The department shall provide the updated file no less than on a monthly basis to the Public Employees' Retirement System.

(5) Information contained in the certified file provided to the Public Employees' Retirement System by the department and the district attorneys and information provided by the Public Employees' Retirement System to the department shall be used exclusively for child support enforcement purposes and may not be used for any other purpose.

(b) Notwithstanding any other provision of law, the Public Employees' Retirement System shall withhold the amount certified from the benefits and refunds to be distributed to members with overdue support obligations or from benefits to be distributed to beneficiaries with overdue support obligations. If the benefits are payable periodically, the amount withheld pursuant to this section shall not exceed the amount permitted to be withheld for an earnings withholding order for support under Section 706.052 of the Code of Civil Procedure.

(c) The Public Employees' Retirement System shall forward the amounts withheld pursuant to subdivision (b) within 10 days of withholding to the department for distribution to the appropriate county.

(d) On an annual basis, the department shall notify individuals with overdue support obligations that PERS benefits or PERS contribution refunds may be intercepted for the purpose of enforcing family support obligations.

(e) No later than the time of the first withholding, the Public Employees' Retirement System shall send those persons subject to withholding the following:

(1) Notice that his or her benefits or retirement contribution refund have been reduced by payment on a support judgment pursuant to this section.

(2) A form developed by the department that the applicant shall use to request either a review by the district attorney or a court hearing, as appropriate.

(f) The notice shall include the address and telephone number of the district attorney's office that is enforcing the support obligation pursuant to Section 11475.1, and shall specify that the form requesting either a review by the district attorney's office or a court hearing must be received by the district attorney's office within 20 days of the date of the notice.

(g) The form shall include instructions that are designed to enable the member or beneficiary to obtain a review or a court hearing as appropriate on his or her own behalf. The form shall specify that if the member or beneficiary disputes the amount of support arrearages certified by the district attorney pursuant to this section, he or she may request a review by the district attorney.

(h) The department shall develop procedures that are consistent with this section to be used by each district attorney in conducting the requested review. The district attorney shall complete the review in accordance with the procedures developed by the department and shall notify the member or beneficiary of the result of the review within 20 days of receiving the request for review. The notification of review results shall include a request for hearing form and shall inform the member or beneficiary that if he or she returns the completed request for hearing form within 20 days of the date of the notice of review results, the district attorney will calendar the matter for court review. If the district attorney cannot complete the review within 20 days, the district attorney shall calendar the matter for hearing as specified in subdivision (k).

(i) The form specified in subdivision (g) shall also notify the member or beneficiary that he or she may request a court hearing to claim an exemption of any benefit not payable periodically by returning the completed form to the district attorney within 20 days. If the district attorney receives a timely request for a hearing for a claim of exemption, the district attorney shall calendar a court

hearing. The amount of the exemption, if any, shall be determined by the court in accordance with the procedures set forth in Section 703.070 of the Code of Civil Procedure.

(j) If the district attorney receives the form requesting either a review by the district attorney or a court hearing within the 20 days specified in subdivision (f), the district attorney shall not distribute the amount intercepted until the review by the district attorney or the court hearing is completed. If the district attorney determines that all or a portion of the member's or beneficiary's benefits were intercepted in error, or if the court determines that any amount of the benefits are exempt, the district attorney shall refund any amount determined to be exempt or intercepted in excess of the correct amount to the member or beneficiary within 10 days of determination that a refund is due.

(k) Any hearing properly requested pursuant to this section shall be calendared by the district attorney. The hearing shall be held within 20 days from the date that the district attorney receives the request for hearing. The district attorney shall provide notice of the time and place for hearing by first-class mail no later than five days prior to the hearing.

(*l*) Nothing in this section shall limit any existing rights of the member or beneficiary, including, but not limited to, the right to seek a determination of arrearages or other appropriate relief directly from the court. However, if the procedures of this section are not utilized by the member or beneficiary, the court may not require the district attorney to refund any money that was distributed to the child support obligee prior to the district attorney receiving notice of a court determination that a refund is due to the member or beneficiary.

(m) The department and the Public Employees' Retirement System shall enter into any agreement necessary to implement this section which shall include provisions for the department to provide funding to the Public Employees' Retirement System to develop, implement, and maintain the intercept process described in this section.

(n) The Public Employees' Retirement System may not assess service charges on members or beneficiaries in order to recover any administrative costs resulting from complying with this section.

SEC. 5. Section 1.5 of this bill incorporates amendments to Section 704.110 of the Code of Civil Procedure proposed by both this bill and AB 1751. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 704.110 of the Code of Civil Procedure, and (3) this bill is enacted after AB 1751, in which case Section 1 of this bill shall not become operative.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local

agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

CHAPTER 928

An act to add Sections 9080 and 12223.5 to, and to amend Sections 9075, 11347.3, and 14755 of, the Government Code, relating to public records.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Section 9075 of the Government Code is amended to read:

9075. Nothing in this article shall be construed to invalidate or affect the operation of Sections 10207, 10208, 10525, and 10526 of this code, or Temporary Joint Rule 37 of the Senate and Assembly in effect on the effective date of this article, or to require the disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or legislative memoranda, except as provided in Section 9080.

(b) Records pertaining to pending litigation to which the Legislature is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810) of Title 1, until the litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy, provided that the Senate Committee on Rules, the Assembly Committee on Rules, or the Joint Rules Committee shall determine whether disclosure of these records constitutes an unwarranted invasion of personal privacy.

(d) Records pertaining to the names and phone numbers of senders and recipients of telephone and telegraph communications, provided that records of the total charges for any such communication shall be open for inspection.

(e) Records pertaining to the name and location of recipients of automotive fuel or lubricants expenditures, provided that records of the total charges for those expenditures shall be open for inspection.

(f) In the custody of or maintained by the Legislative Counsel, except those records in the public data base maintained by the Legislative Counsel that are described in Section 10248. Legislative records shall not be transferred to the custody of the Legislative Counsel to evade the disclosure provisions of this chapter.

(g) In the custody of or maintained by the majority and minority caucuses and majority and minority consultants of each house of the Legislature, provided that legislative records shall not be transferred to the custody of the majority and minority caucuses and majority and minority consultants of each house of the Legislature to evade the disclosure provisions of this chapter.

(h) Correspondence of and to individual Members of the Legislature and their staff, except as provided in Section 9080.

(i) Records the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(j) Communications from private citizens to the Legislature, except as provided in Section 9080.

(k) Records of complaints to or investigations conducted by, or records of security procedures of, the Legislature.

SEC. 2. Section 9080 is added to the Government Code, to read:

9080. (a) The Legislature finds and declares that legislative records relating to bills, resolutions, or proposed constitutional amendments before the Legislature provide evidence of legislative intent that may be important in the subsequent interpretation of laws enacted in the Legislature. The Rules Committee of each house of the Legislature and the Joint Rules Committee shall inform each committee of the Senate and Assembly, and each joint committee of the Legislature, of their responsibility to preserve legislative records and make them available to the public.

(b) Each committee of the Senate or Assembly, and each joint committee of the Legislature, having custody of legislative records relating to a bill, resolution, or proposed constitutional amendment assigned to that committee, shall maintain the legislative records described in subdivision (d) in an official committee file. The committee shall preserve those records in its custody, or, in the alternative, may arrange with the State Archives to lodge some or all of the records there under the condition that the records be preserved.

(c) "Committee" for purposes of this section includes any entity of the Senate or Assembly responsible for preparing analyses of bills, resolutions, or proposed constitutional amendments that are to be put to a vote by a quorum of the members of the Senate or Assembly.

(d) "Legislative records," for purposes of this section, means records contained in an official committee file, including, but not limited to, all of the following:

(1) Committee staff analyses.

(2) Written testimony.

(3) Background material submitted to the committee.

(4) Press releases.

(5) Written commentary submitted to the committee on a bill, resolution, or proposed constitutional amendment. For purposes of this paragraph, "written commentary" does not include the following:

(A) Material not utilized by the staff of a fiscal committee in the preparation of any analysis for the members of that committee.

(B) Communications determined by the committee or its staff to be confidential.

(6) Versions of bills, resolutions, or proposed constitutional amendments assigned to the committee.

(7) Relevant interim hearing materials, studies, case materials, and articles.

(e) Legislative records contained in an official committee file shall be open to inspection and copying by the public, pursuant to Sections 9073 and 9074. Each committee of the Senate or Assembly, and each joint committee of the Legislature, shall adopt and implement written procedures consistent with Sections 9073 and 9074 for the public's access to official committee files maintained in the committee's office. The procedures shall provide for the time, place, and other conditions under which committee files may be inspected and copied. Each committee shall make copies of its written procedures available to the public.

(f) The Rules Committee of each house of the Legislature or, alternatively, the Joint Rules Committee shall provide for the storage of any official committee file that is not maintained in the office of the committee that created the file or lodged with the State Archives. The Rules Committees of each house of the Legislature or the Joint Rules Committee, as the case may be, shall adopt and implement written procedures consistent with Section 9073 for the public's access to official committee files so stored in its custody. The procedures shall provide for the time, place, and other conditions under which committee files may be inspected and copied, and the committee shall make copies of its written procedures available to the public.

(g) Nothing in this section requires making any legislative record available for inspection that relates to any unchaptered bill, resolution, or proposed constitutional amendment introduced in the current legislative session, except in accordance with the requirements and limitations specified in Sections 9073, 9074, and 9075.

SEC. 3. Section 11347.3 of the Government Code is amended to read:

11347.3. (a) Every agency shall maintain a file of each rulemaking that shall be deemed to be the record for that rulemaking proceeding.

(b) The rulemaking file shall include:

(1) Copies of any petitions received from interested persons proposing the adoption, amendment, or repeal of the regulation, and a copy of any decision provided for by subdivision (d) of Section 11340.7, which grants a petition in whole or in part.

(2) All published notices of proposed adoption, amendment, or repeal of the regulation, and an updated informative digest, the initial statement of reasons, and the final statement of reasons.

(3) The determination, together with the supporting data required by paragraph (5) of subdivision (a) of Section 11346.5.

(4) The determination, together with the supporting data required by paragraph (8) of subdivision (a) of Section 11346.5.

(5) The estimate, together with the supporting data and calculations, required by paragraph (6) of subdivision (a) of Section 11346.5.

(6) All data and other factual information, any studies or reports, and written comments submitted to the agency in connection with the adoption, amendment, or repeal of the regulation.

(7) All data and other factual information, technical, theoretical, and empirical studies or reports, if any, on which the agency is relying in the adoption, amendment, or repeal of a regulation, including any cost impact estimates as required by Section 11346.3.

(8) A transcript, recording, or minutes of any public hearing connected with the adoption, amendment, or repeal of the regulation.

(9) The date on which the agency made available to the public for 15 days prior to the adoption, amendment, or repeal of the regulation the full text as required by subdivision (c) of Section 11346.8 if the agency made changes to the regulation noticed to the public.

(10) The text of regulations as originally proposed and the modified text of regulations, if any, that were made available to the public prior to adoption.

(11) Any other information, statement, report, or data that the agency is required by law to consider or prepare in connection with the adoption, amendment, or repeal of a regulation.

(12) An index or table of contents that identifies each item contained in the rulemaking file. The index or table of contents shall include an affidavit or a declaration under penalty of perjury in the form specified by Section 2015.5 of the Code of Civil Procedure by the agency official who has compiled the rulemaking file, specifying the date upon which the record was closed, and that the file or the copy, if submitted, is complete.

(c) Every agency shall submit to the office with the adopted regulation, the rulemaking file or a complete copy of the rulemaking file.

(d) The rulemaking file shall be made available by the agency to the public, and to the courts in connection with the review of the regulation.

(e) Upon filing a regulation with the Secretary of State pursuant to Section 11349.3, the office shall return the related rulemaking file to the agency, after which no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of. The agency shall maintain the file unless it elects to transmit the file to the State Archives pursuant to subdivision (f).

(f) The agency may transmit the rulemaking file to the State Archives. The file shall include instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. Pursuant to Section 12223.5, the Secretary of State may designate a time for the delivery of the rulemaking file to the State Archives in consideration of document processing or storage limitations.

SEC. 4. Section 12223.5 is added to the Government Code, to read:

12223.5. The Secretary of State shall receive into the State Archives any official committee file transmitted pursuant to Section 9080 or rulemaking file transmitted pursuant to Section 11347.3. The Secretary of State may designate a time for the delivery of files in consideration of document processing or storage limitations. The Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in a file received pursuant to this section. Nothing in this section, or in Sections 9080 or 11347.3, shall prohibit the conversion of an official committee file or rulemaking file to another accessible format.

SEC. 5. Section 14755 of the Government Code is amended to read:

14755. (a) No record shall be destroyed or otherwise disposed of by any agency of the state, unless it is determined by the director that the record has no further administrative, legal, or fiscal value and the Secretary of State has determined that the record is inappropriate for preservation in the State Archives.

(b) The director shall not authorize the destruction of any record subject to audit until he or she has determined that the audit has been performed.

(c) The director shall not authorize the destruction of all or any part of an agency rulemaking file subject to Section 11347.3.

SEC. 6. The Legislature finds and declares that:

(a) State agency rulemaking files provide evidence of the adopting agency's intent that may be important in the subsequent interpretation of rules and regulations adopted by state agencies pursuant to specific statutory authority. Furthermore, the preservation of rulemaking files by state agencies has been problematic, resulting in the sporadic loss or destruction, in whole or part, of those files.

(b) Under Section 11347.3 of the Government Code, state agencies are currently required to make the rulemaking file available to the public, and to the courts in connection with the review of the

regulation. Furthermore, specific authority is not granted to permit the destruction of any rulemaking file in derogation of the requirement under 11347.3 to make those files available to the public and to the courts.

(c) As such, amendments to Section 11347.3 made by this act do not constitute a change in, but are declaratory of, existing law insofar as they restate and reaffirm the state's existing obligation to make rulemaking files permanently available to the public and the courts.

(d) Under Government Code Section 14755, state agencies may not destroy or otherwise dispose of any state record which has legal value unless so authorized by the Director of General Services after the Secretary of State has determined that the record is appropriate for preservation in the State Archives. Section 14755 is silent with regard to the state's obligation to permanently retain rulemaking files pursuant to Section 11347.3. Neither does Section 14755 specifically conflict with the requirements of Section 11347.3. In this regard, Section 14755 is vague with regard to its interaction with Section 11347.3, and does not provide clear guidance to state agencies with regard to their duties to permanently preserve rulemaking files under Section 11347.3.

(e) As such, the amendment to Section 14755 made by this act is necessary in order to avoid the continuous loss or destruction of rulemaking files contrary to Section 11347.3, and does not constitute a change in, but is declaratory of, existing law insofar as it conforms Section 14755 to the requirements and intent of Section 11347.3 to make rulemaking files permanently available to the public and the courts.

CHAPTER 929

An act to add Section 33320.51 to the Health and Safety Code, relating to redevelopment.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Section 33320.51 is added to the Health and Safety Code, to read:

33320.51. (a) Any redevelopment plan, or any amendment to an existing redevelopment plan adopted on or after July 1, 1993, that is subject to Section 33320.5, may utilize as the base year either the year it was adopted or the 1994–95 fiscal year, at the option of the adopting agency, as referenced by a duly adopted ordinance of the governing board. If the governing board adopts the 1994–95 fiscal year as the base year, that designation shall remain in effect only until the time

that the county assessor certifies that assessed values for the redevelopment project area equal or exceed the assessed value in the initial base year. When that certification is made by the county assessor, the base year shall revert to the initial base year at the time of plan adoption.

(b) To the extent any adjustment in the base year pursuant to this section creates a negative fiscal impact on the state, the governing board shall, on or before the expiration of five years from the date of the adjustment of the base year pursuant to this section, remit to the State Controller the total amount of increased aid to schools received from the state as a result of the adjustment in the base year as determined by the Department of Finance in consultation with the governing board.

CHAPTER 930

An act to amend Section 52335.2 of, and to add Sections 52335.9 and 52335.10 to, the Education Code, relating to regional occupational centers.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Section 52335.2 of the Education Code is amended to read:

52335.2. The Superintendent of Public Instruction shall calculate a revenue limit for each ROC/P in the following manner:

(a) Calculate a base revenue limit per unit of average attendance for the current fiscal year as follows:

(1) Divide the revenue limit for the prior year computed pursuant to this section by the annual units of average daily attendance funded in the prior year pursuant to subdivisions (c) and (d).

(2) Increase the amount computed in paragraph (1) by the percentage inflation adjustment specified in the Budget Act for the current fiscal year multiplied by the statewide average ROC/P revenue limit per unit of average daily attendance for the prior fiscal year.

(b) Calculate a revenue limit per unit of average daily attendance for program growth by increasing the revenue limit per unit of average daily attendance for program growth computed pursuant to this subdivision for the prior fiscal year by the percentage inflation adjustment specified in the Budget Act for the current fiscal year.

(c) Multiply the amount computed pursuant to subdivision (a) by the lesser of the ROC/P's annual units of average daily attendance

for the current fiscal year or the ROC/P's annual units of funded average daily attendance for the prior fiscal year.

(d) Subtract the ROC/P's annual units of funded average daily attendance for the prior fiscal year from the ROC/P's annual units of average daily attendance for the current fiscal year and multiply the difference by the amount computed pursuant to subdivision (b). If the product computed pursuant to this subdivision is negative, it shall be deemed to be zero.

(e) Except as provided in Section 52335.3, the Superintendent of Public Instruction shall apportion to the ROC/P the sum of the amounts computed pursuant to subdivisions (c) and (d).

(f) The average daily attendance used for purposes of this section shall not include the average daily attendance in schools receiving funding pursuant to Section 52324.6.

(g) Any state funds made available as a result of local property tax revenues deducted pursuant to Section 52335.3 shall be allocated to each ROC/P in an equal amount per unit of funded average daily attendance and shall not be included in the calculation of the base revenue limit made pursuant to subdivision (a) for the subsequent fiscal year.

SEC. 2. Section 52335.9 is added to the Education Code, to read:

52335.9. For the 1996–97 fiscal year only, the Superintendent of Public Instruction shall recalculate the base revenue limit for each ROC/P for the purposes of subdivision (a) of Section 52335.2 to reflect the actual amount received by each ROC/P in the 1995–96 fiscal year, including funding received pursuant to the Budget Act of 1996 for the cost-of-living adjustment for the 1996–97 fiscal year and for growth average daily attendance, but excluding the following:

(a) Any state funds made available as a result of local property tax revenues deducted pursuant to Section 52335.3.

(b) Funding allocated pursuant to Provision 7 of Item 6110-105-0001 of Section 2.00 of the Budget Act of 1996.

SEC. 3. Section 52335.10 is added to the Education Code, to read:

52335.10. From funds appropriated pursuant to Provision 7 of Item 6110-105-0001 of Section 2.00 of the Budget Act of 1996, the Superintendent of Public Instruction shall allocate funds to ROC/Ps on a pro rata basis as follows:

(a) Sixty percent of the funds shall be allocated to increase each ROC/P's revenue limit for the 1995–96 fiscal year to the statewide average ROC/P revenue limit for the 1995–96 fiscal year.

(b) Forty percent of the funds shall be allocated to increase the funded average daily attendance for each ROC/P in the 1995–96 fiscal year to the statewide average rate of participation. For the purpose of this subdivision, the statewide average rate of participation shall be calculated pursuant to Section 52335.6.

CHAPTER 931

An act to add and repeal Article 3 (commencing with Section 54035) of Chapter 1 of Part 29 of the Education Code, relating to summer school.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Article 3 (commencing with Section 54035) is added to Chapter 1 of Part 29 of the Education Code, to read:

Article 3. Back to Basics Summer School Reading Program of 1996

54035. This article shall be known and may be cited as the Back to Basics Summer School Reading Program of 1996.

54036. (a) Notwithstanding any other provision of law, a school district may expend funds received for the purposes of economic impact aid pursuant to Article 2 (commencing with Section 54000), as specified in the annual Budget Act, for the Back to Basics Summer School Reading Program of 1996 if the following requirements are met:

(1) The English reading ability of more than 10 percent of the pupils enrolled in the school district in any of grades 1 to 3, inclusive, is more than one grade level below the grade level the pupil will be leaving at the end of the school year.

(2) The summer school instruction is provided solely to pupils who will be leaving any of grades 1 to 3, inclusive, at the end of the school year.

(3) The summer school instruction is designed solely to increase a pupil's ability to read English.

(4) Each pupil who applies to participate in a Back to Basics Summer School Reading Program is tested before being enrolled in the program and has a test score that places the pupil in reading at one or more grade levels below the grade level the pupil will be leaving at the end of the school year. A school district shall choose a nationally recognized normed standardized reading test for this purpose.

(5) Each pupil enrolled in a Back to Basics Summer School Reading Program, whether or not the pupil completes the program, is tested at the end of the program with the same nationally recognized normed standardized test administered to determine the pupil's progress in learning how to read English. A pupil enrolled in the program who moves out of the district before completing the program is not required to be tested pursuant to this paragraph.

(6) Each pupil enrolled in a Back to Basics Summer School Reading Program shall be offered direct reading instruction based on phonics and phonemic awareness. If a school district determines that the ability of its pupils to read English did not improve solely through the use of instruction based on phonics and phonemic awareness, other state-approved instructional methodologies may be used.

(b) The Superintendent of Public Instruction shall submit an evaluation, based on data provided by participating school districts, of the Back to Basics Summer School Reading Program to the Legislature no later than January 1, 2000. The evaluation shall include, but is not limited to, the following:

(1) The number of pupils who, after completing the program, met the minimum English reading performance standards adopted pursuant to Section 60605.

(2) The number of pupils who, after completing the program, did not meet the minimum English reading performance standards adopted pursuant to Section 60605.

(3) The number of pupils who, after completing the program, exceeded by more than 10 percent the minimum English reading performance standards adopted pursuant to Section 60605.

(4) A recommendation on whether the program should be continued.

(c) Increases in pupils' ability to read English is the sole criterion that shall be used for purposes of determining the success of summer school instruction provided pursuant to this section.

SEC. 2. Article 3 (commencing with Section 54035) of Chapter 1 of Part 29 of the Education Code, as added by Section 1 of this act, shall remain in effect only until January 1, 2001, and as of that date is repealed.

SEC. 3. It is the intent of the Legislature that the enactment of the Back to Basics Summer School Reading Program of 1996 established under Article 3 (commencing with Section 54035) of Chapter 1 of Part 29 of the Education Code shall not require any new General Fund appropriations and that school districts fund the program with existing resources and that the evaluation of the program conducted by the Superintendent of Public Instruction be funded with existing resources available to the State Department of Education.

CHAPTER 932

An act to add Section 846.1 to the Civil Code, relating to real property.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Section 846.1 is added to the Civil Code, to read:

846.1. (a) An owner of any estate or interest in real property, whether possessory or nonpossessory, who gives permission to the public for entry on or use of the real property pursuant to an agreement with a public or nonprofit agency for purposes of recreational trail use, and is a defendant in a civil action brought by, or on behalf of, a person who is allegedly injured or allegedly suffers damages on the real property, may present a claim to the State Board of Control for reasonable attorney's fees incurred in this civil action if any of the following occurs:

(1) The court has dismissed the civil action upon a demurrer or motion for summary judgment made by the owner or upon its own motion for lack of prosecution.

(2) The action was dismissed by the plaintiff without any payment from the owner.

(3) The owner prevails in the civil action.

(b) A public entity, as defined in Section 831.5 of the Government Code, that gives permission to the public for entry on or use of real property for a recreational purpose, as defined in Section 846, and is a defendant in a civil action brought by, or on behalf of, a person who is allegedly injured or allegedly suffers damages on the real property, may present a claim to the State Board of Control for reasonable attorney's fees incurred in this civil action if any of the following occurs:

(1) The court has dismissed the civil action upon a demurrer or motion for summary judgment made by this public entity or upon its own motion for lack of prosecution.

(2) The action was dismissed by the plaintiff without any payment from the public entity.

(3) The public entity prevails in the civil action.

(c) The State Board of Control shall allow the claim if the requirements of this section are met. The claim shall be paid from an appropriation to be made for that purpose. Reasonable attorneys' fees, for purposes of this section, may not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made, and may not exceed an aggregate amount of twenty-five thousand dollars ($25,000). This subdivision shall not apply if a public entity has provided for the defense of this civil action pursuant to Section 995 of the Government Code. This subdivision shall also not apply if an owner or public entity has been provided a legal defense by the state pursuant to any contract or other legal obligation.

(d) The total of claims allowed by the board pursuant to this section shall not exceed one hundred thousand dollars ($100,000) per fiscal year.

CHAPTER 933

An act to add Title 1.4A (commencing with Section 1749.5) to Part 4 of Division 3 of the Civil Code, and to add Section 1520.5 to the Code of Civil Procedure, relating to gift certificates.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Title 1.4A (commencing with Section 1749.5) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1.4A. GIFT CERTIFICATES

1749.5. (a) On or after January 1, 1997, it is unlawful for any person or entity to sell a gift certificate to a purchaser containing an expiration date. Any gift certificate sold after that date shall be redeemable in cash for its cash value, or subject to replacement with a new gift certificate at no cost to the purchaser or holder.

(b) A gift certificate sold without an expiration date is valid continuously except when refunded or replaced with a new gift certificate.

(c) This section shall not apply to gift certificates that are distributed to a consumer for promotional purposes without any money or other thing of value being given in exchange for the gift certificate by the consumer.

SEC. 2. Section 1520.5 is added to the Code of Civil Procedure, to read:

1520.5. Section 1520 shall not apply to gift certificates subject to Title 1.4A (commencing with Section 1749.5) of Part 4 of Division 3 of the Civil Code.

CHAPTER 934

An act to add Section 12440.1 to, and to repeal Section 12470.1 of, the Government Code, relating to the California State University, and making an appropriation therefor.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Section 12440.1 is added to the Government Code, to read:

12440.1. (a) The trustees, in conjunction with the Controller, shall implement a process that allows any campus or other unit of the university to make payments of obligations of the university from its revolving fund directly to all of its vendors. Notwithstanding Article 5 (commencing with Section 16400) of Chapter 2 of Part 2 of Division 4 of Title 2, or any other provision of law, prior to January 1, 2002, the trustees may draw from funds appropriated to the university, for use as a revolving fund, amounts necessary to make payments of obligations of the university directly to vendors. In any fiscal year, the trustees shall obtain the approval of the Director of Finance to draw amounts in excess of 10 percent of the total appropriation to the university for that fiscal year for use as a revolving fund.

(b) Notwithstanding Sections 925.6, 12410, and 16403, or any other provision of law, the trustees shall maintain payment records for three years and make those records available to the Controller for postaudit review, as needed.

(c) Notwithstanding Section 8546.4 or any other provision of law, the trustees shall contract with one or more public accounting firms to conduct systemwide and individual campus annual financial statement and compliance audits without obtaining the approval of any other state officer or entity. At least 10 individual campus audits shall be conducted on a rotating basis, and each campus shall be audited at least once every two years.

(d) The internal and independent financial statement audits of the trustees shall test compliance with procurement procedures and the integrity of the payments made. The results of these audits shall be included in the biennial report required by Section 13405.

(e) As used in this section:

(1) "Trustees" means the Trustees of the California State University.

(2) "University" means the California State University.

SEC. 2. Section 12470.1 of the Government Code is repealed.

SEC. 3. The Bureau of State Audits shall evaluate the system of direct payments to vendors authorized by subdivision (a) of Section 12440.1 of the Government Code and shall submit a written report of its findings and recommendations thereon to the Legislature on or before January 1, 2001.

SEC. 4. Notwithstanding any other provision of law, both of the following shall occur:

(a) For the 1996–97 fiscal year, after receiving certification from the Controller of the audit costs incurred by the Controller's office

pursuant to this act, the Director of Finance shall transfer to the Controller, for reimbursement of those costs, up to one hundred twenty-five thousand dollars ($125,000) from the unencumbered balance of schedule (a) of Item 6610-001-0001 of Section 2.00 of the Budget Act of 1996 (Ch. 162, Stats. 1996).

(b) For the 1997–98 fiscal year, after receiving certification from the Controller of the audit costs incurred by the Controller's office pursuant to this act, the Director of Finance shall transfer to the Controller, for reimbursement of those costs, up to two hundred fifty thousand dollars ($250,000) from the unencumbered balance of schedule (a) of Item 6610-001-0001 of Section 2.00 of the Budget Act of 1997.

CHAPTER 935

An act to add Chapter 4 (commencing with Section 18210) to Part 1 of Division 5 of Title 2 of the Government Code, relating to administrative regulations.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Chapter 4 (commencing with Section 18210) is added to Part 1 of Division 5 of Title 2 of the Government Code, to read:

CHAPTER 4. ADMINISTRATIVE REGULATIONS

18210. The Legislature finds and declares that the purpose of this chapter is to establish basic minimum procedural requirements for the adoption, amendment, or repeal of board regulations. Nothing in this chapter repeals or diminishes additional requirements imposed by statute.

18211. Regulations adopted by the State Personnel Board are exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3), except as provided in Sections 18215 and 18216.

18212. For the purposes of this chapter, "regulation" means every rule, regulation, order, or standard of general application adopted or amended by the board to implement, interpret, or make specific the law enforced or administered by it, except that the following are not regulations:

(a) A rule that constitutes the only legally tenable interpretation of existing law.

(b) A decision that does no more than apply a duly adopted provision of law to a particular set of facts.

(c) A rule relating only to the internal management of the board that does not in itself significantly affect the rights, privileges, or duties of state agencies, state employees, or other persons.

(d) A routine, technical, or procedural instruction or criterion that does not in itself significantly affect the rights, privileges, or duties of state agencies, employees, or other persons.

18213. A regulation concerning the following may be adopted without public notice or comment:

(a) Selection and examinations. However, all of these rules shall be reasonably available to all interested parties.

(b) Classification.

18214. (a) The procedures set forth in subdivisions (b), (c), and (d) shall apply to the adoption of a regulation concerning all matters not specified in Section 18213, 18215, or 18216.

(b) The board shall prepare and submit to the Office of Administrative Law for publication in the California Regulatory Notice Register 30 days prior to board action a notice of the proposed action.

(c) The board shall mail a notice of the proposed action 30 days prior to board action to members of the Governor's cabinet, department heads, employee associations, and persons requesting this notice, and shall make available to the public upon request, all of the following:

(1) The notice of proposed action.

(2) A copy of the express terms of the proposed regulation, using underline or italics to indicate additions to, and strikeout to indicate deletions from, the California Code of Regulations, followed by a note containing authority and reference citations.

(3) A brief statement of reasons for the proposed regulation.

(d) The board shall do all of the following:

(1) Provide opportunity for written comment to the board, and oral comment at board meetings or hearings.

(2) Submit adopted regulations to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations.

18215. (a) Except as provided in subdivision (b), regulations concerning the following shall be subject to the Administration Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3):

(1) Representation of minorities, women, and persons with disabilities in the state work force.

(2) Equal employment opportunities.

(3) Board hearing procedures relating to public testimony and participation, except a procedure that is expressly required by statute.

(4) Disciplinary hearing procedures not mandated by statutes, court decisions, or board precedential decisions. However, rulings within the discretion of an administrative law judge are not subject to this article.

(5) Drug testing.

(6) Grounds for employee discipline.

(7) Reasonable accommodation.

(b) Notwithstanding subdivision (a), the following provisions of the Administrative Procedure Act shall not apply to regulations concerning the subjects specified in subdivision (a):

(1) Section 11346.14.

(2) Paragraph (1) of subdivision (a) of, and paragraphs (4), (5), and (6) of subdivision (b) of, Section 11346.2.

(3) Section 11346.3.

(4) Paragraph (3) of subdivision (a) of Section 11346.4.

(5) Subparagraph (B) of paragraph (3) of, and paragraphs (5) and (7) to (12), inclusive, of, subdivision (a) of Section 11346.5.

(6) Paragraphs (2), (4), and (5) of subdivision (a) of Section 11346.9.

(7) Paragraphs (3) and (4) of subdivision (a) of Section 11347.3.

(8) Subdivisions (a), (e), and (f) of Section 11349.

(9) Paragraphs (1), (5), and (6) of subdivision (a) of, and paragraph (3) of subdivision (d) of, Section 11349.1.

18216. Regulations concerning contracting out shall be subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3).

CHAPTER 936

An act to amend Sections 16000 and 16100 of the Business and Professions Code, relating to business licenses.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Section 16000 of the Business and Professions Code is amended to read:

16000. (a) The legislative body of an incorporated city may, in the exercise of its police power, and for the purpose of regulation, as herein provided, and not otherwise, license any kind of business not prohibited by law transacted and carried on within the limits of its jurisdiction, including all shows, exhibitions and lawful games, and may fix the rates of the license fee and provide for its collection by suit or otherwise. Any legislative body, including the legislative body of a charter city, that fixes the rate of license fees pursuant to this

subdivision upon a business operating both within and outside the legislative body's taxing jurisdiction, shall levy the license fee so that the measure of the fee fairly reflects that proportion of the activity actually carried on within the taxing jurisdiction.

(b) No license fee levied pursuant to subdivision (a) that is measured by the licensee's income or gross receipts, whether levied by a charter or general law city, shall apply to any nonprofit organization that is exempted from taxes by Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code or Subchapter F (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, or the successor of either, or to any minister, clergyman, Christian Science practitioner, rabbi, or priest of any religious organization that has been granted an exemption from federal income tax by the United States Commissioner of Internal Revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code or a successor to that section.

(c) Before a city, including a charter city, issues a business license to a person to conduct business as a contractor, as defined in Section 7026, the city shall verify that the person is licensed by the Contractors' State License Board.

SEC. 2. Section 16100 of the Business and Professions Code is amended to read:

16100. (a) The board of supervisors may in the exercise of its police powers, and for the purpose of regulation, as herein provided, and not otherwise, license any kind of business not prohibited by law, transacted and carried on within the limits of its jurisdiction, including all shows, exhibitions, and lawful games, and may fix the rate of the license fee and provide for its collection by suit or otherwise.

(b) No license fee levied pursuant to subdivision (a) that is measured by the licensee's income or gross receipts, whether levied by a charter or general law county, shall apply to any nonprofit organization that is exempted from taxes by Chapter 4 (commencing with Section 23701) of Part 11 of Division 2 of the Revenue and Taxation Code or Subchapter F (commencing with Section 501) of Chapter 1 of Subtitle A of the Internal Revenue Code of 1986, or the successor of either, or to any minister, clergyman, Christian Science practitioner, rabbi, or priest of any religious organization that has been granted an exemption from federal income tax by the United States Commissioner of Internal Revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code or a successor to that section.

(c) Before a county issues a business license to a person to conduct business as a contractor, as defined by Section 7026, the county shall

verify that the person is licensed by the Contractors' State License Board.

CHAPTER 937

An act to amend Sections 48915.1 and 48916.1 of, to add Section 48915.01 to, and to repeal and add Section 48661 of, the Education Code, and to amend Section 9 of Chapter 974 of the Statutes of 1995, relating to pupils, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Section 48661 of the Education Code is repealed.

SEC. 2. Section 48661 is added to the Education Code, to read:

48661. (a) A community day school serving kindergarten or any of grades 1 to 6, inclusive, shall not be situated on the same site as an elementary, middle, junior high, comprehensive senior high, opportunity, or continuation school, except when the governing board of a school district maintaining kindergarten or any of grades 1 to 6, inclusive, certifies by a two-thirds vote of its membership that no satisfactory alternative facilities are available for a community day school in those grades.

(b) A community day school serving any of grades 7 to 12, inclusive, shall not be situated on the same site as an elementary, middle, junior high, comprehensive senior high, opportunity, or continuation school, except when the governing board of a school district with 2,500 or fewer units of average daily attendance reported for the most recent second principal apportionment and maintaining any of grades 7 to 12, inclusive, certifies by a two-thirds vote of its membership that no satisfactory alternative facilities are available for a community day school in those grades.

(c) A certification made pursuant to subdivision (a) or (b) is valid for not more than one school year and may be renewed by a subsequent two-thirds vote of the governing board.

SEC. 3. Section 48915.01 is added to the Education Code, to read:

48915.01. If the governing board of a school district has established a community day school pursuant to Section 48661 on the same site as a comprehensive middle, junior, or senior high school, or at any elementary school, the governing board does not have to meet the condition in paragraph (2) of subdivision (d) of Section 48915 when the board, pursuant to subdivision (f) of Section 48915, refers a pupil to a program of study and that program of study is at the community day school. All the other conditions of subdivision (d)

of Section 48915 are applicable to the referral as required by subdivision (f) of Section 48915.

SEC. 4. Section 48915.1 of the Education Code is amended to read:

48915.1. (a) If the governing board of a school district receives a request from an individual who has been expelled from another school district for an act other than those described in subdivision (a) or (c) of Section 48915, for enrollment in a school maintained by the school district, the board shall hold a hearing to determine whether that individual poses a continuing danger either to the pupils or employees of the school district. The hearing and notice shall be conducted in accordance with the rules and regulations governing procedures for the expulsion of pupils as described in Section 48918. A school district may request information from another school district regarding a recommendation for expulsion or the expulsion of an applicant for enrollment. The school district receiving the request shall respond to the request with all deliberate speed but shall respond no later than five working days from the date of the receipt of the request.

(b) If a pupil has been expelled from his or her previous school for an act other than those listed in subdivision (a) or (c) of Section 48915, the parent, guardian, or pupil, if the pupil is emancipated or otherwise legally of age, shall, upon enrollment, inform the receiving school district of his or her status with the previous school district. If this information is not provided to the school district and the school district later determines the pupil was expelled from the previous school, the lack of compliance shall be recorded and discussed in the hearing required pursuant to subdivision (a).

(c) The governing board of a school district may make a determination to deny enrollment to an individual who has been expelled from another school district for an act other than those described in subdivision (a) or (c) of Section 48915, for the remainder of the expulsion period after a determination has been made, pursuant to a hearing, that the individual poses a potential danger to either the pupils or employees of the school district.

(d) The governing board of a school district, when making its determination whether to enroll an individual who has been expelled from another school district for these acts, may consider the following options:

(1) Deny enrollment.

(2) Permit enrollment.

(3) Permit conditional enrollment in a regular school program or another educational program.

(e) Notwithstanding any other provision of law, the governing board of a school district, after a determination has been made, pursuant to a hearing, that an individual expelled from another school district for an act other than those described in subdivision (a) or (c) of Section 48915 does not pose a danger to either the pupils or

employees of the school district, shall permit the individual to enroll in a school in the school district during the term of the expulsion, provided that he or she, subsequent to the expulsion, either has established legal residence in the school district, pursuant to Section 48200, or has enrolled in the school pursuant to an interdistrict agreement executed between the affected school districts pursuant to Chapter 5 (commencing with Section 46600).

SEC. 5. Section 48916.1 of the Education Code is amended to read:

48916.1. (a) At the time an expulsion of a pupil is ordered, the governing board of the school district shall ensure that an education program is provided to the pupil who is subject to the expulsion order for the period of the expulsion. Except for pupils expelled pursuant to subdivision (d) of Section 48915, the governing board of a school district is required to implement the provisions of this section only to the extent funds are appropriated for this purpose in the annual Budget Act or other legislation, or both.

(b) Notwithstanding any other provision of law, any educational program provided pursuant to subdivision (a) may be operated by the school district, the county superintendent of schools, or a consortium of districts or in joint agreement with the county superintendent of schools.

(c) Any educational program provided pursuant to subdivision (b) shall not be situated within or on the grounds of the school from which the pupil was expelled.

(d) If the pupil who is subject to the expulsion order was expelled from any of kindergarten or grades 1 to 6, inclusive, the educational program provided pursuant to subdivision (b) shall not be combined or merged with educational programs offered to pupils in any of grades 7 to 12, inclusive. The district or county program is the only program required to be provided to expelled pupils as determined by the governing board of the school district.

(e) (1) Each school district shall maintain data as specified in this subdivision and report the data annually to the State Department of Education, commencing June 1, 1997, on forms provided by the State Department of Education. The school district shall maintain the following data:

(A) The number of pupils recommended for expulsion.

(B) The grounds for each recommended expulsion.

(C) Whether the pupil was subsequently expelled.

(D) Whether the expulsion order was suspended.

(E) The type of referral made after the expulsion.

(F) The disposition of the pupil after the end of the period of expulsion. When a school district does not report outcome data as required by this subdivision, the Superintendent of Public Instruction shall not apportion any further money to the school district pursuant to Section 48664 until the school district is in compliance with the provisions of this subdivision. Before

withholding the apportionment of funds to a school district pursuant to this subdivision, the Superintendent of Public Instruction shall give written notice to the governing board of the school district that the school district has failed to report the data required by paragraph (1) and that the school district has 30 calendar days from the date of the written notice of noncompliance to report the requested data and thereby avoid the withholding of the apportionment of funds.

(f) If the county superintendent of schools is unable for any reason to serve the expelled pupils of a school district within the county, the governing board of that school district may enter into an agreement with a county superintendent of schools in another county to provide education services for the district's expelled pupils.

SEC. 6. Section 9 of Chapter 974 of the Statutes of 1995 is amended to read:

Sec. 9. This act shall not become operative until July 1, 1996.

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

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

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement the changes proposed by this act in time to implement the provisions of Chapter 974 of the Statutes of 1995, it is necessary that this act take effect immediately.

CHAPTER 938

An act to amend Sections 89030 and 89500 of, to add Section 66606.2 to, and to add and repeal Section 89030.1 of, the Education Code, to amend Sections 6516.9 and 11000 of the Government Code, and to amend Sections 10505, 10701, and 10705 of, and to add Section 10710 to, the Public Contract Code, relating to postsecondary education.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Sections 2 to 7, inclusive, and Sections 9 to 11, inclusive, of this act shall be known, and may be cited, as the California State University Management Efficiency Act of 1996.

SEC. 2. Section 66606.2 is added to the Education Code, to read:

66606.2. Recognizing the unique mission and functions of the California State University among the departments, agencies, and boards of the state, it is the intent of the Legislature that both of the following occur:

(a) Before legislation that, by its terms, applies to the state or its agencies, departments, or boards, may apply to the California State University, the legislation should be compatible with the mission and functions of the California State University.

(b) The California State University not be governed by any statute enacted after January 1, 1997, that does not amend a previously applicable act and that applies generally to the state or to state agencies, departments, or boards, unless the statute expressly provides that the California State University is to be governed by that statute.

SEC. 3. Section 89030 of the Education Code is amended to read:

89030. (a) The trustees shall adopt rules and regulations not inconsistent with the laws of this state for the government of all of the following:

(1) The trustees.

(2) The appointees and employees of the trustees.

(3) The California State University.

(b) The adoption of these rules and regulations shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The rules and regulations shall be published for distribution as soon as practicable after adoption.

(d) This section shall be liberally construed in order that the purposes of the Donahoe Higher Education Act pursuant to Part 40 (commencing with Section 66010) of Division 5 may be effectuated.

SEC. 4. Section 89030.1 is added to the Education Code, to read:

89030.1. The trustees shall adopt, amend, or repeal regulations pursuant to this section instead of pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. As used in this section, "regulation" means every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by the university to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure, except one that relates only to the internal management of the university. "Regulation" does not mean or include any form prescribed by the university or any instructions

relating to the use of the form, nor does it mean or include any action listed in subdivision (a) of Section 11343 of the Government Code.

(a) The trustees' office of general counsel shall review the proposed regulations for matters such as necessity, authority, clarity, consistency, reference, and nonduplication and recommend any proposed action to the trustees. For purposes of this section, "necessity," "authority," "clarity," "consistency," "reference," and "nonduplication" shall have the same meaning as defined by Section 11349 of the Government Code.

(b) Notice of the proposed regulations shall be sent at least 45 days prior to the public hearing to those persons who have requested notices of the meetings of the trustees and shall be available to the public in electronic format. The notice shall include the right of the public to comment orally or in writing on the proposed action either prior to or during the public hearing.

(c) At the hearing, the public shall be provided the opportunity to comment on the proposed action.

(d) The trustees shall maintain a rulemaking file containing the public notice, public comments, and minutes of the public hearing, including the action taken by the trustees.

(1) The rulemaking file shall contain a summary of each objection or recommendation made with an explanation of how the proposed action was changed to accommodate each objection or recommendation, or the reason or reasons for making no change.

(2) The proposed regulations shall be accompanied by an estimate, prepared in accordance with instructions adopted by the Department of Finance, of the effect of the proposed regulations with regard to the costs or savings to any state agency, the cost of any state-mandated local program as governed by Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code, any other costs or savings of local agencies, and the costs or savings in federal funding provided to state agencies.

(e) The trustees shall transmit the regulations as finally adopted to the Secretary of State for filing. Each regulation shall be effective upon filing with the Secretary of State and shall be published in the California Code of Regulations.

(f) This section shall become inoperative on January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date.

SEC. 5. Section 89500 of the Education Code is amended to read:

89500. (a) (1) Notwithstanding any other provision of law, the trustees shall provide by rule for the government of their appointees and employees, pursuant to this chapter and other applicable provisions of law, including, but not limited to: appointment; classification; terms; duties; pay and overtime pay; uniform and equipment allowances; travel expenses and allowances; rates for housing and lodging; moving expenses; leave of absence; tenure; vacation; holidays; layoff; dismissal; demotion; suspension; sick leave;

reinstatement; and employer's contribution to employees', annuitants', and survivors' health benefits plans.

(2) The rules adopted by the trustees relating to tenure, layoff, dismissal, demotion, suspension, and reinstatement of academic and administrative employees shall be adopted on or before February 1, 1962, and become effective on July 1, 1962, with respect to employees who are academic teaching and administrative employees as defined in subdivision (1)(e) of Section 24301, as it read on June 30, 1961, as enacted by Chapter 2 of the Statutes of 1959.

(b) The adoption of these rules and regulations shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

SEC. 6. Section 6516.9 of the Government Code is amended to read:

6516.9. Notwithstanding any other provision of law, a joint powers agency or entity provided for by a joint powers agreement pursuant to this article, the members of which may conduct agricultural, livestock, industrial, cultural, or other types of fairs and exhibitions, or educational programs and activities, may establish and administer risk pooling arrangements for the payment of liability losses incurred by members of the joint powers agency or entity and by nonprofit corporations conducting or benefiting agricultural, livestock, industrial, cultural, or other types of fairs and exhibitions, or educational programs and activities, and by members of the joint powers agency or entity and by nonprofit corporations or auxiliary organizations operating facilities, programs, or events at public schools, the California Community Colleges, the California State University, or the University of California. For purposes of this section, one or more public agencies and one or more nonprofit corporations or auxiliary organizations operating facilities, programs, or events at public schools, the California Community Colleges, the California State University, or the University of California may enter into a joint powers agreement. The joint powers agency or entity may provide the nonprofit corporations with any services or nonrisk pooling programs provided to the agency's or entity's members. Aggregate payments made under each risk pooling arrangement shall not exceed the amount available in the pool established for that arrangement. The joint powers agency or entity may establish and administer as many separate risk pooling arrangements as it deems desirable. A liability risk pooling arrangement established pursuant

to this section also may provide for the payment of losses incurred by special events users, lessees, and licensees of facilities operated by nonprofit corporations, auxiliary organizations, public schools, the California Community Colleges, the California State University, or the University of California and for the payment of losses incurred by employees, participants and exhibitors in programs sponsored by those entities.

SEC. 7. Section 11000 of the Government Code is amended to read:

11000. (a) As used in this title, "state agency" includes every state office, officer, department, division, bureau, board, and commission. As used in any section of this title that is added or amended effective on or after January 1, 1997, "state agency" does not include the California State University unless the section explicitly provides that it applies to the university.

(b) References to particular state agencies in this title, without further identification, such as to the "Treasurer" or "Department of General Services," are references to the state officer or agency known by that name.

SEC. 8. Section 10505 of the Public Contract Code is amended to read:

10505. (a) The Regents of the University of California may perform projects with university employees if the regents deem that the award of a contract, the acceptance of bids or the acceptance of further bids is not in the best interests of the university, provided that (1) the estimated value of work to be so performed shall not exceed twenty thousand dollars ($20,000), (2) the project is for the erection, construction, alteration, repair, or improvement of experimental or diagnostic equipment, or (3) the work is to be performed at a research facility located in a remote and sparsely populated area and the estimated cost does not exceed fifty thousand dollars ($50,000).

(b) This section does not apply to the painting or repainting of a structure, building, road, or improvement of any kind if the estimated value of the painting or repainting work exceeds ten thousand dollars ($10,000).

SEC. 9. Section 10701 of the Public Contract Code is amended to read:

10701. As used in this chapter:

(a) "Project" includes the erection, construction, alteration, painting, repair, or improvement of any state structure, building, road, or other state improvement of any kind.

(b) "Service contract" means any contract for services in connection with a project other than a project contract, and includes, but is not limited to, contracts for architectural, engineering, planning, testing, general studies, or feasibility services.

(c) "Trustees" means the trustees of the California State University and their designees.

SEC. 10. Section 10705 of the Public Contract Code is amended to read:

10705. (a) Where the nature of the work in the opinion of the trustees is such that the application of all of the provisions of this chapter in connection therewith is not required, the trustees may carry out the project pursuant to this section if the estimated cost does not exceed two hundred fifty thousand dollars ($250,000).

(b) If the estimated total cost of any construction project or work carried out under this section exceeds five thousand dollars ($5,000), the trustees shall solicit bids in writing and shall award the work to the lowest responsible bidder or reject all bids. The trustees may carry out work in excess of five thousand dollars ($5,000) under this section by day labor if the trustees deem that the award of a contract, the acceptance of bids, or the acceptance of further bids is not in the best interests of the state, but the amount of work performed by day labor under this section shall not exceed the sum of twenty thousand dollars ($20,000).

SEC. 11. Section 10710 is added to the Public Contract Code, to read:

10710. (a) Notwithstanding any other provisions of this chapter, the trustees may award annual contracts that do not exceed one million dollars ($1,000,000) for repair or other repetitive work to be done according to unit prices. The contracts shall be awarded to the lowest responsible bidder and shall be based on plans and specifications for typical work. No project shall be performed under such a contract except by order of the trustees. No annual contracts may be awarded for any new construction under these provisions.

(b) (1) For purposes of this section, "unit price" means the amount paid for a single unit of an item of work, and "typical work" means a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual project.

(2) For purposes of this section, "repair or other repetitive work to be done according to unit prices" shall not include design or contract drawings.

CHAPTER 939

An act to add Section 799 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. The Legislature hereby finds and declares as follows:

(a) Certain public utilities and other service suppliers operating in the State of California are required to collect taxes imposed on their customers by local jurisdictions and to remit those taxes to the local jurisdictions.

(b) The decision of the California Supreme Court in Santa Clara County Transportation Authority v. Guardino, 11 Cal. 4th 220, as modified on denial of rehearing 12 Cal. 4th 344e, upholds the legality of Proposition 62.

(c) As a consequence of the Guardino decision there is uncertainty concerning the legality of taxes imposed by certain local jurisdictions on customers of public utilities and other service suppliers.

(d) Public policy will be served by clarifying the duties and responsibilities of public utilities and other service suppliers.

SEC. 2. Section 799 is added to the Public Utilities Code, to read:

799. (a) With respect to all taxes enacted by any local jurisdiction, including any city, county, or city and county, including a chartered city or county, any district, including an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries, or any public or municipal corporation, and imposed on the customers of public utilities or other service suppliers, which taxes have been collected by the public utilities and other service suppliers and remitted to the local jurisdiction all of the following shall apply:

(1) The public utility or other service supplier shall have no duty to independently investigate or inquire with the local jurisdiction concerning the validity of the tax ordinance.

(2) In connection with any actions or claims relating to or arising from the invalidity of the tax ordinance, in whole or in part, the public utility or other service supplier shall not be liable to any customer as a consequence of collecting the tax.

(3) In the event a local jurisdiction is ordered to refund the tax, it shall be the sole responsibility of the local jurisdiction to refund the tax. Unless a public utility or other service supplier is reimbursed by the local jurisdiction for the actual cost of assisting the local jurisdiction, including, but not limited to, calculating or verifying refunds, distributing refunds, providing data, or providing data processing assistance, the public utility or other service supplier shall not be required to assist the local jurisdiction to refund the tax, including, but not limited to, calculating or verifying refunds, distributing refunds, providing data, or providing data processing assistance.

(4) In any action seeking to enjoin collection of taxes imposed on customers of utilities or other service suppliers and collected by the utilities or other service suppliers, in any action seeking declaratory relief concerning the taxes, in any action seeking a refund of the taxes, or in any action seeking otherwise to invalidate the taxes, the sole necessary party defendant in the action shall be the local jurisdiction on whose behalf the taxes are collected and the public utility or other service supplier collecting the taxes shall not be named as a party in the action.

(5) If a local jurisdiction repeals the tax, reduces an existing tax rate, changes the tax base, or makes any other changes to the tax that would affect the collection and remittance of the tax, the local jurisdiction shall submit, on and after the effective date of the enactment of the change, a written notification and supply all requisite information to the public utility or service supplier, in accordance with the procedures established by the public utility or service supplier. The public utility or other service supplier shall not be required to implement the changes any earlier than 60 days from the date on which the public utility or other service provider receives the written notification and all other information required by the public utility or other service supplier. If the 60th day is not the first day of a month, then the public utility or other service provider shall implement the changes on the first day of the month following the month in which the 60th day occurs.

(6) If a local jurisdiction adopts a new tax, the local jurisdiction shall submit, on and after the effective date of the adoption of the new tax, a written notification to the public utility or other service supplier, in accordance with procedures established by the public utility or other service supplier, requesting that the tax be collected. The public utility or other service supplier shall not be required to begin collecting the tax any earlier than 90 days from the date on which the public utility or other service provider receives written notification and all other information required by the public utility or other service supplier. If the 90th day is not the first day of a month, then the public utility or other service provider shall begin the tax collection on the first day of the month following the month in which the 90th day occurs. Nothing in this section shall be construed to prevent the public utility or other service provider from beginning the tax collection at an earlier date.

(b) The Legislature finds and declares that the limitations imposed by this section constitute an issue of statewide concern. The Legislature further finds and declares that the limitations imposed by this section are not municipal affairs as that term is used in Article XI of the California Constitution. Therefore, it is the intent of the Legislature that the limitations imposed by this section apply to all cities, counties, and cities and counties, including chartered cities and chartered counties, any district, including an agency of the state, formed pursuant to general law or special act, for the local

performance of governmental or proprietary functions within limited boundaries, and any public or municipal corporation.

SEC. 3. The enactment of paragraphs (1), (2), (3), and (4) of subdivision (a) of Section 799 of the Public Utilities Code made by Section 3 of this act does not constitute a change in, but is declaratory of, existing law.

SEC. 4. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

No other reimbursement is required by other provisions of this act pursuant to Section 6 of Article XIII B of the California Constitution because the only other costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 940

An act to amend Section 7203.5 of, and to add Section 7282.3 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Section 7203.5 of the Revenue and Taxation Code is amended to read:

7203.5. (a) The State Board of Equalization shall not administer and shall terminate its contract to administer any sales or use tax ordinance of a city, county, or city and county, if that city, county, or city and county imposes a sales or use tax in addition to the sales and

use taxes imposed under an ordinance conforming to the provisions of Sections 7202 and 7203.

(b) For purposes of this section, and notwithstanding subdivision (f), a city, county, or city and county shall be deemed to have imposed a sales or use tax in addition to the sales and use taxes imposed under an ordinance conforming to the provisions of Sections 7202 and 7203 to the extent that the city, county, or city and county levies a tax on the privilege of occupying a room or rooms in a hotel, motel, bed and breakfast inn, or similar transient lodging establishment when all of the following conditions are met:

(1) The hotel, motel, bed and breakfast inn, or similar transient lodging establishment provides food products for human consumption and all or some of the food products are provided solely for consumption by its transient guests and the invitees of those guests.

(2) The uniform cost of the food products provided solely for consumption by the establishment's transient guests and the invitees of those guests is included in the price of the transient occupancy accommodation, however denominated, and whether or not separately stated.

(3) The portion of the price of the transient occupancy accommodation allocable to these food products is subject to tax under Part 1 (commencing with Section 6001), and is also subject to tax imposed by the city, county, or city and county on the privilege of occupying a room or rooms in the establishment.

(4) The operator of the establishment provides the city, county, or city and county with a reasonable allocation of the value of the food products subject to tax under Part 1 (commencing with Section 6001) that is separately identified either on the guest's receipt or on the operator's accounting records.

(c) The provisions of subdivision (a) shall apply to any tax described in subdivision (b), whether characterized as a "transient occupancy tax," "bed tax," or otherwise, regardless of whether it is levied pursuant to Section 7280, pursuant to charter or other similar authority of the city, county, or city and county, or otherwise pursuant to law.

(d) (1) For purposes of this section, "hotel," "motel," "bed and breakfast inn," or "similar transient lodging establishment" means an establishment containing guest room accommodations with respect to which the predominant relationship existing between the occupants thereof and the owner or operator of the establishment is that of innkeeper and guest. The existence of other relationships as between some occupants and the owner or operator thereof shall be immaterial.

(2) For purposes of this section, "food products" means food and beverage products of every kind, regardless of how or where served, and shall specifically include, but not be limited to, alcoholic beverages and carbonated beverages of every kind.

(e) In the case of a termination, the board shall give the city, county, or city and county written notice of termination, stating the reasons therefor and the effective date of the termination, which shall be not earlier than the first day of the first calendar quarter commencing at least 30 days after the mailing of the notice to the city, county, or city and county. If the cause for termination is not cured within the time specified in the notice, the board shall not administer the ordinance until the cause for termination is removed and a new contract for the administration of the ordinance executed. The contract shall be operative not earlier than the first day of the first calendar quarter commencing after its execution. During the period of time that the board is not administering the sales and use tax ordinance of a city, county, or city and county, no ordinance of that city, county, or city and county shall be considered to be an ordinance enacted in accordance with this part.

(f) Except as provided in subdivision (b), nothing in this section shall be construed as prohibiting the levy or collection by a city, county, or city and county of any other substantially different tax authorized by the California Constitution or by statute or by the charter of any chartered city.

SEC. 2. Section 7282.3 is added to the Revenue and Taxation Code, to read:

7282.3. (a) Notwithstanding any other provision of law, no city, county, or city and county may levy a tax under Section 7280 on any amount subject to tax under the Sales and Use Tax Law (Part 1 (commencing with Section 6001)) with respect to the sale of food products.

(b) This section shall also apply to charter cities.

(c) For purposes of this section, "food products" means food and beverage products of every kind, regardless of how or where served, and shall specifically include, but not be limited to, alcoholic beverages and carbonated beverages of every kind.

SEC. 3. The Legislature finds and declares that taxpayers should not be subjected to both a sales and use tax and a transient occupancy tax on the same portion of a transaction. The Legislature further finds and declares that the right not to have portions of transactions that are subject to the sales and use tax also be subject to the transient occupancy tax is an issue of statewide concern, affecting all taxpayers, and is not a municipal affair. In enacting this act, it is the intent of the Legislature to establish clear and uniform standards for the imposition of transient occupancy taxes on food products.

SEC. 4. The amendments made to Section 7203.5 of the Revenue and Taxation Code by Section 1 of this act shall become operative only if the provisions of Section 7282.3 of the Revenue and Taxation Code, as added by Section 2 of this act, are held to be inapplicable to charter cities.

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CHAPTER 941

An act to add Section 926.19 to the Government Code, relating to claims against the state.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Section 926.19 is added to the Government Code, to read:

926.19. (a) Unless otherwise provided for by statute, any state agency that fails to pay a person any undisputed payment or refund due to that person shall be liable for interest on the undisputed amount pursuant to this section. The interest shall be paid out of the agency's funds and shall accrue at a rate equal to the interest accrued in the Pooled Money Investment Account minus 1 percent over the term that the payment or refund was held by the agency, beginning on the 31st day after the agency provides notice to the person that a payment or refund is owed to that person or after the agency receives notice from the person that an undisputed payment or refund is due. The interest shall cease to accrue on the date full payment or refund is made.

(b) If the state agency's failure to make payment as required by this section is the result of a dispute between the state agency and the person to whom money is owed, interest shall begin to accrue on the 31st day after the dispute has been settled by mutual agreement, arbitration, or court decision. A state agency may dispute a payment or refund if the state agency so notifies the person within 15 days after the state agency receives notice from the person that the payment or refund is due.

(c) If the state agency is not authorized to make a payment or refund to a person pursuant to this section, that state agency shall submit the claim to the Controller's office within 15 days of receiving a claim, or shall be liable for an interest penalty beginning on the 16th day, which shall be paid out of the state agency's funds and shall continue to accrue until the claim is received by the Controller's office. After the claim is forwarded to the Controller's office, an interest penalty fee shall begin to accrue on the 16th day after receipt by the Controller's office, and shall be paid out of the Controller's funds. In any event, the interest penalty shall cease to accrue on the date full payment is made to the person.

(d) (1) In the event that a payment or refund is the joint responsibility of more than one state agency, not including the Controller's office, and neither agency is authorized to make a payment or refund, each agency shall forward the claim to the Controller's office within 15 days of receipt. Interest shall begin to

accrue on the 16th day, pursuant to subdivision (c). Any accrued interest shall be the responsibility of the state agency that delays the transmittal of the claim to the Controller.

(2) If either of the responsible agencies is authorized to make a payment or refund directly to the person, each agency shall have 15 days to transmit the claim to the other agency or pay the person. Interest shall begin to accrue on the 16th day, and shall be the responsibility of the agency delaying the payment process.

(e) When a state agency is required by this section to pay penalties that accumulate in excess of one thousand dollars ($1,000) in one fiscal year, the head of the state agency shall submit to the Legislature, within 60 days following the end of the fiscal year, a written report on the actions taken to correct the problem, including recommendations on actions to avoid a recurrence of the problem and recommendations as to statutory changes, if needed.

(f) A court shall award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to this section where it is found that the state agency has violated this section. The costs and fees shall be paid by the state agency at fault and shall not become a personal economic liability of any public officer or employee thereof. In the case of disputed payments or refunds, nothing in this section shall be construed as precluding a court from awarding a prevailing party the interest accrued while the dispute was pending.

(g) No state agency shall seek additional appropriations to pay interest that accrues as a result of this section.

(h) No person shall receive an interest payment pursuant to this section if it is determined that the person has intentionally overpaid on a liability solely for the purpose of receiving interest.

(i) No interest shall accrue during any time period for which there is no Budget Act in effect, nor on any payment or refund that is the result of a federally mandated program or that is directly dependent upon the receipt of federal funds by a state agency.

(j) This section shall not apply to any of the following:

(1) Payments, refunds, or credits for income tax purposes.

(2) Payment of claims for reimbursement for health care services or mental health services provided under the Medi-Cal program, pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(3) Any payment made pursuant to a public social service or public health program to a recipient of benefits under that program.

(4) Payments made on claims by the State Board of Control.

(5) Payments made by the Commission on State Mandates.

(6) Payments made by the Department of Personnel Administration pursuant to Section 19823.

CHAPTER 942

An act to amend Sections 26820.6 and 72055 of the Government Code, relating to dispute resolution.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Section 26820.6 of the Government Code is amended to read:

26820.6. The term "total fee" as used in Sections 26820.4, 26826, and 26827, includes the amount allocated to the Judges' Retirement Fund pursuant to Section 26822.3, the vital statistic fee imposed pursuant to Section 26859, the fee for the automation and conversion of court records imposed pursuant to Section 26863 any construction fee imposed pursuant to Section 76238, and the law library fee established pursuant to Article 2 (commencing with Section 6320) of Chapter 5 of Division 3 of the Business and Professions Code. The term "total fee" as used in Sections 26820.4, 26826, and 26827, also includes any dispute resolution fee imposed pursuant to Section 470.3 of the Business and Professions Code, but the board of supervisors of each county may exclude any portion of this dispute resolution fee from the term "total fee."

SEC. 2. Section 72055 of the Government Code is amended to read:

72055. The total fee for filing of the first paper in a civil action or proceeding in the municipal court, shall be eighty dollars ($80).

This section applies to the initial complaint, petition, or application, and any papers transmitted from another court on the transfer of a civil action or proceeding, but does not include documents filed pursuant to Section 491.150, 704.750, or 708.160 of the Code of Civil Procedure.

The term "total fee" as used in this section and Section 72056 includes any amount allocated to the Judges' Retirement Fund pursuant to Section 72056.1, any automation fee imposed pursuant to Section 68090.7, any construction fee imposed pursuant to Section 76238, and the law library fee established pursuant to Article 2 (commencing with Section 6320) of Chapter 5 of Division 3 of the Business and Professions Code. The term "total fee" as used in Section 72056 includes any dispute resolution fee imposed pursuant to Section 470.3 of the Business and Professions Code. The term "total fee" as used in this section also includes any dispute resolution fee imposed pursuant to Section 470.3 of the Business and Professions Code, but the board of supervisors of each county may exclude any portion of this dispute resolution fee from the term "total fee."

The fee shall be waived in any action for damages against a defendant, based upon the defendant's commission of a felony offense, upon presentation to the clerk of the court of a certified copy of the abstract of judgment of conviction of the defendant of the felony giving rise to the claim for damages. If the plaintiff would have been entitled to recover those fees from the defendant had they been paid, the court may assess the amount of the waived fees against the defendant and order the defendant to pay that sum to the county.

SEC. 3. Section 72055 of the Government Code is amended to read:

72055. The total fee for filing of the first paper in a civil action or proceeding in the municipal court, shall be ninety dollars ($90) except that in cases where the amount demanded, excluding attorneys' fees and costs, is ten thousand dollars ($10,000) or less, the fee shall be eighty-three dollars ($83).

This section applies to the initial complaint, petition, or application, and any papers transmitted from another court on the transfer of a civil action or proceeding, but does not include documents filed pursuant to Section 491.150, 704.750, or 708.160 of the Code of Civil Procedure.

The term "total fee" as used in this section and Section 72056 includes any amount allocated to the Judges' Retirement Fund pursuant to Section 72056.1, any automation fee imposed pursuant to Section 68090.7, any construction fee imposed pursuant to Section 76238, and the law library fee established pursuant to Article 2 (commencing with Section 6320) of Chapter 5 of Division 3 of the Business and Professions Code.

The term "total fee" as used in Section 72056 includes any dispute resolution fee imposed pursuant to Section 470.3 of the Business and Professions Code. The term "total fee" as used in this section also includes any dispute resolution fee imposed pursuant to Section 470.3 of the Business and Professions Code, but the board of supervisors of each county may exclude any portion of this dispute resolution fee from the term "total fee."

SEC. 4. It is the intent of the Legislature to support the Dispute Resolution Program Act (DRPA), which enables individuals to resolve conflicts outside of the courtroom and thereby alleviate court congestion. It is further the intent of the Legislature that, in counties that elect to be subject to the provisions of this act, the following procedures shall be implemented:

(1) Parties shall be notified of the availability of the programs funded pursuant to the DRPA in a manner that is determined by the Judicial Council. In no event, shall any new duties be imposed upon attorneys, including, but not limited to, a requirement that attorneys notify clients or others of the existence of DRPA programs.

(2) Consideration of a waiver, if necessary, from applicable provisions of the Trial Court Delay Reduction Act for up to 90 days

shall be available in cases where both parties agree to participate in a program funded pursuant to the DRPA to resolve their conflict.

SEC. 5. Section 3 of this bill incorporates amendments to Section 72055 of the Government Code proposed by this bill and AB 2553. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 72055 of the Government Code, and (3) this bill is enacted after AB 2553, in which case Section 72055 of the Government Code, as amended by AB 2553, shall remain operative only until the operative date of this bill, at which time Section 3 of this bill shall become operative, and Section 2 of this bill shall not become operative.

(Coauthors: Assembly Members Aguiar, Brulte, and Cunneen)

CHAPTER 943

An act to add Article 9 (commencing with Section 87860) to Chapter 3 of Part 51 of the Education Code, relating to community colleges, and making an appropriation therefor.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Article 9 (commencing with Section 87860) is added to Chapter 3 of Part 51 of the Education Code, to read:

Article 9. Part-Time Community College Faculty Health Insurance Program

87860. It is the intent of the Legislature that part-time community college faculty and their eligible dependents have continuous access to health insurance benefits.

87860.5. There is hereby established the Part-Time Community College Faculty Health Insurance Program for the purpose of providing a state incentive program to encourage community college districts to offer health insurance for part-time faculty.

87861. For the purposes of this article:

(a) "Health insurance benefits" include medical benefits, but do not include vision or dental benefits.

(b) "Part-time faculty" refers to any faculty member whose teaching assignment in two or more community college districts equals or exceeds the cumulative equivalent of a minimum full-time teaching assignment.

87862. The governing board of a community college district may provide a program of health insurance for part-time faculty and their dependents.

87863. A part-time faculty member and his or her eligible dependents are eligible to participate in the program established pursuant to this article no earlier than the commencement of the faculty member's third consecutive semester of teaching or fourth consecutive quarter of teaching where the quarter system is used. A summer session or any other interim session does not constitute a semester or quarter for purposes of this article.

87864. No part-time faculty member or dependents whose premiums for health insurance are paid by an employer other than a community college district is eligible to participate in the program established pursuant to this article.

87865. If a part-time faculty member is employed by more than one community college district, and both or all of the community college districts for whom he or she works offers health insurance pursuant to this article, the employee shall select only one district to provide health insurance coverage.

87866. The governing board of each community college district that establishes a program pursuant to this article shall do both of the following:

(a) Negotiate with the exclusive representative as to the payment of the portion of the health insurance premium that is not funded by the state.

(b) By June 1 of each year, send verification to the Chancellor of the California Community Colleges as to the number of participants in the program.

87867. By June 15 of each year, the Chancellor of the California Community Colleges shall apportion to each community college district that establishes a program pursuant to this article an amount that equals up to one-half of the total cost of the individual enrollment premiums required to be paid for the health insurance coverage of participating part-time faculty and their dependents in the district. The chancellor shall distribute funds that have been appropriated specifically for this purpose proportionally based on each district's total costs for premiums for those districts that submit verification of the costs of premiums for eligible employees for a fiscal year, but in no event shall the allocation to any district exceed one-half of the cost of the verified premiums. If funds appropriated for this purpose exceed one-half of the verified cost of premiums for all participating districts statewide, the balance that exceeds that amount shall revert to the General Fund annually.

87868. It is the intent of the Legislature that ongoing funding for the purposes of this article be subject to annual Budget Act appropriations.

SEC. 2. (a) The sum of five hundred thousand dollars ($500,000) is hereby appropriated from the General Fund to the Chancellor of the California Community Colleges in augmentation of Item 6870-101-0001 of the Budget Act of 1996 for purposes of the Part-Time Community College Faculty Health Insurance Program established

pursuant to Article 9 (commencing with Section 87860) of Chapter 3 of Part 51 of the Education Code.

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the amount appropriated in subdivision (a) shall be deemed to be "General Fund Revenues appropriated for community college districts" for the 1996–97 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" for the 1996–97 fiscal year, as those phrases are defined in subdivision (c) of Section 41202 of the Education Code.

87869. This article shall become operative on January 1, 1997.

CHAPTER 944

An act to amend Sections 56366, 56366.1, 56740, and 56775 of the Education Code, relating to special education.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Section 56366 of the Education Code is amended to read:

56366. It is the intent of the Legislature that the role of the nonpublic, nonsectarian school or agency shall be maintained and continued as an alternative special education service available to districts, special education local plan areas, county offices, and parents.

(a) The master contract for nonpublic, nonsectarian school or agency services shall be developed in accordance with the following provisions:

(1) The master contract shall specify the general administrative and financial agreements between the nonpublic, nonsectarian school or agency and the district, special education local plan area, or county office to provide the special education and designated instruction and services, as well as transportation specified in the pupil's individualized education program. The administrative provisions of the contract also shall include procedures for recordkeeping and documentation, and the maintenance of school records by the contracting district, special education local plan area, or county office to ensure that appropriate high school graduation credit is received by the pupil. The contract may allow for partial or full-time attendance at the nonpublic, nonsectarian school.

(2) The master contract shall include an individual services agreement for each pupil placed by a district, special education local

plan area, or county office that will be negotiated for the length of time for which nonpublic, nonsectarian school or agency special education and designated instruction and services are specified in the pupil's individualized education program.

Changes in educational instruction, services, or placement provided under contract may only be made on the basis of revisions to the pupil's individualized education program.

At any time during the term of the contract or individual services agreement, the parent; nonpublic, nonsectarian school or agency; or district, special education local plan area, or county office may request a review of the pupil's individualized education program by the individualized education program team. Changes in the administrative or financial agreements of the master contract that do not alter the individual services agreement that outlines each pupil's educational instruction, services, or placement may be made at any time during the term of the contract as mutually agreed by the nonpublic, nonsectarian school or agency and the district, special education local plan area, or county office.

(3) The master contract or individual services agreement may be terminated for cause. The cause shall not be the availability of a public class initiated during the period of the contract unless the parent agrees to the transfer of the pupil to a public school program. To terminate the contract either party shall give 20 days' notice.

(4) The nonpublic, nonsectarian school or agency shall provide all services specified in the individualized education program, unless the nonpublic, nonsectarian school or agency and the district, special education local plan area, or county office agree otherwise in the contract or individualized services agreement.

(5) Related services provided pursuant to a nonpublic, nonsectarian agency master contract shall only be provided during the period of the child's regular or extended school year program, or both, unless otherwise specified by the pupil's individualized education program.

(6) The nonpublic, nonsectarian school or agency shall report attendance of pupils receiving special education and designated instruction and services as defined by Section 46307 for purposes of submitting a warrant for tuition to each contracting district, special education local plan area, or county office.

(b) The master contract or individual services agreement shall not include special education transportation provided through the use of services or equipment owned, leased, or contracted by a district, special education local plan area, or county office for pupils enrolled in the nonpublic, nonsectarian school or agency unless provided directly or subcontracted by that nonpublic, nonsectarian school or agency.

The superintendent shall withhold 20 percent of the amount apportioned to a school district or county office for costs related to the provision of nonpublic, nonsectarian school or agency

placements if the superintendent finds that the local education agency is in noncompliance with this subdivision. This amount shall be withheld from the apportionments in the fiscal year following the superintendent's finding of noncompliance. The superintendent shall take other appropriate actions to prevent noncompliant practices from occurring and report to the Legislature on those actions.

(c) (1) If the pupil is enrolled in the nonpublic, nonsectarian school or agency with the approval of the district, special education local plan area, or county office prior to agreement to a contract or individual services agreement, the district, special education local plan area, or county office shall issue a warrant, upon submission of an attendance report and claim, for an amount equal to the number of creditable days of attendance at the per diem tuition rate agreed upon prior to the enrollment of the pupil. This provision shall be allowed for 90 days during which time the contract shall be consummated.

(2) If after 60 days the master contract or individual services agreement has not been finalized as prescribed in paragraph (1) of subdivision (a), either party may appeal to the county superintendent of schools, if the county superintendent is not participating in the local plan involved in the nonpublic, nonsectarian school or agency contract, or the superintendent, if the county superintendent is participating in the local plan involved in the contract, to negotiate the contract. Within 30 days of receipt of this appeal, the county superintendent or the superintendent, or his or her designee, shall mediate the formulation of a contract which shall be binding upon both parties.

(d) No master contract for special education and related services provided by a nonpublic, nonsectarian school or agency shall be authorized under this part unless the school or agency has been certified as meeting those standards relating to the required special education and specified related services and facilities for individuals with exceptional needs. The certification shall result in the school's or agency's receiving approval to educate pupils under this part for a period no longer than four years from the date of the approval.

(e) By September 30, 1998, the procedures, methods, and regulations for the purposes of contracting for nonpublic, nonsectarian school and agency services pursuant to this section and for reimbursement pursuant to Sections 56740 and 56775 shall be developed by the superintendent in consultation with statewide organizations representing providers of special education and designated instruction and services. The regulations shall be established by rules and regulations issued by the board.

SEC. 2. Section 56366.1 of the Education Code is amended to read:

56366.1. (a) A nonpublic, nonsectarian school or agency that seeks certification shall file an application with the superintendent

on forms provided by the department and include the following information on the application:

(1) A description of the special education and designated instruction and services provided to individuals with exceptional needs if the application is for nonpublic, nonsectarian school certification.

(2) A description of the designated instruction and services provided to individuals with exceptional needs if the application is for nonpublic, nonsectarian agency certification.

(3) A list of appropriately qualified staff, a description of the credential, license, or registration that qualifies each staff member to render special education or designated instruction and services, and copies of their credentials, licenses, or certificates of registration with the appropriate state or national organization that has established standards for the service rendered.

(4) An annual operating budget.

(5) Affidavits and assurances necessary to comply with all applicable federal, state, and local laws and regulations which include criminal record summaries required of all nonpublic school or agency personnel having contact with minor children under Section 44237.

(b) Unless the board grants a waiver pursuant to Section 56101, a nonpublic, nonsectarian school or agency shall file an application for certification between January 1 and June 30.

(c) If the applicant operates a facility or program on more than one site, each site shall be certified.

(d) If the applicant is part of a larger program or facility on the same site, the superintendent shall consider the effect of the total program on the applicant. A copy of the policies and standards for the nonpublic, nonsectarian school or agency and the larger program shall be available to the superintendent.

(e) Prior to certification, the superintendent shall conduct an onsite review of the facility and program for which the applicant seeks certification. The superintendent may be assisted by representatives of the special education local plan area in which the applicant is located and a nonpublic, nonsectarian school or agency representative who does not have a conflict of interest with the applicant. The superintendent shall conduct an additional onsite review of the facility and program within four years of the certification effective date, unless the superintendent conditionally certifies the school or agency or unless the superintendent receives a formal complaint against the school or agency. In the latter two cases, the superintendent shall conduct an onsite review at least annually.

(f) The superintendent shall make a determination on an application within 120 days of receipt of the application and shall certify, conditionally certify, or deny certification to the applicant. If the superintendent fails to take one of these actions within 120 days, the applicant is automatically granted conditional certification for a

period terminating on August 31, of the current school year. If certification is denied, the superintendent shall provide reasons for the denial. The superintendent may certify the school or agency for a period of not longer than four years.

(g) Certification becomes effective on the date the nonpublic, nonsectarian school or agency meets all the application requirements and is approved by the superintendent. Certification may be retroactive if the school or agency met all the requirements of this section on the date the retroactive certification is effective. Certification expires on December 31 of the terminating year.

(h) The superintendent shall annually review the certification of each nonpublic, nonsectarian school and agency. For this purpose, a certified school or agency shall annually update its application between August 1 and October 31, unless the board grants a waiver pursuant to Section 56101. The superintendent may conduct an onsite review as part of the annual review.

(i) The superintendent may monitor a nonpublic, nonsectarian school or agency onsite at any time without prior notice when there is substantial reason to believe that there is an immediate danger to the health, safety, or welfare of a child. The superintendent shall document the concern and submit it to the nonpublic, nonsectarian school or agency at the time of the onsite monitoring. The superintendent shall require a written response to any noncompliance or deficiency found.

(j) (1) Notwithstanding any other provision of law, the superintendent may not certify a nonpublic, nonsectarian school or agency that proposes to initiate or expand services to pupils currently educated in the immediate prior fiscal year in a juvenile court program, community school pursuant to Section 56150, or other nonspecial education program, including independent study or adult school, or both, unless the nonpublic, nonsectarian school or agency notifies the county superintendent of schools and the special education local plan area in which the proposed new or expanded nonpublic, nonsectarian school or agency is located of its intent to seek certification.

(2) The notification shall occur no later than the December 1 prior to the new fiscal year in which the proposed or expanding school or agency intends to initiate services. The notice shall include the following:

(A) The specific date upon which the proposed nonpublic, nonsectarian school or agency is to be established.

(B) The location of the proposed program or facility.

(C) The number of pupils proposed for services, the number of pupils currently served in the juvenile court, community school, or other nonspecial education program, the current school services including special education and related services provided for these pupils, and the specific program of special education and related services to be provided under the proposed program.

(D) The reason for the proposed change in services.

(E) The number of staff that will provide special education and designated instruction and services and hold a current valid California credential or license in the service rendered or certificate of registration to provide occupational therapy.

(3) In addition to the requirements in subdivisions (a) through (e), inclusive, the superintendent shall require and consider the following in determining whether to certify a nonpublic, nonsectarian school or agency as described in this subdivision:

(A) A complete statement of the information required as part of the notice under paragraph (1).

(B) Documentation of the steps taken in preparation for the conversion to a nonpublic, nonsectarian school or agency, including information related to changes in the population to be served and the services to be provided pursuant to each pupil's individualized education program.

(4) Unless the board grants a waiver pursuant to Section 56101, a new or expanded nonpublic, nonsectarian school or agency shall file an application for certification between January 1 and June 30 of each year prior to the fiscal year. Before certifying the school or agency, the superintendent shall determine that certification of the new or expanding school or agency program is necessary for the provision of a free appropriate special education program to the affected pupils in the least restrictive environment.

(5) Notwithstanding any other provision of law, the certification becomes effective no earlier than July 1, if the school or agency provided the notification required pursuant to paragraph (1).

(k) The school or agency shall be charged a reasonable fee for certification. The superintendent may adjust the fee annually commensurate with the statewide average percentage inflation adjustment computed for revenue limits of unified school districts with greater than 1,500 units of average daily attendance if the percentage increase is reflected in the district revenue limit for inflation purposes. For purposes of this section, the base fee shall be the following:

(1)	1– 5 pupils	$ 150
(2)	6–10 pupils	250
(3)	11–24 pupils	500
(4)	25–75 pupils	750
(5)	76 pupils and over	1,000

The school or agency shall pay this fee when it applies for certification and when it updates its application for annual review by the superintendent. The superintendent shall use these fees to conduct onsite reviews, which may include field experts. No fee shall

be refunded if the application is withdrawn or is denied by the superintendent.

(*l*) (1) Notwithstanding any other provision of law, only those nonpublic, nonsectarian schools and agencies that provide special education and designated instruction and services utilizing staff who hold, or are receiving training under the supervision of staff who hold, a current valid California credential or license in the service rendered shall be eligible to receive certification. Only those nonpublic, nonsectarian schools or agencies located outside of California that employ staff who hold a current valid credential or license to render special education and related services as required by that state shall be eligible to be certified.

(2) Nothing in this subdivision restricts student teachers, interns, or other staff who are enrolled in training programs that lead to a license or credential that authorize the holder to render services to special education pupils and who are under the direct supervision of a staff member who holds a current valid California credential, license, or certificate of registration document.

(3) A nonpublic, nonsectarian school or agency that employs only persons who hold a valid California credential authorizing substitute teaching pursuant to Section 56060 shall not be certified. At least one full-time person with a current valid California credential, license, or certificate of registration in the area of service to be rendered, or a current valid credential, license, or certificate of registration for appropriate special education and related services rendered that is required in another state, shall be required for purposes of certification under subdivision (d) of Section 56366.

(4) A nonpublic, nonsectarian school or agency that employs persons holding a valid emergency credential shall document efforts of recruiting appropriately credentialed, licensed, or registered personnel for the special education and related services rendered as a condition of renewing certification.

(5) Not later than August 1, 1997, the State Board of Education shall issue emergency regulations to implement the subdivision. The emergency regulations shall be developed by the Superintendent of Public Instruction, in collaboration with the Commission on Teacher Credentialing and other public agencies responsible for issuing licenses or certificates of registration to individuals providing designated instruction and services to individuals with exceptional needs. The regulations also shall be developed in consultation with statewide organizations representing public and nonpublic, nonsectarian schools or agencies that provide special education and designated instruction and services. The emergency regulations shall include, but shall not be necessarily limited to, all of the following:

(A) Requirements for minimum personnel qualifications for credentials to provide special education to individuals with exceptional needs issued by the Commission on Teacher Credentialing pursuant to this code and applicable federal laws.

(B) Requirements for minimum personnel qualifications for licenses or certifications of registration to provide designated instruction and services to individuals with exceptional needs issued by the California Board of Medical Quality Assurance, the Board of Behavioral Science Examiners, the Board of Consumer Affairs, and other state licensure agencies that are authorized under the Business and Professions Code to grant licenses or certificates of registration that may be applicable to the provision of designated instruction and services to individuals with exceptional needs.

(C) Requirements for personnel who are not licensed or credentialed to provide special education or designated instruction and services to pupils under the supervision of a credentialed or licensed professional in the service rendered, including direct and nondirect supervision requirements established by this code and the Business and Professions Code, and related regulations.

(D) Requirements for the certification of nonpublic, nonsectarian schools and agencies to provide individual and group designated instruction and services to individuals with exceptional needs.

(6) For purposes of the Administrative Procedure Act, the Legislature declares that the regulations issued pursuant to paragraph (5) shall be deemed to be in response to an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare by ensuring that all personnel providing special education and designated instruction and services to individuals with exceptional needs are appropriately qualified to provide the services specified by a pupil's individualized education program.

(m) The superintendent shall establish guidelines for the implementation of subdivision (a) in consultation with statewide organizations representing providers of special education and designated instruction and services. The State Board of Education shall approve the standards not later than August 1, 1997.

(n) (1) By September 30, 1998, the superintendent shall, in consultation with statewide organizations representing providers of special education and designated instruction and services, develop the procedures, methods, and areas of certification, including, but not limited to, the following:

(A) Information required for purposes of the application specified in subdivision (a).

(B) Procedures for conducting onsite reviews of the nonpublic, nonsectarian school or agency program.

(C) Provisions specific to minimum staff qualifications to provide special education and designated instruction and services that are required for certification.

(D) Provisions specific to the provision of special education and related services to individuals with exceptional needs from birth to preschool.

(2) The board shall issue as rules and regulations the procedures, methods, and areas of certification developed pursuant to paragraph (1).

(o) In addition to meeting the standards adopted by the board, a nonpublic, nonsectarian school or agency shall provide written assurances that it meets all applicable standards relating to fire, health, sanitation, and building safety.

SEC. 3. Section 56740 of the Education Code is amended to read:

56740. (a) The superintendent shall apportion to each district and county office 70 percent of the cost of tuition in excess of the revenue limit and applicable federal funds for pupils enrolled in nonpublic, nonsectarian schools and agencies pursuant to Sections 56365 and 56366.

(b) The superintendent also may apportion to each nonpublic, nonsectarian school providing special education and designated instruction and services to individuals with exceptional needs an amount for pupils counted under the federal program of assistance for state-operated or state-supported programs for children with disabilities (P.L. 89-313, Sec. 6).

(c) The cost of master contracts with nonpublic, nonsectarian schools and agencies that a district or county office of education reports under this section shall not include any of the following costs that a district, county office, or special education local plan area may incur:

(1) Administrative or indirect costs for the local education agency.

(2) Direct support costs for the local education agency.

(3) Transportation costs provided either directly, or through a nonpublic, nonsectarian school or agency contract for use of services or equipment owned, leased, or contracted, by a district, special education local plan area, or county office for any pupils enrolled in nonpublic, nonsectarian schools or agencies, unless provided directly or subcontracted by that nonpublic, nonsectarian school or agency pursuant to subdivisions (a) and (b) of Section 56366.

(4) Costs for services routinely provided by the district, special education local plan area, or county office including the following, unless the board grants a waiver under Section 56101:

(A) School psychologist services other than those described in Sections 56324 and 56363 and included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(B) School nurse services other than those described in Sections 49423.5, 56324, and 56363 and included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(C) Language, speech, and hearing services other than those included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(D) Modified, specialized, or adapted physical education services other than those included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(E) Other services not specified by a pupil's individualized education program or funded by the state on a caseload basis.

(5) Costs for nonspecial education programs or settings, including those provided for individuals with exceptional needs between the ages of birth and five years, inclusive, pursuant to Sections 56431 and 56441.8.

(6) Costs for nonpublic, nonsectarian school or agency placements outside of the state unless the board has granted a waiver pursuant to subdivisions (e) and (f) of Section 56365.

(7) Costs for related nonpublic, nonsectarian school pupil assessments by a school psychologist or school nurse pursuant to Sections 56320 and 56324.

(8) Costs for services that the nonpublic, nonsectarian school or agency is not certified to provide.

(9) Costs for services provided by personnel who do not meet the requirements specified in subdivision (*l*) of Section 56366.1.

(10) Costs for services provided by public school employees.

(d) A nonpublic, nonsectarian school or agency shall not claim and is not entitled to receive reimbursement for attendance unless the site where the pupil is receiving special education or designated instruction and services is certified.

SEC. 4. Section 56775 of the Education Code is amended to read:

56775. (a) For the 1980–81 fiscal year and each fiscal year thereafter, the superintendent shall apportion to each district and county superintendent providing programs pursuant to Article 5 (commencing with Section 56155) of Chapter 2 an amount equal to the difference, if any, between (1) the costs of master contracts with nonpublic, nonsectarian schools and agencies to provide special education instruction, designated instruction and services, or both, to pupils in licensed children's institutions, foster family homes, residential medical facilities, and other similar facilities funded under this chapter, and (2) the state and federal income received by the district or county superintendent for providing these programs. The sum of the excess cost, plus any state or federal income for these programs, shall not exceed the cost of master contracts with nonpublic, nonsectarian schools and agencies to provide special education and designated instruction and services for these pupils, as determined by the superintendent.

(b) The cost of contracts with nonpublic, nonsectarian schools and agencies that a district or county office of education reports under this section shall not include any of the following costs that a district, county office, or special education local plan area may incur:

(1) Administrative or indirect costs for the local education agency.

(2) Direct support costs for the local education agency.

(3) Transportation costs provided either directly, or through a nonpublic, nonsectarian school or agency master contract or individual services agreement for use of services or equipment owned, leased, or contracted, by a district, special education local

plan area, or county office for any pupils enrolled in nonpublic, nonsectarian school or agencies, unless provided directly or subcontracted by that nonpublic, nonsectarian school or agency pursuant to subdivisions (a) and (b) of Section 56366.

(4) Costs for services routinely provided by the district or county office including the following, unless the board grants a waiver under 56101:

(A) School psychologist services other than those described in Sections 56324 and 56363 and included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(B) School nurse services other than those described in Sections 49423.5, 56324, and 56363 and included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(C) Language, speech, and hearing services other than those included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(D) Modified, specialized, or adapted physical education services other than those included in a master contract and individual services agreement under subdivision (a) of Section 56366.

(E) Other services not specified by a pupil's individualized education program or funded by the state on a caseload basis.

(5) Costs for nonspecial education programs or settings, including those provided for individuals with exceptional needs between the ages of birth and five years, inclusive, pursuant to Sections 56431 and 56441.8.

(6) Costs for nonpublic, nonsectarian school or agency placements outside of the state unless the board has granted a waiver pursuant to subdivisions (e) and (f) of Section 56365.

(7) Costs for related nonpublic, nonsectarian school pupil assessments by a school psychologist or school nurse pursuant to Sections 56320 and 56324.

(8) Costs for services that the nonpublic, nonsectarian school or agency is not certified to provide.

(9) Costs for services provided by personnel who do not meet the requirements specified in subdivision (*l*) of Section 56366.1.

(10) Costs for services provided by public school employees.

(d) A nonpublic, nonsectarian school or agency shall not claim and is not entitled to receive reimbursement for attendance unless the site where the pupil is receiving special education or designated instruction and services is certified.

CHAPTER 945

An act to add Section 304.7 to the Welfare and Institutions Code, relating to juvenile courts.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Section 304.7 is added to the Welfare and Institutions Code, to read:

304.7. (a) On or before July 31, 1997, the Judicial Council shall develop and implement standards for the education and training of all judges who conduct hearings pursuant to Section 300. The training shall include, but not be limited to, a component relating to Section 300 proceedings for newly appointed or elected judges and an annual training session in Section 300 proceedings.

(b) Any commissioner or referee who is assigned to conduct hearings held pursuant to Section 300 shall meet the minimum standards for education and training established pursuant to subdivision (a), by July 31, 1998.

(c) The Judicial Council shall submit an annual report to the Legislature on compliance by judges, commissioners and referees with the education and training standards described in subdivisions (a) and (b).

CHAPTER 946

An act to add Section 22825.5 to the Government Code, relating to public employees.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Section 22825.5 is added to the Government Code, to read:

22825.5. (a) A contracting agency may amend its contract to provide that subdivision (c) of Section 22825.3 is applicable to employees who retire for service and who are first employed after the operative date of the amendment if the contract is amended to contain the following provisions:

(1) The employer's contribution for each officer, employee, or annuitant shall be based upon the principles prescribed for state officers, employees, or annuitants in Section 22825.1.

(2) The employer has, in the case of employees represented by a bargaining unit, reached an agreement with that bargaining limit to be subject to this section for the period specified in that memorandum of understanding.

(3) The employer certifies to the board, in the case of employees not represented by a bargaining unit, that there is no applicable memorandum of understanding.

(4) The credited service for purposes of determining the percentage of employer contributions applicable under this section shall mean service as defined in Section 20069, except that not less than five years of that service shall be performed entirely with that employer.

(5) The employer agrees to provide the board any information requested necessary to implement this section.

(b) This section shall only apply to the Calaveras County Water District.

CHAPTER 947

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

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. (a) The sum of two million two hundred fifty thousand dollars ($2,250,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for the 1996–97 fiscal year only, for allocation to the Los Angeles Unified School District for the purpose of providing an early intervention program for at-risk pupils in grades 6 to 8, inclusive, who are otherwise eligible to be served by community day schools pursuant to Section 48622 of the Education Code. This early intervention program shall include the following:

(1) Pupil attendance at an intensive residential program located at a site other than the regular campus for a five-week period. The program shall include at least 175 hours of direct instruction, 25 hours of study hall, counseling services, and instruction in conflict resolution.

(2) Attendance by participating pupils in a course of study determined by the school district to be appropriate for pupils identified pursuant to Section 48662 of the Education Code for the remainder of the school year.

(3) Twelve hours of training for parents of pupils attending the residential program.

(b) The Los Angeles Unified School District may contract with an outside public entity for the provision of the intensive residential program specified in subdivision (a) if the public entity has provided that type of service for at least two years and can demonstrate that

attendance by pupils in the residential program has improved pupils' regular school attendance and has lowered the number of pupil suspensions or pupil referrals for disciplinary action by at least 60 percent.

(c) The State Department of Education shall conduct a review of the early intervention program operated by the Los Angeles Unified School District and shall report the findings of the review to the Legislature on or before January 31, 1997.

(d) For purposes of making computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a) shall be deemed to be "General Fund revenues appropriated to school districts," as defined in subdivision (c) of Section 41202 of the Education Code, for the 1995–96 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B" as defined in subdivision (e) of Section 41202 of the Education Code for the 1995–96 fiscal year.

SEC. 2. This bill shall become operative only if Assembly Bill 2460 of the 1995–96 Regular Session is enacted and becomes effective on or before January 1, 1997.

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

In order to implement the programs affected by this act in the current school year, it is necessary that this act take effect immediately.

CHAPTER 948

An act to amend Sections 44830 and 44830.3 of, and to add and repeal Section 24216.5 of, the Education Code, and to amend Item 6360-101-0001 of Section 2.00 of the Budget Act of 1996, relating to schools, making an appropriation therefor, and declaring the urgency thereof to take effect immediately.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Section 24216.5 is added to the Education Code, to read:

24216.5. (a) The earnings paid to a member who retired for service with an effective date on or before July 1, 1996, and who is employed by a school district to provide direct instruction to pupils

in grades kindergarten through 12 are exempt from subdivisions (d), (e), and (f) of Section 24214, if all of the following conditions are met:

(1) The employment is necessary to meet the objectives of the Class Size Reduction Program set forth in Chapter 6.10 (commencing with Section 52120) of Part 28.

(2) All members retired for service whose employment with a school district meets the conditions specified in this section are treated as a distinct class of temporary employees within the existing bargaining unit. The rate of pay for service performed by this class of employees shall be the rate established in accordance with subdivision (b) of Section 24214 and agreed to in the collective bargaining agreement between the employer and the exclusive representative for employees of the school district.

(3) The school district submits documentation required by the system to substantiate the eligibility of the employment of a member retired for service for the exemption under this subdivision.

(b) A school district that employs a member retired for service pursuant to this section shall maintain accurate records of the retired member's earnings and shall report those earnings monthly to the system regardless of the method of payment or the source of funds from which the earnings are paid.

(c) A member who retired for service with an effective date on or before July 1, 1996, and who, between July 1, 1996, and 60 days following the effective date of this section, terminated his or her service retirement allowance and returned to employment that qualifies for the exemption specified in subdivision (a) shall have the right to cancel his or her reinstatement and return to status as a member retired for service as if the service retirement allowance had not been terminated.

(d) This section shall not apply to the earnings paid to a member retired for service for service performed for a county office of education or a community college district.

(e) This section shall become operative on July 1, 1996, and shall remain in effect only until July 1, 1999, and as of that date is repealed unless a later enacted statute which is enacted before July 1, 1999, deletes or extends that date.

SEC. 2. Section 44830 of the Education Code is amended to read:

44830. (a) The governing board of a school district shall employ for positions requiring certification qualifications, only persons who possess the qualifications therefor prescribed by law. It is contrary to the public policy of this state for any person or persons charged, by the governing boards, with the responsibility of recommending persons for employment by the boards to refuse or to fail to do so for reasons of race, color, religious creed, sex, or national origin of the applicants for that employment.

(b) Commencing on February 1, 1983, no school district governing board shall initially hire on a permanent, temporary, or substitute basis a certificated person seeking employment in the

capacity designated in his or her credential unless that person has demonstrated basic skills proficiency as provided in Section 44252.5 or unless the person is exempted from the requirement by subdivisions (c), (d), (e), (f), (g), (h), (i), (j), (k), (*l*), (m), and (n).

(1) The governing board of a school district, with the authorization of the Commission on Teacher Credentialing, may administer the basic skills proficiency test required under Sections 44252 and 44252.5.

(2) The superintendent, in conjunction with the commission and local governing boards, shall take steps necessary to ensure the effective implementation of this subdivision.

It is the intent of the Legislature that in effectively implementing the provisions of this subdivision, school district governing boards shall direct superintendents of schools to prepare for emergencies by developing a pool of qualified emergency substitute teachers. This preparation shall include public notice of the test requirements and of the dates and locations of administrations of the tests. District governing boards shall make special efforts to encourage individuals who are known to be qualified in other respects as substitutes to take the state basic skills proficiency test at its earliest administration.

(3) Demonstration of proficiency in reading, writing, and mathematics by any person pursuant to Section 44252 shall satisfy the requirements of this subdivision.

(c) (1) A certificated person shall not be required to take the state basic skills proficiency test if he or she has been employed in a position requiring certification in any school district within 39 months prior to employment with the district. A person holding a valid California credential who has not been employed in a position requiring certification in any school district within 39 months prior to employment and who has not taken the state basic skills proficiency test, but who has passed a basic skills proficiency examination which has been developed and administered by the school district offering that person employment, may be employed by the governing board of that school district on a temporary basis on the condition that he or she will take the state basic skills proficiency test within one year of the date of his or her employment.

(2) A certificated person who is employed for purposes of the class size reduction program set forth in Chapter 6.10 (commencing with Section 52120) of Part 28 shall not be required to take the state basic skills proficiency test if he or she has been employed in a position requiring certification in any school district within 39 months prior to employment with the district. A person holding a valid California credential who has not been employed in a position requiring certification in any school district within 39 months prior to employment for purposes of the class size reduction program and who has not taken the state basic skills proficiency test may be employed by the governing board of that school district on a temporary basis on the condition that he or she will take the state

basic skills proficiency test within one calendar year of the date of his or her employment.

(d) Nothing in this section shall require a person employed solely for purposes of teaching adults in an apprenticeship program, approved by the Apprenticeship Standards Division of the Department of Industrial Relations, to pass the state proficiency assessment instrument as a condition of employment.

(e) Nothing in this section shall require the holder of a child care permit or a permit authorizing service in a development center for the handicapped to take the state basic skills proficiency test, so long as the holder of the permit is not required to have a baccalaureate degree.

(f) Nothing in this section shall require the holder of a credential issued by the commission who seeks an additional credential or authorization to teach, to take the state basic skills proficiency test.

(g) Nothing in this section shall require the holder of a credential to provide service in the health profession to take the state basic skills proficiency test, so long as that person does not teach in the public schools.

(h) If the basic skills proficiency test is not administered at the time of hiring, the holder of a vocational designated subject credential who has not already taken and passed the basic skills proficiency test may be hired on the condition that he or she will take the test at its next local administration.

(i) If the holder of a vocational designated subject credential does not pass a proficiency assessment in basic skills pursuant to this section, he or she shall be given one year in which to retake and pass the proficiency assessment in basic skills. If at the expiration of the one-year period he or she has not passed the proficiency assessment in basic skills, he or she shall be subject to dismissal under procedures established in Article 3 (commencing with Section 44930) of Chapter 4.

(j) Nothing in this section shall be construed as requiring the holder of a vocational designated subject credential to pass the state basic skills proficiency test as a condition of employment. The governing board of each school district, or each governing board of a consortium of school districts, or each governing board involved in a joint powers agreement, which employs the holder of a vocational designated subject credential shall establish its own basic skills proficiency for these credentials and shall arrange for those individuals to be assessed. The basic skills proficiency criteria established by the governing board shall be at least equivalent to the test required by the district, or in the case of a consortium or a joint powers agreement, by any of the participating districts, for graduation from high school. The governing board or boards may charge a fee to individuals being tested to cover the costs of the test, including the costs of developing, administering, and grading the test.

(k) Nothing in this section shall be construed as requiring the holder of an adult education designated subject credential for other than academic subjects, who is employed in an instructional setting for 20 hours or less per week, to pass the state proficiency assessment as a condition of employment.

(*l*) Nothing in this section shall be construed to require certificated personnel employed under a foreign exchange program to take the state basic skills proficiency test. The maximum period of exemption under this subdivision shall be one year.

(m) A school district may hire a teacher credentialed in another state who has not taken the state basic skills test if, at a public meeting, the school district governing board certifies that no person who meets the credentialing requirements and who has satisfied the basic skills requirement specified in Section 44261.5 is available to fill a position deemed necessary to the normal operation of the school curriculum. The board shall include in the certification a statement of the need to fill the position and the reasons for the need, proof of its attempts to recruit qualified teachers in California, and a statement attesting to the failure of those attempts. Such certification shall be submitted to the commission with the name of the teacher the board intends to employ pursuant to this section. The commission shall issue an emergency credential pursuant to paragraph 3 of subdivision (b) of Section 44252, upon receipt of this documentation.

(n) Notwithstanding any other provision of law, a school district may hire a certificated teacher who has not taken the state basic skills proficiency test if that person has not yet been afforded the opportunity to take the test. The person shall then take the test at the earliest opportunity and may remain employed by the district pending the receipt of his or her test results.

SEC. 3. Section 44830.3 of the Education Code is amended to read:

44830.3. (a) The governing board of any school district that maintains kindergarten or grades 1 to 12, inclusive, or that maintains classes in bilingual education, or in the case of special education programs for pupils with mild and moderate disabilities, the Los Angeles Unified School District, may, in consultation with an accredited institution of higher education offering an approved program of pedagogical teacher preparation, employ persons authorized by the Commission on Teacher Credentialing to provide service as district interns to provide instruction to pupils in those grades or classes as a classroom teacher. The governing board shall require that each district intern be assisted and guided by a certificated employee of the school district who has been designated by the governing board as a mentor teacher pursuant to Article 4 (commencing with Section 44490) of Chapter 3 or by certificated employees selected through a competitive process adopted by the governing board after consultation with the exclusive teacher representative unit or by personnel employed by institutions of

higher education to supervise student teachers. Mentor teachers or other certificated employees shall possess valid certification at the same level, or of the same type, of credential as the district interns they serve.

(b) The governing board of each school district employing district interns shall develop and implement a professional development plan for district interns in consultation with an accredited institution of higher education offering an approved program of pedagogical preparation. The professional development plan shall include all of the following:

(1) Provisions for an annual evaluation of the district intern.

(2) As the governing board determines necessary, a description of courses to be completed by the district intern, if any, and a plan for the completion of preservice or other clinical training, if any, including student teaching.

(3) Mandatory preservice training for district interns tailored to the grade level or class to be taught, through either of the following options:

(A) One hundred twenty clock hours of preservice training and orientation in the aspects of child development and the methods of teaching the subject field or fields in which the district intern will be assigned, which training and orientation period shall be under the direct supervision of an experienced permanent teacher. At the conclusion of the preservice training period, the permanent teacher shall provide the district with information regarding the area that should be emphasized in the future training of the district intern.

(B) The successful completion, prior to service by the intern in any classroom, of six semester units of coursework from a regionally accredited college or university, designed in cooperation with the school district to provide instruction and orientation in the aspects of child development and the methods of teaching the subject field or fields in which the district intern will be assigned.

(4) Instruction in child development and the methods of teaching during the first semester of service for district interns teaching in kindergarten or grades 1 to 6, inclusive, including bilingual classes at those levels.

(5) Instruction in the culture and methods of teaching bilingual children during the first year of service for district interns teaching children in bilingual classes.

(6) Any other criteria that may be required by the governing board.

(7) In addition to the requirements set forth in paragraphs (1) to (6), inclusive, the professional development plan for district interns teaching in special education programs for pupils with mild and moderate disabilities also shall include 120 clock hours of mandatory preservice training and orientation, which shall include, but not be limited to, instruction in the development of exceptional children and the methods of teaching exceptional children.

(8) In addition to the requirements set forth in paragraphs (1) to (6), inclusive, the professional development plan for district interns teaching bilingual classes shall also include 120 clock hours of mandatory training and orientation, which shall include, but not be limited to, instruction in subject matter relating to bilingual-crosscultural language and academic development.

(9) The professional development plan for district interns teaching in special education programs for pupils with mild and moderate disabilities shall be based on the standards adopted by the commission as provided in subdivision (a) of Section 44327.

(c) Each district intern and each district teacher assigned to supervise the district intern during the preservice period, shall be compensated for the preservice period pursuant to subparagraph (A) or (B) of paragraph (3). The compensation shall be that which is normally provided by each district for staff development or in-service activity.

(d) Upon completion of two years of service, or three years of service for interns participating in a program that leads to the attainment of a specialist credential to teach pupils with mild and moderate disabilities, or four years if the intern is participating in a program that leads to the attainment of both a multiple subject or single subject teaching credential and a specialist credential to teach pupils with mild and moderate disabilities, the governing board may recommend to the Commission on Teacher Credentialing that the district intern be credentialed in the manner prescribed by Section 44328.

SEC. 4. Item 6360-101-0001 of Section 2.00 of the Budget Act of 1996 is amended to read:

6360-101-0001—For local assistance, Commission on Teacher Credentialing (Proposition 98)		3,478,000
Schedule:		
(a) 10-Standards for Preparation and Licensing Teachers	3,478,000	

Provisions:

1. Of the fund appropriated by this item, $6,500,000 is for incentive grant funding to school districts and county offices of education participating in the alternative teacher certification program established in Article 11 (commencing with Section 44380) of Chapter 2 of Part 25 of the Education Code.
2. Of the funds appropriated by this item, $1,478,000 shall be available for grants and subventions to school districts and county offices of education participating in the California School Paraprofessional Teacher Training Program pursuant to Article 6.5 (commencing with Section 69619) of Chapter 2 of Part 42 of the Education Code.

SEC. 5. The sum of four million five hundred thousand dollars ($4,500,000) is hereby reappropriated from the Proposition 98 Reversion Account of the General Fund to the Commission on Teacher Credentialing, in augmentation of Item 6360-101-0001 of Section 2.00 of the Budget Act of 1996, for incentive grant funding to school districts and county offices of education participating in the alternative teacher certification program established in Article 11 (commencing with Section 44380) of Chapter 2 of Part 25 of the Education Code.

SEC. 6. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the General Fund to the Commission on Teacher Credentialing, for the administration of the incentive grant program for alternative teacher certification, established in Article 11 (commencing with Section 44380) of Chapter 2 of Part 25 of the Education Code. These funds shall be in augmentation of the funds provided in Item 6360-001-0001 of Section 2.00 of the Budget Act of 1996.

SEC. 7. This act shall not become operative unless Assembly Bill 2460 of the 1995–96 Regular Session is chaptered and becomes effective January 1, 1997.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide for a new credentialing process to be in place to support the teachers that will be needed to implement the provisions of the class size reduction program contained in the

Budget Act of 1996 and the supporting provisions of law, it is necessary that this act take effect immediately.

CHAPTER 949

An act to amend Section 19 of Chapter 204 of the Statutes of 1996, and to augment Item 6870-101-0001 of Section 2.00 of the Budget Act of 1996, relating to community college finances, to take effect immediately as an appropriation for the usual current expenses of the state.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

I have signed on this date Senate Bill No. 1233, however, I am reducing the appropriation by $500,000.

This bill will provide additional growth funds for the community colleges, thereby increasing higher educational opportunities for approximately eight thousand full time equivalent students. However, a reduction is necessary to reflect my signature on AB 3099, which provides an incentive for districts to offer health benefits for faculty who work the equivalent of full time, but who are employed by two or more districts on part-time bases. This modest reduction is necessary because there are insufficient Proposition 98 funds to support both bills at the level requested.

PETE WILSON, Governor

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

SECTION 1. Section 19 of Chapter 204 of the Statutes of 1996 is amended to read:

Sec. 19. (a) The sum of sixty million dollars ($60,000,000) is hereby appropriated from the General Fund to the Chancellor of the California Community Colleges for the purpose of allocating funds to community college districts for one-time deferred maintenance projects for the 1996–97 fiscal year. Allocations shall be made in accordance with Section 84660 of the Education Code, except that for a community college district to be eligible for funds appropriated pursuant to this section, the community college district shall pay for a portion of the project from other revenues available to the community college districts. The matching fund requirement under this section may be waived in whole or in part as specified in Section 84660 of the Education Code. The amount of the match shall be equivalent to one dollar ($1) for every three dollars and fifty cents ($3.50) of state funds provided.

(b) Of the amount appropriated in subdivision (a), up to fourteen million dollars ($14,000,000) may be utilized by the Chancellor of the California Community Colleges to backfill a property tax deficiency for community college districts for the 1995–96 fiscal year provided that the following conditions are met:

(1) No property tax backfill will occur until final property tax figures have been certified by the Chancellor of the California Community College Districts.

(2) The final dollar amount must be adjusted to reflect repayment of six million two hundred thirty-two thousand dollars ($6,232,000) advanced to the Chancellor of the California Community College Districts pursuant to Chapter 142 of the Statutes of 1994.

(3) The dollar amount of the property tax deficiency must be certified by the Director of Finance prior to the allocation of funds.

(c) For the purpose of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a) shall be deemed to be "General Fund revenues appropriated to community college districts," as defined in subdivision (d) of Section 41202 of the Education Code, for the 1995–96 fiscal year, and included within the "total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1995–96 fiscal year.

SEC. 2. (a) The sum of twenty-five million six hundred forty-six thousand dollars ($25,646,000) is hereby appropriated from the General Fund to the Chancellor of the California Community Colleges in augmentation of, and for the purposes of, Schedule (r) of Item 6870-101-0001 of Section 2.00 of the Budget Act of 1996 (Ch. 162, Stats. 1996).

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by Section 1 of this act shall be deemed to be "General Fund revenues appropriated for community college districts," as defined in subdivision (d) of Section 41202 of the Education Code, for the 1996–97 fiscal year, and included within the "[t]otal allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B [of the California Constitution]," as defined in subdivision (e) of Section 41202 of the Education Code, for the 1996–97 fiscal year.

SEC. 3. This act makes an appropriation for the usual current expenses of the state within the meaning of Article IV of the California Constitution and shall go into immediate effect.

CHAPTER 950

An act to amend Sections 830.1, 832.3, 832.4, 13510, and 13526.1 of the Penal Code, relating to peace officers, and making an appropriation therefor.

[Approved by Governor September 25, 1996. Filed with Secretary of State September 26, 1996.]

This bill would make various changes to existing law regarding peace officer authority, training, and certification for deputy sheriffs involved in the supervision, security, and movement of inmates. Additionally, this bill would entitle Los Angeles safety police officers and public rangers to funding from the Peace Officers' Training Fund (POTF).

I am signing Assembly Bill No. 574, however, I am deleting the appropriation in Section 5 of the bill which would allow safety police officers and park rangers in Los Angeles County to be entitled to funding from the POTF. This provision would provide up to $45,000 directly to the County of Los Angeles under specified conditions.

Currently, the Commission on Peace Officer Standards and Training (POST) provides financial assistance to law enforcement agencies throughout the State to increase the effectiveness of law enforcement personnel through training and career development programs. Reimbursement funding is provided to eligible law enforcement entities on a priority basis to address the needs of law enforcement agencies involved in police work. Although the bill contains a number of provisions which I support, Assembly Bill 574 would set a precedent by making an appropriation directly to a local law enforcement group, thereby eliminating the ability of POST to prioritize the allocation of these limited resources. Additionally, I am concerned that this bill may encourage other law enforcement agencies to seek funding through legislation, rather than utilizing the discretion of POST to prioritize these funds. While this group of officers merit training, reserving funds for this group of officers would limit the resources available to reimburse the existing list of eligible law enforcement agencies. For these reasons, I am vetoing provisions of Section 5, paragraph (b).

PETE WILSON, Governor

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

SECTION 1. Section 830.1 of the Penal Code is amended to read:

830.1. (a) Any sheriff, undersheriff, or deputy sheriff, employed in that capacity, of a county, any chief of police, employed in that capacity, of a city, any police officer, employed in that capacity and appointed by the chief of police or the chief executive of the agency, of a city, any chief of police, or police officer of a district (including police officers of the San Diego Unified Port District Harbor Police) authorized by statute to maintain a police department, any marshal or deputy marshal of a municipal court, any constable or deputy constable, employed in that capacity, of a judicial district, any port warden or special officer of the Harbor Department of the City of Los Angeles, or any inspector or investigator employed in that capacity in the office of a district attorney, is a peace officer. The authority of these peace officers extends to any place in the state, as follows:

(1) As to any public offense committed or which there is probable cause to believe has been committed within the political subdivision which employs the peace officer.

(2) Where the peace officer has the prior consent of the chief of police, or person authorized by him or her to give consent, if the place is within a city or of the sheriff, or person authorized by him or her to give consent, if the place is within a county.

(3) As to any public offense committed or which there is probable cause to believe has been committed in the peace officer's presence,

and with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of the offense.

(b) Special agents and Attorney General investigators of the Department of Justice are peace officers, and those assistant chiefs, deputy chiefs, chiefs, deputy directors, and division directors designated as peace officers by the Attorney General are peace officers. The authority of these peace officers extends to any place in the state where a public offense has been committed or where there is probable cause to believe one has been committed.

(c) Any deputy sheriff of a county of the first class who is employed to perform duties exclusively or initially relating to custodial assignments with responsibilities for maintaining the operations of county custodial facilities, including the custody, care, supervision, security, movement, and transportation of inmates, is a peace officer whose authority extends to any place in the state only while engaged in the performance of the duties of his or her respective employment and for the purpose of carrying out the primary function of employment relating to his or her custodial assignments, or when performing other law enforcement duties directed by his or her employing agency during a local state-of-emergency.

SEC. 2. Section 832.3 of the Penal Code is amended to read:

832.3. (a) Except as provided in subdivisions (b) and (e), any sheriff, undersheriff, or deputy sheriff of a county, any police officer of a city, and any police officer of a district authorized by statute to maintain a police department, who is first employed after January 1, 1975, shall successfully complete a course of training prescribed by the Commission on Peace Officer Standards and Training before exercising the powers of a peace officer, except while participating as a trainee in a supervised field training program approved by the Commission on Peace Officer Standards and Training. The training course for an undersheriff and deputy sheriff of a county and a police officer of a city shall be the same.

(b) For the purpose of standardizing the training required in subdivision (a), the commission shall develop a training proficiency testing program, including a standardized examination which enables (1) comparisons between presenters of the training and (2) development of a data base for subsequent training programs. Presenters approved by the commission to provide the training required in subdivision (a) shall administer the standardized examination to all graduates. Nothing in this subdivision shall make the completion of the examination a condition of successful completion of the training required in subdivision (a).

(c) Notwithstanding subdivision (c) of Section 84500 of the Education Code and any regulations adopted pursuant thereto, community colleges may give preference in enrollment to employed law enforcement trainees who shall complete training as prescribed by this section. At least 15 percent of each presentation shall consist of nonlaw enforcement trainees if they are available. Preference

should only be given when the trainee could not complete the course within the time required by statute, and only when no other training program is reasonably available. Average daily attendance for these courses shall be reported for state aid.

(d) Prior to July 1, 1987, the commission shall make a report to the Legislature on academy proficiency testing scores. This report shall include an evaluation of the correlation between academy proficiency test scores and performance as a peace officer.

(e) (1) Any deputy sheriff described in subdivision (c) of Section 830.1 shall be exempt from the training requirements specified in subdivision (a) as long as his or her assignments remain custodial related.

(2) Deputy sheriffs described in subdivision (c) of Section 830.1 shall complete the training for peace officers pursuant to subdivision (a) of Section 832, and within 120 days after the date of employment, shall complete the training required by the Board of Corrections for custodial personnel pursuant to Section 6035, and the training required for custodial personnel of local detention facilities pursuant to Division 1 (commencing with Section 100) of Title 15 of the California Code of Regulations.

(3) Deputy sheriffs described in subdivision (c) of Section 830.1 shall complete the course of training pursuant to subdivision (a) prior to being reassigned from custodial assignments to duties with responsibility for the prevention and detection of crime and the general enforcement of the criminal laws of this state.

SEC. 3. Section 832.4 of the Penal Code is amended to read:

832.4. (a) Any undersheriff or deputy sheriff of a county, any police officer of a city, and any police officer of a district authorized by statute to maintain a police department, who is first employed after January 1, 1974, and is responsible for the prevention and detection of crime and the general enforcement of the criminal laws of this state, shall obtain the basic certificate issued by the Commission on Peace Officer Standards and Training within 18 months of his or her employment in order to continue to exercise the powers of a peace officer after the expiration of the 18-month period.

(b) Every peace officer listed in subdivision (a) of Section 830.1, except a sheriff, elected constable, or elected marshal, or a deputy sheriff described in subdivision (c) of Section 830.1, who is employed after January 1, 1988, shall obtain the basic certificate issued by the Commission on Peace Officer Standards and Training upon completion of probation, but in no case later than 24 months after his or her employment, in order to continue to exercise the powers of a peace officer after the expiration of the 24-month period.

Deputy sheriffs described in subdivision (c) of Section 830.1 shall obtain the basic certificate issued by the Commission on Peace Officer Standards and Training within 24 months after being reassigned from custodial duties to general law enforcement duties.

In those cases where the probationary period established by the employing agency is 24 months, the peace officers described in this subdivision may continue to exercise the powers of a peace officer for an additional three-month period to allow for the processing of the certification application.

SEC. 4. Section 13510 of the Penal Code is amended to read:

13510. (a) For the purpose of raising the level of competence of local law enforcement officers, the commission shall adopt, and may from time to time amend, rules establishing minimum standards relating to physical, mental, and moral fitness that shall govern the recruitment of any city police officers, peace officer members of a county sheriff's office, marshals or deputy marshals of a municipal court, peace officer members of a county coroner's office notwithstanding Section 13526, reserve officers, as defined in subdivision (a) of Section 830.6, police officers of a district authorized by statute to maintain a police department, peace officer members of a police department operated by a joint powers agency established by Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, regularly employed and paid inspectors and investigators of a district attorney's office, as defined in Section 830.1, who conduct criminal investigations, peace officer members of a district, or safety police officers and park rangers of the County of Los Angeles, as defined in subdivisions (a) and (b) of Section 830.31.

The commission also shall adopt, and may from time to time amend, rules establishing minimum standards for training of city police officers, peace officer members of county sheriff's offices, marshals or deputy marshals of a municipal court, peace officer members of a county coroner's office notwithstanding Section 13526, reserve officers, as defined in subdivision (a) of Section 830.6, police officers of a district authorized by statute to maintain a police department, peace officer members of a police department operated by a joint powers agency established by Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, regularly employed and paid inspectors and investigators of a district attorney's office, as defined in Section 830.1, who conduct criminal investigations, peace officer members of a district, and safety police officers and park rangers of the County of Los Angeles, as defined in subdivisions (a) and (b) of Section 830.1.

These rules shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter and shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The commission shall conduct research concerning job-related educational standards and job-related selection standards to include vision, hearing, physical ability, and emotional stability. Job-related standards which are supported by this research shall be

adopted by the commission prior to January 1, 1985, and shall apply to those peace officer classes identified in subdivision (a). The commission shall consult with local entities during the conducting of related research into job-related selection standards.

(c) For the purpose of raising the level of competence of local public safety dispatchers, the commission shall adopt, and may from time to time amend, rules establishing minimum standards relating to the recruitment and training of local public safety dispatchers having a primary responsibility for providing dispatching services for local law enforcement agencies described in subdivision (a), which standards shall apply to those cities, counties, cities and counties, and districts receiving state aid pursuant to this chapter. These standards also shall apply to consolidated dispatch centers operated by an independent public joint powers agency established pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code when providing dispatch services to the law enforcement personnel listed in subdivision (a). Those rules shall be adopted and amended pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. As used in this section, "primary responsibility" refers to the performance of law enforcement dispatching duties for a minimum of 50 percent of the time worked within a pay period.

(d) Nothing in this section shall prohibit a local agency from establishing selection and training standards which exceed the minimum standards established by the commission.

SEC. 5. Section 13526.1 of the Penal Code is amended to read:

13526.1. (a) It is the intent of the Legislature in adding this section that effect be given to amendments made by Chapter 950 of the Statutes of 1989. The Legislature recognizes those amendments were intended to make port wardens and special officers of the Harbor Department of the City of Los Angeles entitled to allocations from the Peace Officers' Training Fund for state aid pursuant to this chapter, notwithstanding the amendments made by Chapter 1165 of the Statutes of 1989, which added Section 13526 to this code.

(b) Notwithstanding Section 13526, for the purposes of this chapter, the port wardens and special officers of the Harbor Department of the City of Los Angeles shall be entitled to receive funding from the Peace Officers' Training Fund. In addition, if total revenues to the Peace Officers' Training Fund in the 1996–97 State Budget exceed total revenues budgeted in the 1995–96 State Budget by forty-five thousand dollars ($45,000), safety police officers and park rangers of the County of Los Angeles shall be entitled to receive funding from the Peace Officers' Training Fund, up to a total of forty-five thousand dollars ($45,000), during the 1996–97 fiscal year. If total revenues to the Peace Officers' Training Fund in the 1997–98 State Budget exceed total revenues budgeted in the 1995–96 State Budget by forty-five thousand dollars ($45,000), safety police officers

and park rangers of the County of Los Angeles shall be entitled to receive funding from the Peace Officers' Training Fund, up to a total of forty-five thousand dollars ($45,000), during the 1997–98 fiscal year.

CHAPTER 951

An act to amend Section 17062 of, and to add Sections 17502 and 24602 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 26, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Section 17062 of the Revenue and Taxation Code is amended to read:

17062. (a) In addition to the other taxes imposed by this part, there is hereby imposed for each taxable year, a tax equal to the excess, if any, of—

(1) The tentative minimum tax for the taxable year, over

(2) The regular tax for the taxable year.

(b) For purposes of this chapter, each of the following shall apply:

(1) The tentative minimum tax shall be computed in accordance with Sections 55 to 59, inclusive, of the Internal Revenue Code, except as otherwise provided in this part.

(2) The regular tax shall be the amount of tax imposed by Section 17041 or 17048, before reduction for any credits against the tax, less any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560.

(3) (A) The provisions of Section 55(b)(1) of the Internal Revenue Code shall be modified to provide that the tentative minimum tax for the taxable year shall be equal to the following percent of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, before reduction for any credits against the tax:

(i) For any taxable year beginning on or after January 1, 1991, and before January 1, 1996, 8.5 percent.

(ii) For any taxable year beginning on or after January 1, 1996, 7 percent.

(B) In the case of a nonresident or part-year resident, the tentative minimum tax shall be computed as if the nonresident or part-year resident were a resident for the entire year multiplied by the ratio of California adjusted gross income (as modified for purposes of this chapter) to total adjusted gross income from all sources (as modified for purposes of this chapter). For purposes of

computing the tax under subparagraph (A) and gross income from all sources, the net operating loss deduction provided in Section 56(d) of the Internal Revenue Code shall be computed as if the taxpayer were a resident for all prior years.

(C) For purposes of this section, the term "California adjusted gross income" includes each of the following:

(i) For any period during which the taxpayer was a resident of this state (as defined by Section 17014), all items of adjusted gross income (as modified for purposes of this chapter), regardless of source.

(ii) For any period during which the taxpayer was not a resident of this state, only those items of adjusted gross income (as modified for purposes of this chapter) which were derived from sources within this state, determined in accordance with Chapter 11 (commencing with Section 17951).

(c) (1) Section 56(b)(1)(E) of the Internal Revenue Code, relating to standard deduction and deduction for personal exemptions not allowed, is modified, for purposes of this part, to deny the standard deduction allowed by Section 17073.5.

(2) Section 56(b)(3) of the Internal Revenue Code, relating to treatment of incentive stock options, shall be modified to additionally provide the following:

(A) Section 421 of the Internal Revenue Code shall not apply to the transfer of stock acquired pursuant to the exercise of a California qualified stock option under Section 17502.

(B) Section 422(c)(2) of the Internal Revenue Code shall apply in any case where the disposition and inclusion of a California qualified stock option for purposes of this chapter are within the same taxable year and that section shall not apply in any other case.

(C) The adjusted basis of any stock acquired by the exercise of a California qualified stock option shall be determined on the basis of the treatment prescribed by this paragraph.

(3) The provisions of Section 56(h) of the Internal Revenue Code, relating to adjustment based on energy preferences, shall not apply.

(d) The provisions of Section 57(a)(5) of the Internal Revenue Code, relating to tax-exempt interest shall not apply.

(e) The last two sentences of Section 57(a)(6)(B) of the Internal Revenue Code, relating to tangible personal property, shall not apply.

(f) Section 57(a) of the Internal Revenue Code, relating to items of tax preference, is modified to include as an item of tax preference an amount equal to one-half of the amount excluded from gross income for the taxable year under Section 18152.5.

(g) The provisions of Section 59(a) of the Internal Revenue Code, relating to the alternative minimum tax foreign tax credit, shall not apply.

SEC. 2. Section 17502 is added to the Revenue and Taxation Code, to read:

17502. (a) In addition to the application of Part II (commencing with Section 421) of Subchapter D of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to certain stock options, paragraphs (1), (2), and (3) of Section 421(a) of the Internal Revenue Code shall also apply to any other stock option that is exercised by an individual whose earned income for the taxable year does not exceed forty thousand dollars ($40,000).

(b) For purposes of this section, "California qualified stock option" means a stock option issued and exercised pursuant to this section.

(c) (1) This section shall apply only to those stock options that are issued on or after January 1, 1997, and before January 1, 2002, by a corporation to its employee and are exercised by the employee, while employed by the corporation that issued those stock options (or within three months thereof, or within one year thereof if permanently and totally disabled as defined in Section 22(e)(3) of the Internal Revenue Code), during the taxable year with respect to any class of shares, or combination thereof, issued by the corporation, to the extent that the number of shares transferable by the exercise of the options does not exceed a total of 1,000 and have a combined fair market value of less than one hundred thousand dollars ($100,000). The combined fair market value of any stock shall be determined as of the time the option with respect to that stock is granted.

(2) Paragraph (1) shall be applied by taking options into account in the order in which they were granted.

(d) In the case of a California qualified stock option, no amount shall be included in the gross income of the employee until such time as the disposition of the option (or the stock acquired upon exercise of the option).

No deduction shall be allowed under Section 162 of the Internal Revenue Code to the employer on the grant of a California qualified stock option.

(e) Subdivision (d) shall not apply to any stock option for which an election has been made under Section 83(b) of the Internal Revenue Code, relating to election to include in gross income in year of transfer.

SEC. 3. Section 24602 is added to the Revenue and Taxation Code, to read:

24602. (a) In addition to the application of Part II (commencing with Section 421) of Subchapter D of Chapter 1 of Subtitle A of the Internal Revenue Code, relating to certain stock options, paragraphs (1), (2), and (3) of Section 421(a) of the Internal Revenue Code shall also apply to any other stock option that is exercised by an individual whose earned income for the taxable year does not exceed forty thousand dollars ($40,000).

(b) For purposes of this section, "California qualified stock option" means a stock option issued and exercised pursuant to this section.

(c) (1) This section shall apply only to those stock options that are issued on or after January 1, 1997, and before January 1, 2002, by a corporation to its employee and are exercised by the employee, while employed by the corporation that issued those stock options (or within three months thereof, or within one year thereof if permanently and totally disabled as defined in Section 22(e)(3) of the Internal Revenue Code), during the income year with respect to any class of shares, or combination thereof, issued by the corporation, to the extent that the number of shares transferable by the exercise of the options does not exceed a total of 1,000 and have a combined fair market value of less than one hundred thousand dollars ($100,000). The combined fair market value of any stock shall be determined as of the time the option with respect to that stock is granted.

(2) Paragraph (1) shall be applied by taking options into account in the order in which they were granted.

(d) In the case of a California qualified stock option, no amount shall be included in the gross income of the employee until such time as the disposition of the option (or the stock acquired upon exercise of the option). No deduction shall be allowed under Section 162 of the Internal Revenue Code to the employer on the grant of a California qualified stock option.

(e) Subdivision (d) shall not apply to any stock option for which an election has been made under Section 83(b) of the Internal Revenue Code, relating to election to include in gross income in year of transfer.

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

CHAPTER 952

An act to amend Section 1060.5 of the Code of Civil Procedure, and to amend Sections 17004, 17024.5, 17039, 17052.13, 17052.15, 17053.8, 17053.10, 17053.11, 17053.17, 17053.45, 17053.46, 17063, 17207, 17220, 18152.5, 18567, 18633, 19132, 19141.6, 19602, 19604, 19605, 23036, 23051.5, 23081, 23455, 23612, 23612.6, 23622, 23623, 23623.5, 23625, 23645, 23646, 23801, 24347.5, 24672, and 25128 of, to add Sections 17851.5, 19607, 23083, 23096.5, 23099.5, and 24327 to, to add Chapter 10.5 (commencing with Section 17935), Chapter 10.6 (commencing with Section 17941), and Chapter 10.7 (commencing with Section 17948) to Part 10 of Division 2 of, and to repeal Sections 17208.4, 21022, 23804, and 24347.51 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 26, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Section 1060.5 of the Code of Civil Procedure is amended to read:

1060.5. Any individual claiming to be a nonresident of the State of California for the purposes of the Personal Income Tax Law may commence an action in the Superior Court in the County of Sacramento, or in the County of Los Angeles, or in the City and County of San Francisco, against the Franchise Tax Board to determine the fact of his or her residence in this state under the conditions and circumstances set forth in Section 19381 of the Revenue and Taxation Code.

SEC. 2. Section 17004 of the Revenue and Taxation Code is amended to read:

17004. "Taxpayer" includes any individual, fiduciary, estate, or trust subject to any tax imposed by this part or any partnership.

SEC. 3. Section 17024.5 of the Revenue and Taxation Code is amended to read:

17024.5. (a) (1) Unless otherwise specifically provided, the terms "Internal Revenue Code," "Internal Revenue Code of 1954," or "Internal Revenue Code of 1986," for purposes of this part, mean Title 26 of the United States Code, including all amendments thereto as enacted on the specified date for the applicable taxable year as follows:

Taxable Year	Specified Date of Internal Revenue Code Sections
(A) For taxable years beginning on or after January 1, 1983, and on or before December 31, 1983	January 15, 1983
(B) For taxable years beginning on or after January 1, 1984, and on or before December 31, 1984	January 1, 1984
(C) For taxable years beginning on or after January 1, 1985, and on or before December 31, 1985	January 1, 1985
(D) For taxable years beginning on or after January 1, 1986, and on or before December 31, 1986	January 1, 1986
(E) For taxable years beginning on or after January 1, 1987, and on or before December 31, 1988	January 1, 1987

(F) For taxable years beginning on or after January 1, 1989, and on or before December 31, 1989	January 1, 1989
(G) For taxable years beginning on or after January 1, 1990, and on or before December 31, 1990	January 1, 1990
(H) For taxable years beginning on or after January 1, 1991, and on or before December 31, 1991	January 1, 1991
(I) For taxable years beginning on or after January 1, 1992, and on or before December 31, 1992	January 1, 1992
(J) For taxable years beginning on or after January 1, 1993	January 1, 1993

(2) Unless otherwise specifically provided, for federal laws enacted on or after January 1, 1987, and on or before the specified date for the taxable year, uncodified provisions that relate to provisions of the Internal Revenue Code that are incorporated for purposes of this part shall be applicable to the same taxable years as the incorporated provisions.

(3) Subtitle G (Tax Technical Corrections) and Part I of Subtitle H (Repeal of Expired or Obsolete Provisions) of the Revenue Reconciliation Act of 1990 (Public Law 101-508) modified numerous provisions of the Internal Revenue Code and provisions of prior federal acts, some of which are incorporated by reference into this part. Unless otherwise provided, the provisions described in the preceding sentence, to the extent that they modify provisions that are incorporated into this part, are declaratory of existing law and shall be applied in the same manner and for the same periods as specified in the Revenue Reconciliation Act of 1990.

(b) Unless otherwise specifically provided, when applying any section of the Internal Revenue Code for purposes of this part, any provision that refers to any of the following shall not be applicable for purposes of this part:

(1) Except as provided in Chapter 4.5 (commencing with Section 23800) of Part 11 of Division 2, an electing small business corporation, as defined in Section 1361(b) of the Internal Revenue Code.

(2) Domestic international sales corporations (DISC), as defined in Section 992(a) of the Internal Revenue Code.

(3) A personal holding company, as defined in Section 542 of the Internal Revenue Code.

(4) A foreign personal holding company, as defined in Section 552 of the Internal Revenue Code.

(5) A foreign investment company, as defined in Section 1246(b) of the Internal Revenue Code.

(6) A foreign trust, as defined in Section 679 of the Internal Revenue Code.

(7) Foreign income taxes and foreign income tax credits.

(8) Section 911 of the Internal Revenue Code, relating to United States citizens living abroad.

(9) A foreign corporation, except that Section 367 of the Internal Revenue Code shall be applicable.

(10) Federal tax credits and carryovers of federal tax credits, except as provided in Section 162(*l*)(3) of the Internal Revenue Code, relating to coordination with medical deduction, etc., and former Section 213(f) of the Internal Revenue Code, relating to coordination with health insurance credit under Section 32 of the Internal Revenue Code.

(11) Nonresident aliens.

(12) Deduction for personal exemptions, as provided in Section 151 of the Internal Revenue Code.

(13) The tax on generation-skipping transfers imposed by Section 2601 of the Internal Revenue Code.

(14) The tax, relating to estates, imposed by Section 2001 or 2101 of the Internal Revenue Code.

(c) (1) The provisions contained in Sections 41 to 44, inclusive, and 172 of the Tax Reform Act of 1984 (Public Law 98-369), relating to treatment of debt instruments, shall not be applicable for taxable years beginning before January 1, 1987.

(2) The provisions contained in Public Law 99-121, relating to the treatment of debt instruments, shall not be applicable for taxable years beginning before January 1, 1987.

(3) For each taxable year beginning on or after January 1, 1987, the provisions referred to by paragraphs (1) and (2) shall be applicable for purposes of this part in the same manner and with respect to the same obligations as the federal provisions, except as otherwise provided in this part.

(d) When applying the Internal Revenue Code for purposes of this part, regulations promulgated in final form or issued as temporary regulations by "the secretary" shall be applicable as regulations under this part to the extent that they do not conflict with this part or with regulations issued by the Franchise Tax Board.

(e) Whenever this part allows a taxpayer to make an election, the following rules shall apply:

(1) A proper election filed with the Internal Revenue Service in accordance with the Internal Revenue Code or regulations issued by "the secretary" shall be deemed to be a proper election for purposes of this part, unless otherwise provided in this part or in regulations issued by the Franchise Tax Board.

(2) A copy of that election shall be furnished to the Franchise Tax Board upon request.

(3) To obtain treatment other than that elected for federal purposes, a separate election shall be filed at the time and in the manner required by the Franchise Tax Board.

(f) Whenever this part allows or requires a taxpayer to file an application or seek consent, the rules set forth in subdivision (e) shall be applicable with respect to that application or consent.

(g) When applying the Internal Revenue Code for purposes of determining the statute of limitations under this part, any reference to a period of three years shall be modified to read four years for purposes of this part.

(h) When applying, for purposes of this part, any section of the Internal Revenue Code or any applicable regulation thereunder, all of the following shall apply:

(1) References to "adjusted gross income" shall mean the amount computed in accordance with Section 17072, except as provided in paragraph (2).

(2) References to "adjusted gross income" for purposes of computing limitations based upon adjusted gross income, shall mean the amount required to be shown as adjusted gross income on the federal tax return for the same taxable year.

(3) Any reference to "subtitle" or "chapter" shall mean this part.

(4) The provisions of Section 7806 of the Internal Revenue Code, relating to construction of title, shall apply.

(5) Any provision of the Internal Revenue Code that becomes operative on or after the specified date for that taxable year shall become operative on the same date for purposes of this part.

(6) Any provision of the Internal Revenue Code that becomes inoperative on or after the specified date for that taxable year shall become inoperative on the same date for purposes of this part.

(7) Due account shall be made for differences in federal and state terminology, effective dates, substitution of "Franchise Tax Board" for "secretary" when appropriate, and other obvious differences.

(i) Any reference to a specific provision of the Internal Revenue Code shall include modifications of that provision, if any, in this part.

SEC. 4. Section 17039 of the Revenue and Taxation Code is amended to read:

17039. (a) Notwithstanding any provision in this part to the contrary, for the purposes of computing tax credits, the term "net tax" means the tax imposed under either Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to lump-sum distributions) less the credits allowed by Section 17054 (relating to personal exemption credits) and any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560. Notwithstanding the preceding sentence, the "net tax" shall not be less than the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions), if any. Credits shall be allowed against "net tax" in the following order:

(1) Credits that do not contain carryover or refundable provisions, except those described in paragraphs (4) and (5).

(2) Credits that contain carryover provisions but do not contain refundable provisions.

(3) Credits that contain both carryover and refundable provisions.

(4) The minimum tax credit allowed by Section 17063 (relating to the alternative minimum tax).

(5) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(6) Credits that contain refundable provisions but do not contain carryover provisions.

The order within each paragraph shall be determined by the Franchise Tax Board.

(b) Notwithstanding the provisions of Sections 17053.5 (relating to the renter's credit), 17061 (relating to refunds pursuant to the Unemployment Insurance Code), and 19002 (relating to tax withholding), the credits provided in those sections shall be allowed in the order provided in paragraph (6) of subdivision (a).

(c) (1) Notwithstanding any other provision of this part, no tax credit shall reduce the tax imposed under Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions) below the tentative minimum tax, as defined by Section 17062, except the following credits, but only after allowance of the credit allowed by Section 17063:

(A) The credit allowed by former Section 17052.4 (relating to solar energy).

(B) The credit allowed by former Section 17052.5 (relating to solar energy).

(C) The credit allowed by Section 17052.5 (relating to solar energy).

(D) The credit allowed by Section 17052.12 (relating to research expenses).

(E) The credit allowed by Section 17052.13 (relating to sales and use tax credit).

(F) The credit allowed by Section 17052.15 (relating to Los Angeles Revitalization Zone sales tax credit).

(G) The credit allowed by Section 17053.5 (relating to the renter's credit).

(H) The credit allowed by Section 17053.8 (relating to enterprise zone hiring credit).

(I) The credit allowed by Section 17053.10 (relating to Los Angeles Revitalization Zone hiring credit).

(J) The credit allowed by Section 17053.11 (relating to program area hiring credit).

(K) For each taxable year beginning on or after January 1, 1994, the credit allowed by Section 17053.17 (relating to Los Angeles Revitalization Zone hiring credit).

(L) The credit allowed by Section 17053.49 (relating to qualified property).

(M) The credit allowed by Section 17057 (relating to clinical testing expenses).

(N) The credit allowed by Section 17058 (relating to low-income housing).

(O) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(P) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(Q) The credit allowed by Section 19002 (relating to tax withholding).

(2) Any credit which is partially or totally denied under paragraph (1) shall be allowed to be carried over and applied to the net tax in succeeding taxable years, if the provisions relating to that credit include a provision to allow a carryover when that credit exceeds the net tax.

(d) Unless otherwise provided, any remaining carryover of a credit allowed by a section that has been repealed or made inoperative shall continue to be allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(e) (1) Unless otherwise provided, if two or more taxpayers (other than husband and wife) share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred.

(2) In the case of a partnership, the credit shall be allocated among the partners pursuant to a written partnership agreement in accordance with Section 704 of the Internal Revenue Code, relating to partner's distributive share.

(3) In the case of a husband and wife who file separate returns, the credit may be taken by either or equally divided between them.

(f) Unless otherwise provided, in the case of a partnership, any credit allowed by this part shall be computed at the partnership level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit shall be applied to the partnership and to each partner.

SEC. 5. Section 17052.13 of the Revenue and Taxation Code is amended to read:

17052.13. (a) There shall be allowed as a credit against the "net tax" (as defined in Section 17039) for the taxable year the amount equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means either of the following:

(A) A qualified business as defined in Section 7082 of the Government Code.

(B) A person or entity engaged in a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code.

(2) "Qualified property" means machinery and machinery parts used for fabricating, processing, assembling, and manufacturing, and machinery and machinery parts used for the production of renewable energy resources or air or water pollution control mechanisms, up to a value of one million dollars ($1,000,000), which, in the case of a taxpayer described in subparagraph (A) of paragraph (1), is used exclusively in a program area, and, in the case of a taxpayer described in subparagraph (B) of paragraph (1), is used exclusively in an enterprise zone.

(c) If the taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided under subdivision (a) shall be allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(d) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit which exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding taxable years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the purchase of qualified property.

(f) (1) The amount of credit otherwise allowed under this section and Sections 17053.8 and 17053.11, including any credit carryover from prior years, that may reduce the "net tax" for the taxable year shall not exceed the amount determined under paragraph (2), in the case of a taxpayer described in subparagraph (A) of paragraph (1) of subdivision (b), or paragraph (3), in the case of a taxpayer described in subparagraph (B) of paragraph (1) of subdivision (b).

(2) (A) The amount determined under this paragraph shall be the amount of tax which would be imposed on the taxpayer's business income attributed to the program area (as defined by Section 7082 of the Government Code) determined as if that attributed income represented all of the income of the taxpayer subject to tax under this part.

(B) The amount of attributed income, for purposes of this paragraph, shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section as follows:

(i) For taxable years beginning on or after January 1, 1991, and ending on or before December 31, 1996, income shall be apportioned to the program area by multiplying total business income by a

fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The program area" shall be substituted for "this state."

(3) (A) The amount determined under this paragraph shall be the amount of tax which would be imposed on the taxpayer's business income attributed to an enterprise zone (designated pursuant to Section 7073 of the Government Code) determined as if that attributed income represented all of the income of the taxpayer subject to tax under this part.

(B) The amount of attributed income, for purposes of this paragraph, shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section as follows:

(i) For taxable years beginning on or after January 1, 1991, and ending on or before December 31, 1996, income shall be apportioned to the enterprise zone by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The enterprise zone" shall be substituted for "this state."

(4) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (d).

SEC. 6. Section 17052.15 of the Revenue and Taxation Code is amended to read:

17052.15. (a) For each taxable year beginning on or after January 1, 1992, and before January 1, 1998, there shall be allowed a credit against the "net tax," as defined in Section 17039, an amount equal to the sales or use tax paid or incurred during the taxable year by the taxpayer in connection with the taxpayer's purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means a person or entity engaged in a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(2) "Qualified property" means the purchase on or after May 1, 1992, and before the zone expiration date, of either or both of the following:

(A) Building materials to replace or repair the taxpayer's building and fixtures.

(B) Machinery or equipment, excluding inventory, to be used by the taxpayer exclusively in the Los Angeles Revitalization Zone.

(3) "Zone expiration date" means the date the Los Angeles Revitalization Zone designation expires, is repealed, or becomes inoperative pursuant to Section 7102, 7103, or 7104 of the Government Code.

(c) (1) In the case where a credit is allowable for qualified property under more than one section in this part, the taxpayer shall

make an election, on the original return filed for each year, as to which section applies to the qualified property.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(d) In the case where the credit otherwise allowed under this section exceeds the net tax for the taxable year, that portion of the credit that exceeds the net tax may be carried over and added to the credit, if any, in succeeding taxable years for the number of taxable years in which the designation of the Los Angeles Revitalization Zone under Section 7102 of the Government Code is operative, or 15 taxable years, if longer, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to the sales and use tax paid or incurred in connection with the taxpayer's purchase of qualified property.

(f) (1) The amount of credit otherwise allowed under this section and Sections 17053.10 and 17053.17, including any credit carryover from prior years, that may reduce the net tax for the taxable year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributable to the Los Angeles Revitalization Zone (designated pursuant to Section 7102 of the Government Code) determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be that portion of the taxpayer's California source business income which is apportioned to the Los Angeles Revitalization Zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11. That business income shall be further apportioned to the Los Angeles Revitalization Zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization

Zone during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.

(3) The portion of the credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the net tax for the taxable year, as provided in subdivision (d).

(g) If the qualified property is disposed of or no longer used by the taxpayer in the Los Angeles Revitalization Zone, at any time before the close of the second taxable year after the property is placed in service, the amount of the credit previously claimed shall be added to the taxpayer's tax liability in the taxable year of that disposition or nonuse.

(h) This section shall be inoperative on the first day of the taxable year beginning on or after the determination date, and each taxable year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area determined pursuant to Section 7104 of the Government Code. The determination date is the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused credit amount as of the date this section becomes inoperative, that unused credit amount may continue to be carried forward as provided in subdivision (d).

(i) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (d).

SEC. 7. Section 17053.8 of the Revenue and Taxation Code is amended to read:

17053.8. (a) There shall be allowed as credit against the "net tax" (as defined in Section 17039) for the taxable year an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the employer during the taxable year to qualified disadvantaged individuals that does not exceed 150 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the individual commences employment with the taxpayer.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(c) For purposes of this section:

(1) "Qualified disadvantaged individual" means an individual—

(A) Who is a qualified employee within the meaning of subdivision (d).

(B) Who is hired by the employer after the designation of the area in which services were performed as an enterprise zone (under Section 7073 of the Government Code).

(C) Who is any of the following immediately preceding the individual's commencement of employment with the taxpayer:

(i) An individual who is eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.) and who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act.

(ii) Any individual who is eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who is eligible as determined by the Employment Development Department under the federal Targeted Jobs Tax Credit Program as long as that program is in effect.

(2) Priority shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible under the federal Targeted Jobs Tax Credit Program.

(d) For purposes of this section: "qualified employee" means an individual—

(1) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone, and

(2) Who performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone.

(e) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification which provides that a qualified individual meets the eligibility requirements specified in subparagraph (C) of paragraph (1) of subdivision (c).

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(f) (1) For purposes of this section:

(A) All employees of trades or businesses (which are not incorporated) which are under common control shall be treated as employed by a single employer, and

(B) The credit (if any) allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit.

The regulations prescribed under this paragraph shall be based on principles similar to the principles which apply in the case of controlled groups of corporations as specified in subdivision (f) of Section 23622.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (g)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(g) (1) If the employment of any employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount (determined under those regulations) equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(h) In the case of an estate or trust—

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each, and

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated (for purposes of this part) as the employer with respect to those wages.

(i) For purposes of this section, "enterprise zone" means an area for which designation as an enterprise zone is in effect under Section 7073 of the Government Code.

(j) The credit shall be reduced by the credit allowed under Section 17053.7. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (k) or (*l*).

(k) In the case where the credit otherwise allowed under this section exceeds the net tax for the taxable year, that portion of the credit which exceeds the net tax may be carried over and added to the credit, if any, in succeeding taxable years for the number of taxable years in which the designation of an enterprise zone is binding, or 15 taxable years, if longer, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(*l*) (1) The amount of the credit otherwise allowed under this section and Section 17052.13, including any credit carryover from prior years, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributed to the enterprise zone determined as if that attributed income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section as follows:

(A) For taxable years beginning on or after January 1, 1991, and ending on or before December 31, 1996, income shall be apportioned to the enterprise zone by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The enterprise zone" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (k).

SEC. 8. Section 17053.10 of the Revenue and Taxation Code is amended to read:

17053.10. (a) For each taxable year beginning on or after January 1, 1992, and before January 1, 1998, there shall be allowed to a taxpayer who employs qualified employees in the Los Angeles Revitalization Zone during the taxable year as a credit against the "net tax," as defined in Section 17039, an amount equal to the sum of the following:

(1) One hundred percent of the qualified wages paid or incurred during the period from May 1, 1992, to the end of the sixth full month after the designation of the Los Angeles Revitalization Zone, with respect to qualified employees that are hired during that period.

(2) Seventy-five percent of the qualified wages paid or incurred during the period from the beginning of the seventh month after designation to the end of the 12th full month after designation, with respect to qualified employees that are hired during that period.

(3) Fifty percent of the qualified wages paid or incurred during the period from the beginning of the 13th month after designation to the end of the 60th full month after designation, with respect to qualified employees that are hired during that period.

(b) For purposes of this section:

(1) (A) "Qualified wages" means that portion of wages paid or incurred by the taxpayer for construction work in the Los Angeles Revitalization Zone during the taxable year with respect to qualified employees that does not exceed 150 percent of the minimum wage.

(B) If, after a taxpayer hires a qualified employee, the geographic area in which the taxpayer's trade or business is located is excluded from the map of the Los Angeles Revitalization Zone by the Trade and Commerce Agency pursuant to Section 7102 or 7104 of the Government Code, wages paid or incurred with respect to the qualified employee may continue to be qualified wages and may qualify for the credit under this section, provided all provisions of this section are satisfied, applied as if the taxpayer's trade or business was still located within the Los Angeles Revitalization Zone.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Qualified employee" means an individual to whom both of the following apply:

(A) Is a resident, as defined in Section 7101 of the Government Code, in the Los Angeles Revitalization Zone.

(B) Was hired by the taxpayer to perform construction work in the Los Angeles Revitalization Zone.

(4) "Los Angeles Revitalization Zone" means the area designated pursuant to Section 7102 of the Government Code.

(5) "Construction work" means any work performed by a qualified employee directly to the erection, demolition, repair, or renovation of a structure located within the Los Angeles Revitalization Zone.

(6) "Taxpayer" means a person or entity engaged in a trade or business within the Los Angeles Revitalization Zone.

(c) If an employer acquires the major portion of a trade or business of another employer (hereafter in this subdivision referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for the purposes of applying this section, other than subdivision (h), for any taxable year ending after the acquisition, the employment relationship between a qualified employee and employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(d) The credit shall be reduced by the credits allowable under Sections 17053.7, 17053.8, 17053.11, and 17053.17 claimed for the same qualified employee. The credit shall also be reduced by the credit allowed under Section 51 of the Internal Revenue Code for the same qualified employee.

(e) Any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of credit, prior to any reduction required by subdivision (f) or (g).

(f) In the case where the credit otherwise allowed under this section exceeds the net tax for the taxable year, that portion of the credit that exceeds the net tax may be carried over and added to the credit, if any, in succeeding taxable years for the number of taxable years in which the designation of the Los Angeles Revitalization Zone under Section 7102 of the Government Code is operative, or 15 taxable years, if longer, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(g) (1) The amount of credit otherwise allowed under this section and Sections 17052.15 and 17053.17, including any credit carryover from prior years, that may reduce the net tax for the taxable year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributable to the Los Angeles Revitalization Zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be that portion of the taxpayer's California source business income which is apportioned to the Los Angeles Revitalization Zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11. That business income shall be further apportioned to the Los Angeles Revitalization Zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.

(3) The portion of the credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the net tax for the taxable year, as provided in subdivision (f).

(h) (1) If the employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that qualified employee.

(iii) A termination of employment of a qualified employee, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that qualified employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that qualified employee is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(vi) A termination of employment due to a contractual agreement.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the qualified employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(i) Except as provided in subparagraph (B) of paragraph (1) of subdivision (b), this section shall cease to be operative on the first day of the taxable year beginning on or after the determination date, and each taxable year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area determined pursuant to Section 7104 of the Government Code. For purposes of this subdivision, "determination date" means the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused credit amount as of the date this section becomes inoperative, that unused credit amount may continue to be carried forward as provided in subdivision (f).

(j) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (f).

SEC. 9. Section 17053.11 of the Revenue and Taxation Code is amended to read:

17053.11. (a) There shall be allowed as a credit against the "net tax" (as defined in Section 17039) for the taxable year the amount determined in subdivisions (c) and (d) for a qualified business which hires a qualified employee.

(b) For purposes of this section:

(1) "Qualified business" means either (A) a qualified business, as defined in Section 7082 of the Government Code, or (B) a qualified business, as defined in Section 7082 of the Government Code, except

that the percentage requirements with respect to employment of residents of a high-density unemployment area shall be applicable only to those employees hired within the 12 months immediately preceding the date that the business seeks certification from the Trade and Commerce Agency and not to the entire workforce of the business. A business that qualifies under clause (B) shall be a qualified business only for the purposes of this section, provided that the Trade and Commerce Agency certifies that the business meets the standards set forth in this paragraph.

(2) "Qualified employee" means an employee who has been an unemployed resident of a high-density unemployment area (as defined in Section 7082 of the Government Code) prior to being employed by the qualified business. For the purposes of this section, participation by a prospective employee in a state or federally funded job training or work demonstration program shall not constitute employment, or affect the eligibility of an otherwise qualified employee. Qualified employee includes an otherwise qualified employee who is employed by a qualified business in the 90 days prior to its certification by the Trade and Commerce Agency as a qualified business for the purpose of becoming eligible for that certification.

(c) The credit provided for each qualified employee who has been unemployed for at least six months prior to being employed pursuant to subdivision (a), shall be an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of employment.

(d) The credit provided for each qualified employee who has been unemployed for at least three months but less than six months prior to being employed shall be 25 percent of qualified wages for the first year of employment; however, the credit for the second year of employment shall be that provided in paragraph (2) of subdivision (c), the credit for the third year of employment shall be that provided in paragraph (3) of subdivision (c), the credit for the fourth year of employment shall be that provided in paragraph (4) of subdivision (c), and the credit for the fifth year of employment shall be that provided in paragraph (5) of subdivision (c).

(e) For purposes of this section, "qualified wages" means that portion of wages not in excess of 150 percent of the minimum hourly wage paid or incurred by the qualified business during the taxable year to the qualified employee.

(f) (1) If the employment of any employee with respect to whom qualified wages are taken into account under subdivision (c) or (d) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) Paragraph (1) shall not apply to any of the following:

(A) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(B) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(C) A termination of employment of an individual, if it is determined under the applicable unemployment compensation provisions that the termination was due to the misconduct of that individual.

(D) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer other than regularly occurring seasonal reductions.

(E) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both number of employees and hours of employment.

(F) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer if the employee continues to be employed in that trade or business and the taxpayer retained a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(g) In the case of an estate or trust—

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each, and

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated (for purposes of this part) as the employer with respect to those wages.

(h) The credit shall be reduced by the credit allowed under Section 17053.7. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (i) or (j).

(i) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit which exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding taxable years until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 17052.13, including any credit carryover from prior years, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributed to the program area (as defined in Section 7082 of the Government Code) determined as if that attributed income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section as follows:

(A) For taxable years beginning on or after January 1, 1991, and ending on or before December 31, 1996, income shall be apportioned to the program area by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The program area" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (i).

SEC. 10. Section 17053.17 of the Revenue and Taxation Code is amended to read:

17053.17. (a) For each taxable year beginning on or after January 1, 1992, and before January 1, 1998, the taxpayer shall be allowed for hiring qualified disadvantaged individuals on or after May 1, 1992, a credit against the "net tax," as defined in Section 17039, for the taxable year equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means all of the following:

(A) That portion of wages paid or incurred by the taxpayer during the taxable year to qualified disadvantaged individuals that does not exceed 150 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the individual commences employment with the taxpayer.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date.

(D) If, after a taxpayer hires a qualified disadvantaged individual, the geographic area in which the taxpayer's trade or business is located is excluded from the map of the Los Angeles Revitalization Zone by the Trade and Commerce Agency pursuant to Section 7102 or 7104 of the Government Code, wages paid or incurred with respect to the disadvantaged individual may continue to be qualified wages and may qualify for the credit under this section, provided all provisions of this section are satisfied, applied as if the taxpayer's trade or business was still located within the Los Angeles Revitalization Zone.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Qualified disadvantaged individual" means an individual who is a qualified employee and a resident of the Los Angeles Revitalization Zone.

(4) "Los Angeles Revitalization Zone" means the area designated under Section 7102 of the Government Code.

(5) "Qualified employee" means an individual that meets both of the following:

(A) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in the Los Angeles Revitalization Zone.

(B) Who performs at least 50 percent of his or her services for the taxpayer during the taxable year in the Los Angeles Revitalization Zone.

(6) "Resident" means a resident as defined in Section 7101 of the Government Code.

(7) "Taxpayer" means a person or entity engaged in a trade or business within the Los Angeles Revitalization Zone.

(8) "Zone expiration date" means the date the Los Angeles Revitalization Zone designation expires, is repealed, or becomes inoperative pursuant to Section 7102, 7103, or 7104 of the Government Code.

(9) (A) All employees of trades or businesses, that are not incorporated, that are under common control shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit and allocated in that manner.

Principles similar to the principles that apply in the case of controlled groups of corporations as specified in paragraph (9) of subdivision (b) of Section 23623.5 shall apply with respect to determining common control of employees.

(10) If an employer acquires the major portion of a trade or business of another employer (hereafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for the purposes of applying this section (other than subdivision (c)) for any calendar year ending after that acquisition, the employment relationship between a disadvantaged individual and an employer shall not be treated as terminated if the individual continues to be employed in that trade or business.

(c) (1) If the employment of any disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a), is terminated by the taxpayer at any time during the first 270 days of that employment, whether or not consecutive, or before the close of the 270th calendar day after the day in which that individual completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that individual.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a disadvantaged individual who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a disadvantaged individual who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of a disadvantaged individual, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of a disadvantaged individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a disadvantaged individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and a disadvantaged individual shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the individual continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(d) In the case of an estate or trust, both of the following apply:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated, for purposes of this part, as the employer with respect to those wages.

(e) The credit shall be reduced by the credits allowed under Sections 17053.7, 17053.8, 17053.10, and 17053.11, claimed for the same disadvantaged individual. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (f) or (g).

(f) In the case where the credit otherwise allowed under this section exceeds the net tax for the taxable year, that portion of the credit that exceeds the net tax may be carried over and added to the credit, if any, in succeeding taxable years while the designation of the Los Angeles Revitalization Zone under Section 7102 of the Government Code is operative, or 15 taxable years, if longer, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(g) (1) The amount of the credit otherwise allowed under this section and Sections 17052.15 and 17053.10, including any credit carryover from prior years, that may reduce the net tax for the taxable year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributable to the Los Angeles Revitalization Zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be that portion of the taxpayer's California source business income which is apportioned to the Los Angeles Revitalization Zone.

For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11. That business income shall be further apportioned to the Los Angeles Revitalization Zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.

(3) The portion of the credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the net tax for the taxable year, as provided in subdivision (f).

(h) Except as provided in subparagraph (D) of paragraph (1) of subdivision (b), this section shall cease to be operative as of the first day of the taxable year beginning on or after the determination date, and each taxable year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area determined pursuant Section 7104 of the Government Code. For purposes of this subdivision, "determination date" means the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused credit amount as of the date this section becomes inoperative, that unused credit amount may continue to be carried forward as provided in subdivision (f).

(i) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as specified in subdivision (f).

SEC. 11. Section 17053.45 of the Revenue and Taxation Code is amended to read:

17053.45. (a) For each taxable year beginning on or after January 1, 1995, and before January 1, 2003, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property to the extent that the qualified property does not exceed a value of one million dollars ($1,000,000).

(b) For purposes of this section:

(1) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(2) "Taxpayer" means a taxpayer or partnership that conducts a trade or business within a LAMBRA and, for the first two taxable years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA.

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the taxable year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second taxable year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the taxable year prior to commencing business operations in the LAMBRA shall be zero. If the taxpayer has a net increase in jobs in the state, the credit shall be allowed only if one or more full-time employees is employed within the LAMBRA.

(B) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(i) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(ii) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(C) In the case of a taxpayer who first commences doing business in the LAMBRA during the taxable year, for purposes of clauses (i) and (ii), respectively, of subparagraph (B) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the taxable year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(3) "Qualified property" means the purchase of any of the following for exclusive use in a LAMBRA:

(A) High technology equipment, including, but not limited to, computers and electronic processing equipment.

(B) Aircraft maintenance equipment, including, but not limited to, engine stands, hydraulic mules, power carts, test equipment, handtools, aircraft start carts, and tugs.

(C) Aircraft components, including, but not limited to, engines, fuel control units, hydraulic pumps, avionics, starts, wheels, and tires.

(D) Any property that is Section 1245 property, as defined in Section 1245(a)(3) of the Internal Revenue Code.

(c) The credit provided under subdivision (a) shall be allowed only for qualified property manufactured in California unless qualified property of a comparable quality and price is not available for timely purchase and delivery from a California manufacturer.

(d) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit which exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the purchase of qualified property.

(f) (1) The amount of credit otherwise allowed under this section and Section 17053.46, including any credit carryover from prior years, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributed to a LAMBRA determined as if that attributable income represented all the income of the taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section as follows:

(A) Income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor, plus the payroll factor, and the denominator of which is two.

(B) "The LAMBRA" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (d).

(g) (1) If the qualified property is disposed of or no longer used by the taxpayer in the LAMBRA, at any time before the close of the second taxable year after the property is placed in service, the amount of the credit previously claimed, with respect to that property, shall be added to the taxpayer's tax liability in the taxable year of that disposition or nonuse.

(2) At the close of the second taxable year, if the taxpayer has not increased the number of its employees as determined by paragraph (2) of subdivision (b), then the amount of the credit previously

claimed shall be added to the taxpayer's net tax for the taxpayer's second taxable year.

(h) In the case where "qualified property" qualifies for a credit under more than one section in this part, the taxpayer shall make an election as to which section applies to that qualified property.

(i) This section shall remain in effect only until December 1, 2003, and as of that date is repealed. However, any unused credit may continue to be carried forward as provided in subdivision (d), until the credit is exhausted.

SEC. 12. Section 17053.46 of the Revenue and Taxation Code is amended to read:

17053.46. (a) For each taxable year beginning on or after January 1, 1995, and before January 1, 2003, there shall be allowed as a credit against the "net tax" (as defined in Section 17039) to a qualified taxpayer for hiring a qualified disadvantaged individual or a qualified displaced employee during the taxable year for employment in the LAMBRA. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of the qualified wages in the first year of employment.

(2) Forty percent of the qualified wages in the second year of employment.

(3) Thirty percent of the qualified wages in the third year of employment.

(4) Twenty percent of the qualified wages in the fourth year of employment.

(5) Ten percent of the qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the employer during the taxable year to qualified disadvantaged individuals or qualified displaced employees that does not exceed 150 percent of the minimum wage.

(B) The total amount of qualified wages which may be taken into account for purposes of claiming the credit allowed under this section shall not exceed two million dollars ($2,000,000) per taxable year.

(C) Wages received during the 60-month period beginning with the day the individual commences employment with the taxpayer.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(4) "Qualified disadvantaged individual" means an individual who satisfies all of the following requirements:

(A) (i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in a LAMBRA.

(ii) Who performs at least 50 percent of his or her services for the taxpayer during the taxable year in the LAMBRA.

(B) Who is hired by the employer after the designation of the area as a LAMBRA in which the individual's services were primarily performed.

(C) Who is any of the following immediately preceding the individual's commencement of employment with the taxpayer:

(i) An individual who has been determined eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.).

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 as provided pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who has been certified eligible by the Employment Development Department under the federal Targeted Jobs Tax Credit Program whether or not this program is in effect.

(5) "Qualified taxpayer" means a taxpayer or partnership that conducts a trade or business within a LAMBRA and, for the first two taxable years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA.

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the taxable year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second taxable year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the taxable year prior to commencing business operations in the LAMBRA shall be zero. If the taxpayer has a net increase in jobs in the state, the credit shall be allowed only if one or more full-time employees is employed within the LAMBRA.

(B) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(i) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(ii) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(C) In the case of a taxpayer who first commences doing business in the LAMBRA during the taxable year, for purposes of clauses (i) and (ii), respectively, of subparagraph (B) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the

number of months of the taxable year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(6) "Qualified displaced employee" means an individual who satisfies all of the following requirements:

(A) Any civilian or military employee of a base or former base who has been displaced as a result of a federal base closure act.

(B) (i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in a LAMBRA.

(ii) Who performs at least 50 percent of his or her services for the taxpayer during the taxable year in a LAMBRA.

(C) Who is hired by the employer after the designation of the area in which services were performed as a LAMBRA.

(c) (1) For purposes of this section, both of the following apply:

(A) All employees of trades or businesses that are under common control shall be treated as employed by a single employer.

(B) The credit (if any) allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit.

The regulations prescribed under this paragraph shall be based on principles similar to the principles that apply in the case of controlled groups of corporations as specified in subdivision (e) of Section 23622.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (d)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(d) (1) If the employment of any employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount (determined under those regulations) equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is

removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable employment compensation laws that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(4) At the close of the second taxable year, if the taxpayer has not increased the number of its employees as determined by paragraph (5) of subdivision (b), then the amount of the credit previously claimed shall be added to the taxpayer's net tax for the taxpayer's second taxable year.

(e) In the case of an estate or trust, both of the following apply:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated (for purposes of this part) as the employer with respect to those wages.

(f) The credit shall be reduced by the credit allowed under Section 17053.7. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (g) or (h).

(g) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit that exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(h) (1) The amount of credit otherwise allowed under this section and Section 17053.45, including prior year credit carryovers, that may reduce the "net tax" for the taxable year shall not exceed

the amount of tax that would be imposed on the taxpayer's business income attributed to a LAMBRA determined as if that attributed income represented all of the net income of the taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section as follows:

(A) Income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The LAMBRA" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (g).

(i) (1) In the case where "qualified wages" qualify for a credit under more than one section in this part, the taxpayer shall make an election as to which section applies to those qualified wages.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(j) This section shall remain in effect only until December 1, 2003, and as of that date is repealed. However, any unused credit may continue to be carried forward as provided in subdivision (g), until the credit is exhausted.

SEC. 13. Section 17063 of the Revenue and Taxation Code is amended to read:

17063. (a) There shall be allowed as a credit against the net tax (as defined by Section 17039) for any taxable year an amount equal to the minimum tax credit for that taxable year.

(b) For purposes of subdivision (a), the minimum tax credit shall be determined in accordance with Section 53 of the Internal Revenue Code, except as otherwise provided in this part.

(c) For purposes of this chapter, the amount determined under Section 53(c)(1) of the Internal Revenue Code shall be the regular tax as defined by paragraph (2) of subdivision (b) of Section 17062, reduced by the sum of the credits allowable under this part, other than:

(1) The credits described in paragraph (6) of subdivision (a) of Section 17039.

(2) That portion of any credit which reduces the tax below the tentative minimum tax as provided in paragraph (1) of subdivision (c) of Section 17039.

(d) Section 53(d)(1)(B)(ii)(II) of the Internal Revenue Code, relating to credit not allowed for exclusion preferences, is modified to include subdivision (f) of Section 17062, as a specified item.

SEC. 14. Section 17207 of the Revenue and Taxation Code is amended to read:

17207. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other taxable years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes that occurred in the County of San Bernardino in June and July of 1992, or any other related casualty.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino, San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

(14) Any loss sustained as a result of a fire that occurred in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, during October or November of 1993, or any other related casualty.

(15) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(16) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(17) Any loss sustained as a result of the storms or flooding occurring in 1995, or any other related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms and flooding.

(b) (1) In the case of any loss allowed under Section 165(c) of the Internal Revenue Code, relating to limitation of losses of individuals, any excess disaster loss shall be carried forward to each of the five taxable years following the taxable year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then 50 percent of that excess disaster loss shall be carried forward to each of the next 10 taxable years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the taxable years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of excess disaster loss over the sum of the adjusted taxable income for each of the prior taxable years to which that excess disaster loss is carried.

(c) "Excess disaster loss" means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code which exceeds the adjusted taxable income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the adjusted taxable income of the year preceding the loss.

(d) For purposes of this section, "disaster losses" are losses that either qualified for treatment under Section 165(i) of the Internal Revenue Code or were sustained in any county or city in this state which is proclaimed by the Governor to be in a state of disaster.

(e) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(f) For purposes of this section, "adjusted taxable income" shall be defined by Section 1212(b)(2)(B) of the Internal Revenue Code.

(g) For losses described in paragraphs (15), (16), and (17) of subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the taxable year in which the disaster occurred.

SEC. 15. Section 17208.4 of the Revenue and Taxation Code is repealed.

SEC. 16. Section 17220 of the Revenue and Taxation Code is amended to read:

17220. (a) Section 164(a)(3) of the Internal Revenue Code, relating to the deductibility of state, local, and foreign income, war profits, and excess profits taxes, shall not apply.

(b) In addition to the provisions of Section 164(c) of the Internal Revenue Code, relating to deduction denied in case of certain taxes, no deduction shall be allowed for any tax imposed under Chapter 10.5 (commencing with Section 17935), Chapter 10.6 (commencing with Section 17941), or Chapter 10.7 (commencing with Section 17951) of this part or under Part 11 (commencing with Section 23001) or Section 23097.

SEC. 17. Section 17851.5 is added to the Revenue and Taxation Code, to read:

17851.5. Notwithstanding the provisions of Section 701 of the Internal Revenue Code, relating to partners, not partnerships, subject to tax, a partnership, as an entity shall be subject to Chapter 10.5 (commencing with Section 17935), relating to tax on limited partnerships, Chapter 10.6 (commencing with Section 17941), relating to tax on limited liability companies, and Chapter 10.7 (commencing with Section 17951), relating to tax on limited liability partnerships.

SEC. 18. Chapter 10.5 (commencing with Section 17935) is added to Part 10 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 10.5. TAX ON LIMITED PARTNERSHIPS

17935. (a) For each taxable year beginning on or after January 1, 1997, every limited partnership doing business in this state (as defined by Section 23101) and required to file a return under Section 18633 shall pay annually to this state a tax for the privilege of doing business in this state in an amount equal to the applicable amount specified in Section 23153.

(b) (1) In addition to any limited partnership that is doing business in this state and therefore is subject to the tax imposed by subdivision (a), for each taxable year beginning on or after January 1, 1997, every limited partnership that has executed, acknowledged, and filed a certificate of limited partnership with the Secretary of State pursuant to Section 15621 of the Corporations Code, and every foreign limited partnership that has registered with the Secretary of State pursuant to Section 15692 of the Corporations Code, shall pay annually the tax prescribed in subdivision (a). The tax shall be paid for each taxable year, or part thereof, until a certificate of dissolution or certificate of cancellation is filed on behalf of the limited partnership with the office of the Secretary of State pursuant to Section 15623 or 15696 of the Corporations Code.

(2) In the case of a limited partnership initially qualifying to do business in this state or that has filed its first certificate of limited partnership with the Secretary of State, a period of one-half month may be disregarded, for purposes of the tax imposed under subdivisions (a) and (b), provided that the partnership was not doing business in, and received no income from sources in, the state during that period.

(c) The tax imposed under this section shall be due and payable on the date the return is required to be filed under former Section 18432 or Section 18633.

(d) For purposes of this section, "limited partnership" means any partnership formed by two or more persons under the laws of this state or any other jurisdiction and having one or more general partners and one or more limited partners.

SEC. 19. Chapter 10.6 (commencing with Section 17941) is added to Part 10 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 10.6. TAX AND FEES ON LIMITED LIABILITY COMPANIES

17941. (a) For each taxable year beginning on or after January 1, 1997, every limited liability company doing business in this state (as defined in Section 23101) and required to file a return under Section 18633.5, shall pay annually to this state a tax for the privilege of doing business in this state in an amount equal to the applicable amount specified in paragraph (1) of subdivision (d) of Section 23153 for the taxable year.

(b) In addition to any limited liability company which is doing business in this state and is therefore subject to the tax imposed by subdivision (a), for each taxable year beginning on or after January 1, 1997, a limited liability company shall pay annually the tax prescribed in subdivision (a) if articles of organization have been accepted, or a certificate of registration has been issued, by the office of the Secretary of State. The tax shall be paid for each taxable year, or part thereof, until a certificate of cancellation of registration or of articles of organization is filed on behalf of the limited liability company with the office of the Secretary of State.

(c) The tax assessed under this section shall be due and payable on or before the 15th day of the fourth month of the taxable year.

(d) For purposes of this section, "limited liability company" means any organization formed by one or more persons under the law of this state, any other country, or any other state, as a "limited liability company" and which is classified as a partnership for California tax purposes.

17942. (a) In addition to the tax imposed under Section 17941, every limited liability company subject to tax under Section 17941 shall pay annually to this state a fee equal to:

(1) Five hundred dollars ($500), if the total income from all sources reportable to this state for the taxable year is two hundred fifty thousand dollars ($250,000) or more, but less than five hundred thousand dollars ($500,000).

(2) One thousand five hundred dollars ($1,500), if the total income from all sources reportable to this state for the taxable year is five hundred thousand dollars ($500,000) or more, but less than one million dollars ($1,000,000).

(3) Three thousand dollars ($3,000), if the total income from all sources reportable to this state for the taxable year is one million dollars ($1,000,000) or more, but less than five million dollars ($5,000,000).

(4) Four thousand five hundred dollars ($4,500), if the total income from all sources reportable to this state for the taxable year is five million dollars ($5,000,000) or more.

(5) This subdivision shall apply to taxable years beginning on or after January 1, 1997.

(b) (1) For purposes of this section, "total income" means gross income, as defined in Section 24271, plus the cost of goods sold that are paid or incurred in connection with the trade or business of the taxpayer.

(2) In the event a taxpayer is a commonly controlled limited liability company, the total income from all sources reportable to this state, taking into account any election under Section 25110, may be determined by the Franchise Tax Board to be the total income of all the commonly controlled limited liability company members if it determines that multiple limited liability companies were formed for the primary purpose of reducing fees payable under this section. A determination by the Franchise Tax Board under this subdivision may only be made with respect to one limited liability company in a commonly controlled group. However, each commonly controlled limited liability company shall be jointly and severally liable for the fee. For purposes of this section, commonly controlled limited liability companies shall include the taxpayer and any other partnership or limited liability company doing business (as defined in Section 23101) in this state and required to file a return under Section 18633 or 18633.5, in which the same persons own, directly or indirectly, more than 50 percent of the capital interests or profits interests.

(c) The fee assessed under this section shall be due and payable on the date the return of the limited liability company is required to be filed under Section 18633.5, shall be collected and refunded in the same manner as the taxes imposed by this part, and shall be subject to interest and applicable penalties.

17943. (a) On or before January 1, 1999, and annually thereafter, the Franchise Tax Board shall conduct a study using the methodology and assumptions set forth in the report dated August 9, 1994, and titled "Methodology for the Limited Liability Company Fee Adjustment Calculation," which is hereby incorporated by reference into this section. The study shall be submitted to the Joint Legislative Budget Committee and made available, upon request, to any Member of the Legislature. If the Franchise Tax Board determines, in accordance with the methodology and assumptions set forth in the study referenced in this subdivision that the application of Chapter 1200 of the Statutes of 1994 results in a net gain or reduction in state income and franchise tax revenues, the Franchise Tax Board

annually shall, after a public hearing, increase or decrease the amounts of the fees imposed under Section 17942 in a manner that offsets the computed revenue gain or loss. Notwithstanding the above, in no case shall the amount of the fees be less than one dollar ($1).

(b) Limited liability companies shall provide, upon request, any information that the Secretary of State or the Franchise Tax Board determines to be necessary to complete the revenue analysis pursuant to this section.

(c) The annual increase or decrease in the amounts of the fees as determined by the Franchise Tax Board in accordance with this section shall apply to each taxable year beginning on or after January 1, 1999.

(d) The Secretary of State shall provide the Franchise Tax Board with an annual listing, in a form and manner agreed upon by the Franchise Tax Board and the Secretary of State, of the limited liability companies registered with the Secretary of State during the previous calendar year, including, but not limited to, the following information:

(1) The name and the mailing address of the limited liability company.

(2) The name of the state or foreign country in which the limited liability company has filed articles of organization.

(3) The intent of the limited liability company to be treated as a corporation or as a partnership for tax purposes in this state.

17944. (a) The effective date of dissolution, withdrawal, or cancellation of a limited liability company is the date on which the certified copy of the court decree, judgment, or order declaring the limited liability company duly wound up and dissolved is filed in the office of the Secretary of State or the date on which the certificate of winding up and dissolution is filed in the office of the Secretary of State. For the purposes of this chapter, the effective date of cancellation of registration of a foreign limited liability company is the date on which the certificate of cancellation of registration is filed in the office of the Secretary of State.

(b) The Secretary of State shall, through an information program and by forms and instructions, recommend that all required documents filed with the Secretary of State be sent, if mailed, by certified mail with return receipt requested. The Secretary of State shall also notify persons that receipt of documents by the Secretary of State will be acknowledged within 21 days of receipt.

(c) On or before 21 days after their receipt, the Secretary of State shall provide a payer with acknowledgment of the receipt of documents submitted by a limited liability company pursuant to this chapter.

17945. No decree of dissolution, withdrawal, or cancellation shall be made and entered by any court, nor shall the county clerk of any county or the Secretary of State file any decree of dissolution,

withdrawal, or cancellation or any other document by which the term of existence of the limited liability company shall be reduced or terminated, nor shall the Secretary of State file any certificate of the surrender or cancellation by a foreign limited liability company of its rights to do intrastate business in this state unless the limited liability company obtains from the Franchise Tax Board and files from the court, county clerk, or Secretary of State as the case may be, a tax clearance certificate indicating that the Franchise Tax Board is satisfied from the available evidence that all taxes and fees imposed by this chapter have been paid or are secured by bond, deposit, or otherwise. Within 30 days after receiving a request for a certificate, the Franchise Tax Board shall either issue the certificate or notify the person requesting the certificate of the amount of tax or fees that must be paid or the amount of bond, deposit, or other security that must be furnished as a condition of issuing the certificate. The issuance of the certificate shall not relieve the taxpayer or any individual, bank, or corporation from liability for any taxes, fees, penalties, or interest imposed by this code. The Franchise Tax Board shall furnish a copy of the tax clearance certificate to the Secretary of State.

17946. A limited liability company shall not be subject to the taxes and fees imposed by this chapter if the limited liability company did no business in this state during the taxable year and the taxable year was 15 days or less.

SEC. 20. Chapter 10.7 (commencing with Section 17948) is added to Part 10 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 10.7. TAX ON REGISTERED LIMITED LIABILITY PARTNERSHIPS AND FOREIGN LIMITED LIABILITY PARTNERSHIPS

17948. (a) For each taxable year beginning on or after January 1, 1997, every limited liability partnership doing business in this state (as defined in Section 23101) and required to file a return under Section 18633 shall pay annually to the Franchise Tax Board a tax for the privilege of doing business in this state in an amount equal to the applicable amount specified in paragraph (1) of subdivision (d) of Section 23153 for the taxable year.

(b) In addition to any limited liability partnership that is doing business in this state and therefore is subject to the tax imposed by subdivision (a), for each taxable year beginning on or after January 1, 1997, every registered limited liability partnership that has registered with the Secretary of State pursuant to Section 15049 of the Corporations Code and every foreign limited liability partnership that has registered with the Secretary of State pursuant to Section 15055 of the Corporations Code shall pay annually the tax prescribed in subdivision (a). The tax shall be paid for each taxable year, or part thereof, until any of the following occurs:

(1) A notice of cessation is filed with the Secretary of State pursuant to subdivision (b) of Sections 15050 and 15056 of the Corporations Code.

(2) A foreign limited liability partnership withdraws its registration pursuant to subdivision (a) of Section 15056 of the Corporations Code.

(3) The registered limited liability partnership or foreign limited liability partnership has been dissolved and finally wound up.

(c) The tax assessed under this section shall be due and payable on the date the return is required to be filed under Section 18633.

17948.1. No decree of dissolution, withdrawal, or cancellation shall be made and entered by any court, nor shall the county clerk of any county or the Secretary of State file any decree of dissolution, withdrawal, or cancellation or any other document by which the term of existence of the registered limited liability partnership shall be reduced or terminated, nor shall the Secretary of State file any amended registration or notice by a foreign limited liability partnership that its rights to do intrastate business in this state have ceased or of its dissolution and winding up, unless the registered limited liability partnership or foreign limited liability partnership obtains from the Franchise Tax Board and files with the court, county clerk, or Secretary of State, as the case may be, a tax clearance certificate indicating that the Franchise Tax Board is satisfied from the available evidence that all taxes imposed by this chapter have been paid or are secured by bond, deposit, or otherwise. Within 30 days after receiving a request for a certificate, the Franchise Tax Board shall either issue the certificate or notify the person requesting the certificate of the amount of tax or fees that must be paid or the amount of bond, deposit, or other security that must be furnished as a condition of issuing the certificate. The issuance of the certificate shall not relieve the taxpayer or any individual, bank, or corporation from liability for any taxes, fees, penalties, or interest imposed by this code. The Franchise Tax Board shall furnish a copy of the tax clearance certificate to the Secretary of State.

17948.2. A registered limited liability partnership or foreign limited liability partnership shall not be subject to the taxes and fees imposed by this chapter if the registered limited liability partnership or foreign limited liability partnership did no business in this state during the taxable year and the taxable year was 15 days or less.

SEC. 21. Section 18152.5 of the Revenue and Taxation Code is amended to read:

18152.5. (a) For purposes of this part, gross income shall not include 50 percent of any gain from the sale or exchange of qualified small business stock held for more than five years.

(b) (1) If the taxpayer has eligible gain for the taxable year from one or more dispositions of stock issued by any corporation, the aggregate amount of the gain from dispositions of stock issued by the corporation which may be taken into account under subdivision (a)

for the taxable year shall not exceed the greater of either of the following:

(A) Ten million dollars ($10,000,000) reduced by the aggregate amount of eligible gain taken into account by the taxpayer under subdivision (a) for prior taxable years and attributable to dispositions of stock issued by the corporation.

(B) Ten times the aggregate adjusted bases of qualified small business stock issued by the corporation and disposed of by the taxpayer during the taxable year. For purposes of subparagraph (B), the adjusted basis of any stock shall be determined without regard to any addition to basis after the date on which the stock was originally issued.

(2) For purposes of this subdivision, the term "eligible gain" means any gain from the sale or exchange of qualified small business stock held for more than five years.

(3) (A) In the case of a married individual filing a separate return, subparagraph (A) of paragraph (1) shall be applied by substituting five million dollars ($5,000,000) for ten million dollars ($10,000,000).

(B) In the case of a married taxpayer filing a joint return, the amount of gain taken into account under subdivision (a) shall be allocated equally between the spouses for purposes of applying this subdivision to subsequent taxable years.

(C) For purposes of this subdivision, marital status shall be determined under Section 7703 of the Internal Revenue Code.

(c) For purposes of this section:

(1) Except as otherwise provided in this section, the term "qualified small business stock" means any stock in a C corporation which is originally issued after August 10, 1993, and before January 1, 1999, if both of the following apply:

(A) As of the date of issuance, the corporation is a qualified small business.

(B) Except as provided in subdivisions (f) and (h), the stock is acquired by the taxpayer at its original issue (directly or through an underwriter) in either of the following manners:

(i) In exchange for money or other property (not including stock).

(ii) As compensation for services provided to the corporation (other than services performed as an underwriter of the stock).

(2) (A) Stock in a corporation shall not be treated as qualified small business stock unless, during substantially all of the taxpayer's holding period for the stock, the corporation meets the active business requirements of subdivision (e) and the corporation is a C corporation.

(B) (i) Notwithstanding subdivision (e), a corporation shall be treated as meeting the active business requirements of subdivision (e) for any period during which the corporation qualifies as a specialized small business investment company.

(ii) For purposes of clause (i), the term "specialized small business investment company" means any eligible corporation (as defined in paragraph (4) of subdivision (e)) that is licensed to operate under Section 301(d) of the Small Business Investment Act of 1958 (as in effect on May 13, 1993).

(3) (A) Stock acquired by the taxpayer shall not be treated as qualified small business stock if, at any time during the four-year period beginning on the date two years before the issuance of the stock, the corporation issuing the stock purchased (directly or indirectly) any of its stock from the taxpayer or from a related person (within the meaning of Section 267(b) or 707(b)) to the taxpayer.

(B) Stock issued by a corporation shall not be treated as qualified small business stock if, during the two-year period beginning on the date one year before the issuance of the stock, the corporation made one or more purchases of its stock with an aggregate value (as of the time of the respective purchases) exceeding 5 percent of the aggregate value of all of its stock as of the beginning of the two-year period.

(C) If any transaction is treated under Section 304(a) of the Internal Revenue Code as a distribution in redemption of the stock of any corporation, for purposes of subparagraphs (A) and (B), the corporation shall be treated as purchasing an amount of its stock equal to the amount treated as a distribution in redemption of the stock of the corporation under Section 304(a) of the Internal Revenue Code.

(d) For purposes of this section:

(1) The term "qualified small business" means any domestic corporation (as defined in Section 7701(a)(4) of the Internal Revenue Code) which is a C corporation if all of the following apply:

(A) The aggregate gross assets of the corporation (or any predecessor thereof) at all times on or after July 1, 1993, and before the issuance did not exceed fifty million dollars ($50,000,000).

(B) The aggregate gross assets of the corporation immediately after the issuance (determined by taking into account amounts received in the issuance) do not exceed fifty million dollars ($50,000,000).

(C) At least 80 percent of the corporation's payroll, as measured by total dollar value, is attributable to employment located within California.

(D) The corporation agrees to submit those reports to the Franchise Tax Board and to shareholders as the Franchise Tax Board may require to carry out the purposes of this section.

(2) (A) For purposes of paragraph (1), the term "aggregate gross assets" means the amount of cash and the aggregate adjusted basis of other property held by the corporation.

(B) For purposes of subparagraph (A), the adjusted basis of any property contributed to the corporation (or other property with a basis determined in whole or in part by reference to the adjusted

basis of property so contributed) shall be determined as if the basis of the property contributed to the corporation immediately after the contribution was equal to its fair market value as of the time of the contribution.

(3) (A) All corporations which are members of the same parent-subsidiary controlled group shall be treated as one corporation for purposes of this subdivision.

(B) For purposes of subparagraph (A), the term "parent-subsidiary controlled group" means any controlled group of corporations as defined in Section 1563(a)(1) of the Internal Revenue Code, except that both of the following shall apply:

(i) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(ii) Section 1563(a)(4) of the Internal Revenue Code shall not apply.

(e) (1) For purposes of paragraph (2) of subdivision (c), the requirements of this subdivision are met by a corporation for any period if during that period both of the following apply:

(A) At least 80 percent (by value) of the assets of the corporation are used by the corporation in the active conduct of one or more qualified trades or businesses in California.

(B) The corporation is an eligible corporation.

(2) For purposes of paragraph (1), if, in connection with any future qualified trade or business, a corporation is engaged in:

(A) Startup activities described in Section 195(c)(1)(A) of the Internal Revenue Code,

(B) Activities resulting in the payment or incurring of expenditures which may be treated as research and experimental expenditures under Section 174 of the Internal Revenue Code, or

(C) Activities with respect to in-house research expenses described in Section 41(b)(4) of the Internal Revenue Code, then assets used in those activities shall be treated as used in the active conduct of a qualified trade or business. Any determination under this paragraph shall be made without regard to whether a corporation has any gross income from those activities at the time of the determination.

(3) For purposes of this subdivision, the term "qualified trade or business" means any trade or business other than any of the following:

(A) Any trade or business involving the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, brokerage services, or any trade or business where the principal asset of the trade or business is the reputation or skill of one or more of its employees.

(B) Any banking, insurance, financing, leasing, investing, or similar business.

(C) Any farming business (including the business of raising or harvesting trees).

(D) Any business involving the production or extraction of products of a character with respect to which a deduction is allowable under Section 613 or 613A of the Internal Revenue Code.

(E) Any business of operating a hotel, motel, restaurant, or similar business.

(4) For purposes of this subdivision, the term "eligible corporation" means any domestic corporation, except that the term shall not include any of the following:

(A) A DISC or former DISC.

(B) A corporation with respect to which an election under Section 936 of the Internal Revenue Code is in effect or which has a direct or indirect subsidiary with respect to which the election is in effect.

(C) A regulated investment company, real estate investment trust (REIT), or real estate mortgage investment conduit (REMIC).

(D) A cooperative.

(5) (A) For purposes of this subdivision, stock and debt in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets, and to conduct its ratable share of the subsidiary's activities.

(B) A corporation shall be treated as failing to meet the requirements of paragraph (1) for any period during which more than 10 percent of the value of its assets (in excess of liabilities) consists of stock or securities in other corporations which are not subsidiaries of the corporation (other than assets described in paragraph (6)).

(C) For purposes of this paragraph, a corporation shall be considered a subsidiary if the parent owns more than 50 percent of the combined voting power of all classes of stock entitled to vote, or more than 50 percent in value of all outstanding stock, of the corporation.

(6) For purposes of subparagraph (A) of paragraph (1), the following assets shall be treated as used in the active conduct of a qualified trade or business:

(A) Assets that are held as a part of the reasonably required working capital needs of a qualified trade or business of the corporation.

(B) Assets that are held for investment and are reasonably expected to be used within two years to finance research and experimentation in a qualified trade or business or increases in working capital needs of a qualified trade or business. For periods after the corporation has been in existence for at least two years, in no event may more than 50 percent of the assets of the corporation qualify as used in the active conduct of a qualified trade or business by reason of this paragraph.

(7) A corporation shall not be treated as meeting the requirements of paragraph (1) for any period during which more than 10 percent of the total value of its assets consists of real property that is not used in the active conduct of a qualified trade or business. For purposes of the preceding sentence, the ownership of, dealing in, or renting of, real property shall not be treated as the active conduct of a qualified trade or business.

(8) For purposes of paragraph (1), rights to computer software that produces active business computer software royalties (within the meaning of Section 543(d)(1) of the Internal Revenue Code) shall be treated as an asset used in the active conduct of a trade or business.

(9) A corporation shall not be treated as meeting the requirements of paragraph (1) for any period during which more than 20 percent of the corporation's total payroll expense is attributable to employment located outside of California.

(f) If any stock in a corporation is acquired solely through the conversion of other stock in the corporation that is qualified small business stock in the hands of the taxpayer, both of the following shall apply:

(1) The stock so acquired shall be treated as qualified small business stock in the hands of the taxpayer.

(2) The stock so acquired shall be treated as having been held during the period during which the converted stock was held.

(g) (1) If any amount included in gross income by reason of holding an interest in a pass-through entity meets the requirements of paragraph (2), then both of the following shall apply:

(A) The amount shall be treated as gain described in subdivision (a).

(B) For purposes of applying subdivision (b), the amount shall be treated as gain from a disposition of stock in the corporation issuing the stock disposed of by the pass-through entity and the taxpayer's proportionate share of the adjusted basis of the pass-through entity in the stock shall be taken into account.

(2) An amount meets the requirements of this paragraph if both of the following apply:

(A) The amount is attributable to gain on the sale or exchange by the pass-through entity of stock that is qualified small business stock in the hands of the entity (determined by treating the entity as an individual) and that was held by that entity for more than five years.

(B) The amount is includable in the gross income of the taxpayer by reason of the holding of an interest in the entity that was held by the taxpayer on the date on which the pass-through entity acquired the stock and at all times thereafter before the disposition of the stock by the pass-through entity.

(3) Paragraph (1) shall not apply to any amount to the extent the amount exceeds the amount to which paragraph (1) would have applied if the amount was determined by reference to the interest

the taxpayer held in the pass-through entity on the date the qualified small business stock was acquired.

(4) For purposes of this subdivision, the term "pass-through entity" means any of the following:

(A) Any partnership.

(B) Any S corporation.

(C) Any regulated investment company.

(D) Any common trust fund.

(h) For purposes of this section:

(1) In the case of a transfer described in paragraph (2), the transferee shall be treated as meeting both of the following:

(A) Having acquired the stock in the same manner as the transferor.

(B) Having held the stock during any continuous period immediately preceding the transfer during which it was held (or treated as held under this subdivision) by the transferor.

(2) A transfer is described in this subdivision if the transfer is any of the following:

(A) By gift.

(B) At death.

(C) From a partnership to a partner of stock with respect to which requirements similar to the requirements of subdivision (g) are met at the time of the transfer (without regard to the five-year holding period requirement).

(3) Rules similar to the rules of Section 1244(d)(2) of the Internal Revenue Code shall apply for purposes of this section.

(4) (A) In the case of a transaction described in Section 351 of the Internal Revenue Code or a reorganization described in Section 368 of the Internal Revenue Code, if qualified small business stock is exchanged for other stock that would not qualify as qualified small business stock but for this subparagraph, the other stock shall be treated as qualified small business stock acquired on the date on which the exchanged stock was acquired.

(B) This section shall apply to gain from the sale or exchange of stock treated as qualified small business stock by reason of subparagraph (A) only to the extent of the gain that would have been recognized at the time of the transfer described in subparagraph (A) if Section 351 or 368 of the Internal Revenue Code had not applied at that time. The preceding sentence shall not apply if the stock that is treated as qualified small business stock by reason of subparagraph (A) is issued by a corporation that (as of the time of the transfer described in subparagraph (A)) is a qualified small business.

(C) For purposes of this paragraph, stock treated as qualified small business stock under subparagraph (A) shall be so treated for subsequent transactions or reorganizations, except that the limitation of subparagraph (B) shall be applied as of the time of the first transfer to which the limitation applied (determined after the application of the second sentence of subparagraph (B)).

(D) In the case of a transaction described in Section 351 of the Internal Revenue Code, this paragraph shall apply only if immediately after the transaction the corporation issuing the stock owns directly or indirectly stock representing control (within the meaning of Section 368(c) of the Internal Revenue Code) of the corporation whose stock was exchanged.

(i) For purposes of this section:

(1) In the case where the taxpayer transfers property (other than money or stock) to a corporation in exchange for stock in the corporation, both of the following shall apply:

(A) The stock shall be treated as having been acquired by the taxpayer on the date of the exchange.

(B) The basis of the stock in the hands of the taxpayer shall in no event be less than the fair market value of the property exchanged.

(2) If the adjusted basis of any qualified small business stock is adjusted by reason of any contribution to capital after the date on which the stock was originally issued, in determining the amount of the adjustment by reason of the contribution, the basis of the contributed property shall in no event be treated as less than its fair market value on the date of the contribution.

(j) (1) If the taxpayer has an offsetting short position with respect to any qualified small business stock, subdivision (a) shall not apply to any gain from the sale or exchange of the stock unless both of the following apply:

(A) The stock was held by the taxpayer for more than five years as of the first day on which there was such a short position.

(B) The taxpayer elects to recognize gain as if the stock was sold on that first day for its fair market value.

(2) For purposes of paragraph (1), the taxpayer shall be treated as having an offsetting short position with respect to any qualified small business stock if any of the following apply:

(A) The taxpayer has made a short sale of substantially identical property.

(B) The taxpayer has acquired an option to sell substantially identical property at a fixed price.

(C) To the extent provided in regulations, the taxpayer has entered into any other transaction that substantially reduces the risk of loss from holding the qualified small business stock. For purposes of the preceding sentence, any reference to the taxpayer shall be treated as including a reference to any person who is related (within the meaning of Section 267(b) or 707(b) of the Internal Revenue Code) to the taxpayer.

(k) The Franchise Tax Board may prescribe those regulations as may be appropriate to carry out the purposes of this section, including regulations to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, or otherwise.

(*l*) It is the intent of the Legislature that, in construing this section, any regulations that may be promulgated by the Secretary of the Treasury under Section 1202(k) of the Internal Revenue Code shall apply to the extent that those regulations do not conflict with this section or with any regulations that may be promulgated by the Franchise Tax Board.

SEC. 22. Section 18567 of the Revenue and Taxation Code is amended to read:

18567. (a) The Franchise Tax Board may grant a reasonable extension of time for filing any return, declaration, statement or other document required by Part 10 (commencing with Section 17001) or this part in the manner and form as the Franchise Tax Board may determine. Except for a taxpayer residing or traveling abroad, no extension shall be for more than six months. In the case of a taxpayer residing or traveling abroad, returns shall be filed no later than the 15th day of the sixth month following the close of the taxable year, unless the requirements for extension have been fulfilled on or before that date.

(b) An extension of time granted pursuant to this section is not an extension of time for payment of tax required to be paid on or before the due date of the return without regard to extension. Underpayment of tax penalties shall be imposed as provided by law without regard to any extension granted under this section.

(c) A reasonable extension for payment of tax required by this part may be granted by the Franchise Tax Board whenever in its judgment good cause exists.

SEC. 23. Section 18633 of the Revenue and Taxation Code is amended to read:

18633. (a) (1) Every partnership, within three months and 15 days after the close of its taxable year, shall make a return for that taxable year, stating specifically the items of gross income and the deductions allowed by Part 10 (commencing with Section 17001). Except as otherwise provided in Section 18621.5, the return shall include the names, addresses, and taxpayer identification numbers of the persons, whether residents or nonresidents, who would be entitled to share in the net income if distributed and the amount of the distributive share of each person. The return shall contain or be verified by a written declaration that it is made under the penalties of perjury, signed by one of the partners.

(2) In addition to returns required by paragraph (1), every limited partnership subject to the tax imposed by subdivision (b) of Section 17935 or 23081, within three months and 15 days after the close of its taxable year, shall make a return for that year that satisfies the requirements of paragraph (1).

(b) Each partnership required to file a return under subdivision (a) for any taxable year shall (on or before the day on which the return for that taxable year was required to be filed) furnish to each person who is a partner or who holds an interest in that partnership

as a nominee for another person at any time during that taxable year a copy of that information required to be shown on that return as may be required by regulations.

(c) Any person who holds an interest in a partnership as a nominee for another person shall do both of the following:

(1) Furnish to the partnership, in the manner prescribed by the Franchise Tax Board, the name, address, and taxpayer identification number of that other person, and any other information for that taxable year as the Franchise Tax Board may by form and regulation prescribe.

(2) Furnish to that other person, in the manner prescribed by the Franchise Tax Board, the information provided by that partnership under subdivision (b).

(d) The provisions of Section 6031(d) of the Internal Revenue Code, relating to the separate statement of items of unrelated business taxable income, shall apply.

(e) The amendments made to this section by the act adding this subdivision shall apply to returns required to be filed under subdivision (a) after the effective date of that act.

SEC. 24. Section 19132 of the Revenue and Taxation Code is amended to read:

19132. (a) (1) Unless it is shown that the failure is due to reasonable cause and not due to willful neglect, a penalty computed in accordance with paragraph (2) is hereby imposed in the case of failure to pay any of the following:

(A) The amount shown as tax on any return on or before the date prescribed for payment of that tax determined with regard to any extension of time for payment.

(B) Any amount in respect of any tax required to be shown on a return which is not so shown including an assessment made pursuant to Section 19051 within 10 days of the date of the notice and demand therefor.

(C) The amount required to be paid by Section 19021, if applicable, that is not paid.

(D) The amount required to be paid by Section 17941 or 23091, if applicable, that is not paid.

(E) The amount required to be paid by Section 17951 or 23097, if applicable, that is not paid.

(2) The penalty imposed under paragraph (1) shall consist of both of the following:

(A) Five percent of the total tax unpaid as defined in subdivision (c).

(B) An amount computed at the rate of 0.5 percent per month of the "remaining tax" as defined in subdivision (d) for each additional month or fraction thereof not to exceed 40 months during which the "remaining tax" is greater than zero.

(3) The aggregate amount of penalty imposed by this subdivision shall not exceed 25 percent of the total unpaid tax and shall be due

and payable upon notice and demand by the Franchise Tax Board. The tender of a check or money order does not constitute payment of the tax for purposes of this section unless the check or money order is paid on presentment.

(b) The penalty prescribed by subdivision (a) shall not be assessed if, for the same taxable year, the sum of any penalties imposed under Section 19131 relating to failure to file return and Section 19133 relating to failure to file return after demand is equal to or greater than the subdivision (a) penalty. In the event the penalty imposed under subdivision (a) is greater than the sum of any penalties imposed under Sections 19131 and 19133, the penalty imposed under subdivision (a) shall be the amount which exceeds the sum of any penalties imposed under Sections 19131 and 19133.

(c) For purposes of this section, total tax unpaid means the amount of tax shown on the return reduced by both of the following:

(1) The amount of any part of the tax which is paid on or before the date prescribed for payment of the tax.

(2) The amount of any credit against the tax which may be claimed upon the return.

(d) For purposes of this section, "remaining tax" means total tax unpaid reduced by the amount of any payment of the tax.

(e) If the amount required to be shown as a tax on a return is less than the amount shown as tax on that return, subdivisions (a), (c), and (d) shall be applied by substituting that lower amount.

(f) No interest shall accrue on the portion of the penalty prescribed in subparagraph (B) of paragraph (2) of subdivision (a).

SEC. 25. Section 19141.6 of the Revenue and Taxation Code is amended to read:

19141.6. (a) Each taxpayer determining its income subject to tax pursuant to Section 25101 or electing to file pursuant to Section 25110 shall, for income years beginning on or after January 1, 1994, maintain (in the location, in the manner, and to the extent prescribed in regulations which shall be promulgated by the Franchise Tax Board on or before December 31, 1995) and make available upon request all of the following:

(1) Any records as may be appropriate to determine the correct treatment of the components that are a part of one or more unitary businesses for purposes of determining the income derived from or attributable to this state pursuant to Section 25101 or 25110.

(2) Any records as may be appropriate to determine the correct treatment of amounts that are attributable to the classification of an item as business or nonbusiness income for purposes of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(3) Any records as may be appropriate to determine the correct treatment of the apportionment factors for purposes of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(4) Documents and information, including any questionnaires completed and submitted to the Internal Revenue Service that are

necessary to audit issues involving attribution of income to the United States or foreign jurisdictions under Section 882 or Subpart F of Part III of Subchapter N, or similar sections, of the Internal Revenue Code.

(b) For purposes of this section:

(1) Information for any year shall be retained for that period of time in which the taxpayers' income or franchise tax liability to this state may be subject to adjustment, including all periods in which additional income or franchise taxes may be assessed, not to exceed eight years from the due date or extended due date of the return, or during which a protest is pending before the Franchise Tax Board, or an appeal is pending before the State Board of Equalization or a lawsuit is pending in the courts of this state or the United States with respect to California franchise or income tax.

(2) "Related party" means banks and corporations that are related because one owns or controls directly or indirectly more than 50 percent of the stock of the other or because more than 50 percent of the voting stock of each is owned or controlled, directly or indirectly, by the same interests.

(3) "Records" includes any books, papers, or other data.

(c) (1) If a bank or corporation subject to this section fails to maintain or fails to cause another to maintain records as required by subdivision (a), or willfully fails to comply substantially with Section 18634 requiring the filing of an information return, that bank or corporation shall pay a penalty of ten thousand dollars ($10,000) for each income year with respect to which the failure occurs.

(2) If any failure described in paragraph (1) continues for more than 90 days after the day on which the Franchise Tax Board mails notice of the failure to the bank or corporation, that bank or corporation shall pay a penalty (in addition to the amount required under paragraph (1)) of ten thousand dollars ($10,000) for each 30-day period (or fraction thereof) during which the failure continues after the expiration of the 90-day period. The additional penalty imposed by this subdivision shall not exceed a maximum of fifty thousand dollars ($50,000) if the failure to maintain or the failure to cause another to maintain is not willful. This maximum shall apply with respect to income years beginning on or after January 1, 1994, and before the earlier of the first day of the month following the month in which regulations are adopted pursuant to this section or December 31, 1995.

(3) For purposes of this section, the time prescribed by regulations to maintain records (and the beginning of the 90-day period after notice by the Franchise Tax Board) shall be treated as not earlier than the last day on which (as shown to the satisfaction of the Franchise Tax Board) reasonable cause existed for failure to maintain the records.

(d) (1) The Franchise Tax Board may apply the rules of paragraph (2) whether or not the board begins a proceeding to

enforce a subpoena, or subpoena duces tecum, if subparagraphs (A), (B), and (C) apply:

(A) For purposes of determining the correct treatment under Part 11 (commencing with Section 23001) of the items described in subdivision (a), the Franchise Tax Board issues a subpoena or subpoena duces tecum to a bank or corporation to produce (either directly or as agent for the related party) any records or testimony.

(B) The subpoena or subpoena duces tecum is not quashed in a proceeding begun under paragraph (3) and is not determined to be invalid in a proceeding begun under Section 19504 to enforce the subpoena or subpoena duces tecum.

(C) The bank or corporation does not substantially comply in a timely manner with the subpoena or subpoena duces tecum and the Franchise Tax Board has sent by certified or registered mail a notice to that bank or corporation that it has not substantially complied.

(D) If the bank or corporation fails to maintain or fails to cause another to maintain records as required by subdivision (a), and by reason of that failure, the subpoena, or subpoena duces tecum, is quashed in a proceeding described in subparagraph (B) or the bank or corporation is not able to provide the records requested in the subpoena or subpoena duces tecum, the Franchise Tax Board may apply the rules of paragraph (2) to any of the items described in subdivision (a) to which the records relate.

(2) (A) All of the following shall be determined by the Franchise Tax Board in the Franchise Tax Board's sole discretion from the Franchise Tax Board's own knowledge or from information the Franchise Tax Board may obtain through testimony or otherwise:

(i) The components that are a part of one or more unitary businesses for purposes of determining the income derived from or attributable to this state pursuant to Section 25101 or 25110.

(ii) Amounts that are attributable to the classification of an item as business or nonbusiness income for purposes of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(iii) The apportionment factors for purposes of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11.

(iv) The correct amount of income under Section 882 of, or Subpart F of Part III of, Subchapter N of, or similar sections of, the Internal Revenue Code.

(B) This paragraph shall apply to determine the correct treatment of the items described in subdivision (a) unless the bank or corporation is authorized by its related parties (in the manner and at the time as the Franchise Tax Board shall prescribe) to act as the related parties' limited agent solely for purposes of applying Section 19504 with respect to any request by the Franchise Tax Board to examine records or produce testimony related to any item described in subdivision (a) or with respect to any subpoena or subpoena duces tecum for the records or testimony. The appearance of persons or the production of records by reason of the bank or corporation being an

agent shall not subject those persons or records to legal process for any purpose other than determining the correct treatment under Part 11 of the items described in subdivision (a).

(C) Determinations made in the sole discretion of the Franchise Tax Board pursuant to this paragraph may be appealed to the State Board of Equalization, in the manner and at a time, as provided by Section 19045 or 19324, or may be the subject of an action to recover tax, in the manner and at a time, as provided by Section 19382. The review of determinations by the board or the court shall be limited to whether the determinations were arbitrary or capricious, or are not supported by substantial evidence.

(3) (A) Notwithstanding any other law or rule of law, any reporting bank or corporation to which the Franchise Tax Board issues a subpoena or subpoena duces tecum referred to in subparagraph (A) of paragraph (1) shall have the right to begin a proceeding to quash the subpoena or subpoena duces tecum not later than the 90th day after the subpoena or subpoena duces tecum was issued. In that proceeding, the Franchise Tax Board may seek to compel compliance with the subpoena or subpoena duces tecum.

(B) Notwithstanding any other law or rule of law, any reporting bank or corporation that has been notified by the Franchise Tax Board that it has determined that the bank or corporation has not substantially complied with a subpoena or subpoena duces tecum referred to in paragraph (1) shall have the right to begin a proceeding to review the determination not later than the 90th day after the day on which the notice referred to in subparagraph (C) of paragraph (1) was mailed. If the proceeding is not begun on or before the 90th day, the determination by the Franchise Tax Board shall be binding and shall not be reviewed by any court.

(C) The superior courts of the State of California for the Counties of Los Angeles, Sacramento, and San Diego, and for the City and County of San Francisco shall have jurisdiction to hear any proceeding brought under subparagraphs (A) and (B). Any order or other determination in the proceeding shall be treated as a final order that may be appealed.

(D) If any bank or corporation takes any action as provided in subparagraphs (A) and (B), the running of any period of limitations under Sections 19057 to 19064, inclusive (relating to the assessment and collection of tax), or under Section 19704 (relating to criminal prosecutions) with respect to that bank or corporation shall be suspended for the period during which the proceedings, and appeals therein, are pending. In no event shall any period expire before the 90th day after the day on which there is a final determination in the proceeding.

SEC. 26. Section 19602 of the Revenue and Taxation Code is amended to read:

19602. Except for amounts collected or accrued under Sections 17935, 17941, 17948, 19532, and 19561, all moneys and remittances

received by the Franchise Tax Board as amounts imposed under Part 10 (commencing with Section 17001), and related penalties, additions to tax, and interest imposed under this part, shall be deposited, after clearance of remittances, in the State Treasury and credited to the Personal Income Tax Fund.

SEC. 27. Section 19604 of the Revenue and Taxation Code is amended to read:

19604. (a) Except for fees received for services under Section 23305e, all moneys and remittances received by the Franchise Tax Board as amounts imposed under Part 11 (commencing with Section 23001), and related penalties, additions to tax, fees, and interest imposed under this part, shall be deposited in a special fund in the State Treasury, to be designated the Bank and Corporation Tax Fund. The moneys in the fund shall, upon the order of the Controller, be drawn therefrom for the purpose of making refunds under this part or be transferred into the General Fund. All undelivered refund warrants shall be redeposited into the Bank and Corporation Tax Fund upon receipt by the Controller. Fees received for services under Section 23305e shall be treated as reimbursement of the Franchise Tax Board's costs and shall be deposited into the General Fund.

(b) Notwithstanding Section 13340 of the Government Code, all moneys in the Bank and Corporation Tax Fund are hereby continuously appropriated, without regard to fiscal year, to the Franchise Tax Board for purposes of making all payments as provided in this section.

SEC. 28. Section 19605 of the Revenue and Taxation Code is amended to read:

19605. All moneys and remittances received by the Franchise Tax Board as fees imposed under Section 19532 or 19561 shall be treated as reimbursement of the Franchise Tax Board's costs and shall be deposited into the General Fund.

SEC. 29. Section 19607 is added to the Revenue and Taxation Code, to read:

19607. All moneys and remittances received by the Franchise Tax Board as amounts imposed under Sections 17935, 17941, and 17948 and related penalties, additions to tax, interest, and other related amounts imposed under this part, shall be deposited, after clearance of remittances, in the State Treasury and credited to the Bank and Corporation Tax Fund.

SEC. 30. Section 21022 of the Revenue and Taxation Code is repealed.

SEC. 31. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) (1) The term "tax" includes any of the following:

(A) The tax imposed under Chapter 2 (commencing with Section 23101).

(B) The tax imposed under Chapter 3 (commencing with Section 23501).

(C) The tax on unrelated business taxable income, imposed under Section 23731.

(D) The tax on S corporations imposed under Section 23802.

(2) The term "tax" does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(b) For purposes of Article 5 (commencing with Section 18661) of Chapter 2, Article 3 (commencing with Section 19031) of Chapter 4, Article 6 (commencing with Section 19101) of Chapter 4, and Chapter 7 (commencing with Section 19501) of Part 10.2, and for purposes of Sections 18601, 19001, and 19005, the term "tax" shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 17935 or 23081, the tax on limited liability companies, imposed under Section 17941 or 23091, and the tax on registered limited liability partnerships and foreign limited liability partnerships imposed under Section 17948 or 23097.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of S corporations, imposed under Section 23809.

(4) The tax on excess passive investment income of S corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits shall be allowed against the "tax" in the following order:

(1) Credits which do not contain carryover provisions.

(2) Credits which, when the credit exceeds the "tax," allow the excess to be carried over to offset the "tax" in succeeding taxable years. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits for taxes withheld under Section 18662.

(d) Notwithstanding any other provision of this part, each of the following shall be applicable:

(1) No credit shall reduce the "tax" below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits, but only after allowance of the credit allowed by Section 23453:

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by former Section 23601.4 (relating to solar energy).

(C) The credit allowed by Section 23601.5 (relating to solar energy).

(D) The credit allowed by Section 23609 (relating to research expenditures).

(E) The credit allowed by Section 23609.5 (relating to clinical testing expenses).

(F) The credit allowed by Section 23610.5 (relating to low-income housing).

(G) The credit allowed by Section 23612 (relating to sales and use tax credit).

(H) The credit allowed by Section 23612.6 (relating to Los Angeles Revitalization Zone sales tax credit).

(I) The credit allowed by Section 23622 (relating to enterprise zone hiring credit).

(J) The credit allowed by Section 23623 (relating to program area hiring credit).

(K) For each income year beginning on or after January 1, 1994, the credit allowed by Section 23623.5 (relating to Los Angeles Revitalization Zone hiring credit).

(L) The credit allowed by Section 23625 (relating to Los Angeles Revitalization Zone hiring credit).

(M) The credit allowed by Section 23649 (relating to qualified property).

(2) No credit against the tax shall reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) shall be allowed to be carried over to reduce the "tax" in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit that has been repealed or made inoperative shall continue to be allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the costs paid or incurred.

(h) Unless otherwise provided, in the case of an S corporation, any credit allowed by this part shall be computed at the S corporation level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit shall be applied to the S corporation and to each shareholder.

SEC. 32. Section 23051.5 of the Revenue and Taxation Code is amended to read:

23051.5. (a) (1) Unless otherwise specifically provided, the terms "Internal Revenue Code," "Internal Revenue Code of 1954," or "Internal Revenue Code of 1986," for purposes of this part, mean Title 26 of the United States Code, including all amendments thereto, as enacted on the specified date for the applicable taxable year as defined in paragraph (1) of subdivision (a) of Section 17024.5, except

that for purposes of this part, "income year" shall be substituted for "taxable year" throughout that section.

(2) Unless otherwise specifically provided, for federal laws enacted on or after January 1, 1987, and on or before the specified date for the income year, uncodified provisions that relate to provisions of the Internal Revenue Code that are incorporated for purposes of this part, shall be applicable to the same income years as the incorporated provisions.

(3) Subtitle G (Tax Technical Corrections) and Part I of Subtitle H (Repeal of Expired or Obsolete Provisions) of the Revenue Reconciliation Act of 1990 (Public Law 101-508) modified numerous provisions of the Internal Revenue Code and provisions of prior federal acts, some of which are incorporated by reference into this part. Unless otherwise provided, the provisions described in the preceding sentence, to the extent that they modify provisions that are incorporated into this part, are declaratory of existing law and shall be applied in the same manner and for the same periods as specified in the Revenue Reconciliation Act of 1990.

(b) Unless otherwise specifically provided, when applying the Internal Revenue Code for purposes of this part, a reference to any of the following shall not be applicable for purposes of this part:

(1) Domestic International Sales Corporations (DISC), as defined in Section 992(a) of the Internal Revenue Code.

(2) Foreign Sales Corporations (FSC), as defined in Section 922(a) of the Internal Revenue Code.

(3) A personal holding company, as defined in Section 542 of the Internal Revenue Code.

(4) A foreign personal holding company, as defined in Section 552 of the Internal Revenue Code.

(5) A foreign investment company, as defined in Section 1246(b) of the Internal Revenue Code.

(6) A foreign trust as defined in Section 679 of the Internal Revenue Code.

(7) Foreign income taxes and foreign income tax credits.

(8) Federal tax credits and carryovers of federal tax credits.

(c) (1) The provisions contained in Sections 41 to 44, inclusive, and Section 172 of the Tax Reform Act of 1984 (Public Law 98-369), relating to treatment of debt instruments, shall not be applicable for income years beginning before January 1, 1987.

(2) The provisions contained in Public Law 99-121, relating to the treatment of debt instruments, shall not be applicable for income years beginning before January 1, 1987.

(3) For income years beginning on and after January 1, 1987, the provisions referred to by paragraphs (1) and (2) shall be applicable for purposes of this part in the same manner and with respect to the same obligations as the federal provisions, except as otherwise provided in this part.

(d) When applying the Internal Revenue Code for purposes of this part, regulations promulgated in final form or issued as temporary regulations by "the secretary" shall be applicable as regulations issued under this part to the extent that they do not conflict with this part or with regulations issued by the Franchise Tax Board.

(e) Whenever this part allows a taxpayer to make an election, the following rules shall apply:

(1) A proper election filed with the Internal Revenue Service in accordance with the Internal Revenue Code or regulations issued by "the secretary" shall be deemed to be a proper election for purposes of this part, unless otherwise expressly provided in this part or in regulations issued by the Franchise Tax Board.

(2) A copy of that election shall be furnished to the Franchise Tax Board upon request.

(3) To obtain treatment other than that elected for federal purposes, a separate election shall be filed with the Franchise Tax Board at the time and in the manner which may be required by the Franchise Tax Board.

(f) Whenever this part allows or requires a taxpayer to file an application or seek consent, the rules set forth in subdivision (e) shall apply to that application or consent.

(g) When applying the Internal Revenue Code for purposes of determining the statute of limitations under this part, any reference to a period of three years shall be modified to read four years for purposes of this part.

(h) When applying, for purposes of this part, any section of the Internal Revenue Code or any applicable regulation thereunder, all of the following shall apply:

(1) For purposes of Chapter 2 (commencing with Section 23101), Chapter 2.5 (commencing with Section 23400), and Chapter 3 (commencing with Section 23501), the term "taxable income" shall mean "net income."

(2) For purposes of Article 2 (commencing with Section 23731) of Chapter 4, the term "taxable income" shall mean "unrelated business taxable income," as defined by Section 23732.

(3) Any reference to "subtitle," "Chapter 1," or "chapter" shall mean this part.

(4) The provisions of Section 7806 of the Internal Revenue Code, relating to construction of title, shall apply.

(5) Any provision of the Internal Revenue Code that becomes operative on or after the specified date for that income year shall become operative on the same date for purposes of this part.

(6) Any provision of the Internal Revenue Code that becomes inoperative on or after the specified date for that income year shall become inoperative on the same date for purposes of this part.

(7) Due account shall be made for differences in federal and state terminology, effective dates, substitution of "income year" for

"taxable year" when appropriate, substitution of "Franchise Tax Board" for "secretary" when appropriate, and other obvious differences.

(8) Any provision of the Internal Revenue Code that refers to a "corporation" shall, when applicable for purposes of this part, include a "bank," as defined by Section 23039.

(i) Any reference to a specific provision of the Internal Revenue Code shall include modifications of that provision, if any, in this part.

SEC. 33. Section 23081 of the Revenue and Taxation Code is amended to read:

23081. (a) For each taxable year beginning on or after January 1, 1988, every limited partnership doing business in this state (as defined by Section 23101) and required to file a return under former Section 17932 or Section 18633 shall pay annually to this state a tax for the privilege of doing business in this state in an amount equal to the applicable amount specified in Section 23153 for the current taxable year.

(b) (1) In addition to any limited partnership that is doing business in this state and therefore is subject to the tax imposed by subdivision (a), for each taxable year beginning on or after January 1, 1993, every limited partnership that has executed, acknowledged, and filed a certificate of limited partnership with the Secretary of State pursuant to Section 15621 of the Corporations Code, and every foreign limited partnership that has registered with the Secretary of State pursuant to Section 15692 of the Corporations Code, shall pay annually the tax prescribed in subdivision (a). The tax shall be paid for each taxable year, or part thereof, until a certificate of dissolution or certificate of cancellation is filed on behalf of the limited partnership with the office of the Secretary of State pursuant to Section 15623 or 15696 of the Corporations Code.

(2) In the case of a limited partnership initially qualifying to do business in this state or that has filed its first certificate of limited partnership with the Secretary of State, a period of one-half month may be disregarded, for purposes of the tax imposed under subdivisions (a) and (b), provided that the partnership was not doing business in and received no income from sources in the state during that period.

(c) The tax imposed under this section shall be due and payable on the date the return is required to be filed under former Section 18432 or Section 18633.

(d) For purposes of this section, "limited partnership" means any partnership formed by two or more persons under the laws of this state or any other jurisdiction and having one or more general partners and one or more limited partners.

(e) Notwithstanding subdivision (b), any limited partnership that ceased doing business prior to January 1, 1993, filed a final return with the Franchise Tax Board for a taxable year ending before January 1, 1993, and files a certificate of dissolution or a certificate of

cancellation with the Secretary of State pursuant to Section 15623 or 15696 of the Corporations Code by the later of December 31, 1994, or the date 90 days after the date of enactment of this act, shall not be subject to the tax imposed by this section.

(f) The amendments to this section by the act adding this subdivision shall apply to each taxable year beginning on or after January 1, 1993.

(g) The amendments made to this section by the act adding this subdivision shall apply to returns required to be filed under subdivisions (a) and (b) after the effective date of the act.

SEC. 34. Section 23083 is added to the Revenue and Taxation Code, to read:

23083. This chapter shall not apply to taxable years beginning on or after January 1, 1997.

SEC. 35. Section 23096.5 is added to the Revenue and Taxation Code, to read:

23096.5. This chapter shall not apply to taxable years beginning on or after January 1, 1997.

SEC. 36. Section 23099.5 is added to the Revenue and Taxation Code, to read:

23099.5. This chapter shall not apply to taxable years beginning on or after January 1, 1997.

SEC. 37. Section 23455 of the Revenue and Taxation Code is amended to read:

23455. For purposes of this part, Section 55 of the Internal Revenue Code is modified as follows:

(a) Section 55(b)(1) of the Internal Revenue Code, relating to tentative minimum tax, is modified by requiring the tentative minimum tax for the taxable year to be imposed as follows:

(1) With respect to corporations subject to tax under Chapter 2 (commencing with Section 23101), other than financial corporations, according to or measured by net income, for the privilege of doing business within this state, at a rate of 7 percent upon the basis of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount.

(2) With respect to corporations subject to tax under Chapter 3 (commencing with Section 23501), on net income from sources within this state, at a rate of 7 percent upon the basis of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount.

(3) With respect to organizations or trusts subject to tax under Article 2 of Chapter 4 (commencing with Section 23731), on the unrelated business income from sources within this state, at a rate of 7 percent upon the basis of so much of the alternative taxable income for the taxable year as exceeds the exemption amount.

(4) With respect to banks subject to tax under Section 23181, according to or measured by net income, for the privilege of doing

business within this state, in an amount equal to the sum of the following:

(A) At a rate of 7 percent upon the basis of so much of the alternative minimum taxable income as exceeds the exemption amount.

(B) At the rate determined under Section 23186, less the rate prescribed by Section 23151, upon the basis of net income for the taxable year.

(5) With respect to financial corporations subject to tax under Section 23183, according to or measured by net income, for the privilege of doing business within this state, in an amount equal to the sum of the following:

(A) At a rate of 7 percent upon the basis of so much of the alternative minimum taxable income as exceeds the exemption amount.

(B) At the rate determined under Section 23186, less the rate prescribed by Section 23151, upon the basis of net income for the taxable year. The offset prescribed by Section 23184 shall be applied to the tentative minimum tax in the same manner and to the same extent as that offset is applied to the tax imposed under Chapter 2 (commencing with Section 23101).

(b) Section 55(b)(2) of the Internal Revenue Code, relating to the definition of alternative minimum taxable income, is modified as follows:

(1) For corporations whose net income is determined under Chapter 17 (commencing with Section 25101), alternative minimum taxable income shall be allocated and apportioned in the same manner as net income is allocated and apportioned for purposes of the regular tax.

(2) With respect to taxpayers subject to Article 4 (commencing with Section 23221) of Chapter 2, Articles 4 (commencing with Section 23221) to 9 (commencing with Section 23361), inclusive, shall apply to the tax imposed by this section except that Section 23221 shall not apply.

(3) For purposes of computing the alternative minimum tax for taxable years in which a taxpayer commenced doing business, dissolves, withdraws, or ceases doing business, Sections 18601, 23151, 23151.1, 23151.2, 23181, 23183, 23183.1, 23183.2, 23201 to 23204, inclusive, 23222 to 23224.5, inclusive, 23282, 23332.5, and 23504 shall be applied with due regard for the rate and alternative minimum taxable income prescribed by this chapter.

(c) Section 55(c) of the Internal Revenue Code, relating to the definition of regular tax, is modified to read:

(1) For purposes of this chapter, the term "regular tax" means the amount of tax imposed under Chapter 2 (commencing with Section 23101) or Chapter 3 (commencing with Section 23501) or Article 2 (commencing with Section 23731) of Chapter 4, but does not include

any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(2) The tax specified in paragraph (1) shall be the amount determined prior to reduction by any credits against the tax.

(d) The rate of 7 percent prescribed in subdivision (a) shall be 6.65 percent for any income year beginning on or after January 1, 1997. The change in rate provided in this subdivision shall be made without proration otherwise required by Section 24251.

SEC. 38. Section 23612 of the Revenue and Taxation Code is amended to read:

23612. (a) There shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means either of the following:

(A) A qualified business as defined in Section 7082 of the Government Code.

(B) A bank or corporation engaged in a trade or business within an enterprise zone designated pursuant to Section 7073 of the Government Code.

(2) "Qualified property" means machinery and machinery parts used for fabricating, processing, assembling, and manufacturing and machinery and machinery parts used for the production of renewable energy resources or air or water pollution control mechanisms, up to a value of twenty million dollars ($20,000,000), which, in the case of a taxpayer described in subparagraph (A) of paragraph (1), is used exclusively in a program area, and, in the case of a taxpayer described in subparagraph (B) of paragraph (1), is used exclusively in an enterprise zone.

(c) If the taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided under subdivision (a) shall be allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(d) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit which exceeds the "tax" may be carried over and added to the credit, if any, in the following year, and succeeding years if necessary, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the purchase of qualified property.

(f) (1) The amount of credit otherwise allowed under this section and Sections 23622 and 23623, including any credit carryover from prior years, that may reduce the "tax" for the income year shall not

exceed the amount determined under paragraph (2), in the case of a taxpayer described in subparagraph (A) of paragraph (1) of subdivision (b), or paragraph (3), in the case of a taxpayer described in subparagraph (B) of paragraph (1) of subdivision (b).

(2) (A) The amount determined under this paragraph shall be the amount of tax which would be imposed on the taxpayer's business income attributed to the program area (as defined in Section 7082 of the Government Code) determined as if that attributed income represented all of the income of the taxpayer subject to tax under this part.

(B) The amount of attributed income, for purposes of this paragraph, shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section as follows:

(i) For income years beginning on or after January 1, 1991, and ending on or before December 31, 1996, income shall be apportioned to the program area by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The program area" shall be substituted for "this state."

(3) (A) The amount determined under this paragraph shall be the amount of tax which would be imposed on the taxpayer's business income attributed to the enterprise zone (designated pursuant to Section 7073 of the Government Code) determined as if that attributed income represented all of the income of the taxpayer subject to tax under this part.

(B) The amount of attributed income, for purposes of this paragraph, shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section as follows:

(i) For income years beginning on or after January 1, 1991, and ending on or before December 31, 1996, income shall be apportioned to the enterprise zone by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The enterprise zone" shall be substituted for "this state."

(4) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (d).

SEC. 39. Section 23612.6 of the Revenue and Taxation Code is amended to read:

23612.6. (a) For each income year beginning on or after January 1, 1992, and before January 1, 1998, there shall be allowed a credit against the "tax," as defined by Section 23036, for the income year an amount equal to the sales or use tax paid or incurred during the income year by the taxpayer in connection with the taxpayer's purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means a bank or corporation engaged in a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(2) "Qualified property" means the purchase on or after May 1, 1992, and before the zone expiration date, of either or both of the following:

(A) Building materials to replace or repair the taxpayer's building and fixtures.

(B) Machinery or equipment, excluding inventory, to be used by the taxpayer exclusively in the Los Angeles Revitalization Zone.

(3) "Zone expiration date" means the date the Los Angeles Revitalization Zone designation expires, is repealed, or becomes inoperative pursuant to Section 7102, 7103, or 7104 of the Government Code.

(c) (1) In the case where a credit is allowable for qualified property under more than one section in this part, the taxpayer shall make an election, on the original return filed for each year, as to which section applies to the qualified property.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(d) In the case where the credit otherwise allowed under this section exceeds the tax for the income year, that portion of the credit that exceeds the tax may be carried over and added to the credit, if any, in succeeding income years for the number of income years in which the designation of the Los Angeles Revitalization Zone under Section 7102 of the Government Code is operative, or 15 income years, if longer, until the credit is exhausted. The credit shall be applied first to the earliest income year possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to the sales and use tax paid or incurred in connection with the taxpayer's purchase of qualified property.

(f) (1) The amount of credit otherwise allowed under this section and Sections 23623.5 and 23625, including any credit carryover from prior years, that may reduce the tax for the income year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the Los Angeles Revitalization Zone (designated pursuant to Section 7102 of the Government Code) determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be that portion of the taxpayer's California source business income which is apportioned to the Los Angeles Revitalization Zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with the

provisions of Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the Los Angeles Revitalization Zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the income year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the income year.

(3) The portion of the credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the tax for the income year, as provided in subdivision (d).

(g) If the qualified property is disposed of or no longer used by the taxpayer in the Los Angeles Revitalization Zone, at any time before the close of the second income year after the property is placed in service, the amount of the credit previously claimed shall be added to the taxpayer's tax liability in the income year of that disposition or nonuse.

(h) This section shall be inoperative as of the first day of the income year beginning on or after the determination date, and each income year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area determined pursuant to Section 7104 of the Government Code. The determination date is the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused credit amount as of the date this section becomes inoperative, that unused credit amount may continue to be carried forward as provided in subdivision (d).

(i) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (d).

SEC. 40. Section 23622 of the Revenue and Taxation Code is amended to read:

23622. (a) There shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the employer during the income year to qualified disadvantaged individuals that does not exceed 150 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the individual commences employment with the taxpayer.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(c) For purposes of this section:

(1) "Qualified disadvantaged individual" means an individual—

(A) Who is a qualified employee within the meaning of subdivision (d).

(B) Who is hired by the employer after the designation of the area in which services were performed as an enterprise zone (under Section 7073 of the Government Code).

(C) Who is any of the following immediately preceding the individual's commencement of employment with the taxpayer:

(i) An individual who is eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.) and who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act.

(ii) Any individual who is eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who is eligible as determined by the Employment Development Department under the federal Targeted Jobs Tax Credit Program as long as that program is in effect.

(2) Priority shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act

or the Greater Avenues for Independence Act of 1985 or who is eligible under the federal Targeted Jobs Tax Credit Program.

(d) For purposes of this section, "qualified employee" means an individual—

(1) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone, and

(2) Who performs at least 50 percent of his or her services for the taxpayer during the income year in an enterprise zone.

(e) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification which provides that a qualified individual meets the eligibility requirements specified in subparagraph (C) of paragraph (1) of subdivision (c).

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(f) (1) For purposes of this section, all employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single employer. In that case, the credit (if any) allowable by this section to each member shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit. For purposes of this subdivision, "controlled group of corporations" has the meaning given to that term by Section 1563(a) of the Internal Revenue Code, except that—

(A) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(B) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue Code.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (g)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(g) (1) If the employment of any employee with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is

terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable unemployment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the employee continues to be employed by the acquiring corporation, or

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(h) In the case of—

(1) An organization to which Section 593 of the Internal Revenue Code applies, and

(2) A regulated investment company or a real estate investment trust subject to taxation under this part, rules similar to the rules provided in subsections (e) and (h) of Section 46 of the Internal Revenue Code shall apply.

(i) For purposes of this section, "enterprise zone" means an area for which designation as an enterprise zone is in effect under Section 7073 of the Government Code.

(j) The credit shall be reduced by the credit allowed under Section 23621. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (k) or (*l*).

(k) In the case where the credit, if any, allowed under this section exceeds the "tax" for the income year, that portion of the credit which exceeds the "tax" may be carried over and added to the credit, if any, in the following year, and succeeding years if necessary, for the number of years in which the designation of an enterprise zone is binding, or 15 income years, if longer, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(*l*) (1) The amount of the credit otherwise allowed under this section and Section 23612, including any credit carryover from prior years, that may reduce the "tax" for the income year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributed to the enterprise zone determined as if that attributed income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section as follows:

(A) For income years beginning on or after January 1, 1991, and ending on or before December 31, 1996, income shall be apportioned to the enterprise zone by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The enterprise zone" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (k).

SEC. 41. Section 23623 of the Revenue and Taxation Code is amended to read:

23623. (a) There shall be allowed as a credit against the "tax" (as defined by Section 23036) the amount determined in subdivisions (c) and (d) for a qualified business which hires a qualified employee.

(b) For purposes of this section:

(1) "Qualified business" means either (A) a qualified business, as defined in Section 7082 of the Government Code, or (B) a qualified business, as defined in Section 7082 of the Government Code, except that the percentage requirements with respect to employment of residents of a high-density unemployment area shall be applicable only to those employees hired within the 12 months immediately preceding the date that the business seeks certification from the

Trade and Commerce Agency and not to the entire work force of the business. A business that qualifies under clause (B) shall be a qualified business only for the purposes of this section, provided that the Trade and Commerce Agency certifies that the business meets the standards set forth in this paragraph.

(2) "Qualified employee" means an employee who has been an unemployed resident of a high-density unemployment area (as defined in Section 7082 of the Government Code) prior to being employed by the qualified business. For the purposes of this section, participation by a prospective employee in a state or federally funded job training or work demonstration program shall not constitute employment, or affect the eligibility of an otherwise qualified employee. Qualified employee includes an otherwise qualified employee who is employed by a qualified business in the 90 days prior to its certification by the Trade and Commerce Agency as a qualified business for the purpose of becoming eligible for that certification.

(c) The credit provided for each qualified employee who has been unemployed for at least six months prior to being employed pursuant to subdivision (a) shall be an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of employment.

(d) The credit provided for each qualified employee who has been unemployed for at least three months but less than six months prior to being employed shall be 25 percent of qualified wages for the first year of employment; however, the credit for the second year of employment shall be that provided in paragraph (2) of subdivision (c), the credit for the third year of employment shall be that provided in paragraph (3) of subdivision (c), the credit for the fourth year of employment shall be that provided in paragraph (4) of subdivision (c), and the credit for the fifth year of employment shall be that provided in paragraph (5) of subdivision (c).

(e) For purposes of this section, "qualified wages" means that portion of wages not in excess of 150 percent of the minimum hourly wage paid or incurred by the qualified business during the income year to the qualified employee.

(f) (1) If the employment of any employee with respect to whom qualified wages are taken into account under subdivision (c) or (d) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close

of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) Paragraph (1) shall not apply to any of the following:

(A) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(B) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(C) A termination of employment of an individual, if it is determined under the applicable unemployment compensation provisions that the termination was due to the misconduct of that individual.

(D) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer other than regularly occurring seasonal reductions.

(E) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both number of employees and hours of employment.

(F) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retained a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(g) The credit shall be reduced by the credit allowed under Section 23621. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (h) or (i).

(h) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit which exceeds the "tax" may be carried over and added to the credit, if any, in the following year, and succeeding years if necessary, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(i) (1) The amount of credit otherwise allowed under this section and Section 23612, including any credit carryover from prior years, that may reduce the "tax" for the income year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributed to the program area (as defined in Section 7082 of the Government Code) determined as if that attributed income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section as follows:

(A) For income years beginning on or after January 1, 1991, and ending on or before December 31, 1996, income shall be apportioned to the program area by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The program area" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (h).

SEC. 42. Section 23623.5 of the Revenue and Taxation Code is amended to read:

23623.5. (a) For each income year beginning on or after January 1, 1992, and before January 1, 1998, the taxpayer shall be allowed for hiring qualified disadvantaged individuals on or after May 1, 1992, a credit against the "tax," as defined in Section 23036, for the income year equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the taxpayer during the income year to qualified disadvantaged individuals that does not exceed 150 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the disadvantaged individual commences employment with the taxpayer.

(C) Qualified wages does not include any wages paid or incurred by the taxpayer on or after the zone expiration date.

(D) If, after a taxpayer hires a qualified disadvantaged individual, the geographic area in which the taxpayer's trade or business is located is excluded from the map of the Los Angeles Revitalization Zone by the Trade and Commerce Agency pursuant to Section 7102 or 7104 of the Government Code, wages paid or incurred with respect to the disadvantaged individual may continue to be qualified wages and may qualify for the credit under this section, provided all provisions of this section are satisfied, applied as if the taxpayer's trade or business was still located within the Los Angeles Revitalization Zone.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Qualified disadvantaged individual" means an individual who is a qualified employee and a resident of the Los Angeles Revitalization Zone.

(4) "Los Angeles Revitalization Zone" means the area designated under Section 7102 of the Government Code.

(5) "Qualified employee" means an individual that meets both of the following:

(A) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in the Los Angeles Revitalization Zone.

(B) Who performs at least 50 percent of his or her services for the taxpayer during the income year in the Los Angeles Revitalization Zone.

(6) "Resident" means a "resident" as defined in Section 7101 of the Government Code.

(7) "Taxpayer" means a bank or corporation engaged in a trade or business within the Los Angeles Revitalization Zone.

(8) "Zone expiration date" means the date the Los Angeles Revitalization Zone designation expires, is repealed, or becomes inoperative pursuant to Section 7102, 7103, or 7104 of the Government Code.

(9) (A) All employees of all corporations that are members of the same controlled group of corporations shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section to each member shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit and allocated in that manner.

(C) "Controlled group of corporations" means "controlled group of corporations" as defined in Section 1563(a) of the Internal Revenue Code, except that:

(i) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(ii) The determination shall be made without regard to Sections 1563(a)(4) and 1563(e)(3)(C) of the Internal Revenue Code.

(10) If a taxpayer acquires the major portion of a trade or business of another employer (hereafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for the purposes of applying this section (other than subdivision (c)) for any calendar year ending after that acquisition, the employment relationship between a disadvantaged individual and an employer shall not be treated as terminated if the individual continues to be employed in that trade or business.

(c) (1) If the employment of any disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a), is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that individual completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that individual.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a disadvantaged individual who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a disadvantaged individual who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of a disadvantaged individual, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of a disadvantaged individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a disadvantaged individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and a disadvantaged individual shall not be treated as terminated by either of the following:

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the individual continues to be employed by the acquiring corporation.

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the individual continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(d) In the case of an organization to which Section 593 of the Internal Revenue Code applies, and a regulated investment company or a real estate investment trust subject to taxation under this part, rules similar to the rules provided in Sections 46(e) and 46(h) of the Internal Revenue Code shall apply.

(e) The credit shall be reduced by the credits allowed under Sections 23621, 23622, 23623, and 23625, claimed for the same disadvantaged individual. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (f) or (g).

(f) In the case where the credit otherwise allowed under this section exceeds tax for the income year, that portion of the credit that exceeds the tax may be carried over and added to the credit, if any, in succeeding income years while the designation of the Los Angeles Revitalization Zone under Section 7102 of the Government Code is operative or 15 income years, if longer, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(g) (1) The amount of credit otherwise allowed under this section and Sections 23612.6 and 23625, including any credit carryover from prior years, that may reduce the tax for the income year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributable to the Los Angeles Revitalization Zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be that portion of the taxpayer's California source business income which is apportioned to the Los Angeles Revitalization Zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the Los Angeles Revitalization Zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the income year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the income year.

(3) The portion of the credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the tax for the income year, as provided in subdivision (f).

(h) Except as provided in subparagraph (D) of paragraph (1) of subdivision (b), this section shall be inoperative on the first day of the income year beginning on or after the determination date, and each income year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area determined pursuant to Section 7104 of the Government Code. The determination date is the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused credit amount as of the date this section becomes inoperative, that unused credit amount may continue to be carried forward as provided in subdivision (f).

(i) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as specified in subdivision (f).

SEC. 43. Section 23625 of the Revenue and Taxation Code is amended to read:

23625. (a) For each income year beginning on or after January 1, 1992, and before January 1, 1998, there shall be allowed to a taxpayer who employs qualified employees in the Los Angeles Revitalization Zone during the income year as a credit against the "tax," as defined in Section 23036, an amount equal to the sum of the following:

(1) One hundred percent of the qualified wages paid or incurred during the period from May 1, 1992, to the end of the sixth full month

after the designation of the Los Angeles Revitalization Zone with respect to qualified employees that are hired during that period.

(2) Seventy-five percent of the qualified wages paid or incurred during the period from the beginning of the seventh month after designation to the end of the 12th full month after designation with respect to qualified employees that are hired during that period.

(3) Fifty percent of the qualified wages paid or incurred during the period from the beginning of the 13th month after designation to the end of the 60th full month after designation with respect to qualified employees that are hired during that period.

(b) For purposes of this section:

(1) (A) "Qualified wages" means that portion of wages paid or incurred by the taxpayer for construction work in the Los Angeles Revitalization Zone during the income year with respect to qualified employees which does not exceed 150 percent of the minimum wage.

(B) If, after a taxpayer hires a qualified employee, the geographic area in which the taxpayer's trade or business is located is excluded from the map of the Los Angles Revitalization Zone by the Trade and Commerce Agency pursuant to Section 7102 or 7104 of the Government Code, wages paid or incurred with respect to the qualified employee may continue to be qualified wages and may qualify for the credit under this section, provided all provisions of this section are satisfied, applied as if the taxpayer's trade or business was still located within the Los Angeles Revitalization Zone.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Qualified employee" means an individual to whom both of the following apply:

(A) Is a resident, as defined in Section 7101 of the Government Code, in the Los Angeles Revitalization Zone.

(B) Was hired by the taxpayer to perform construction work in the Los Angeles Revitalization Zone.

(4) "Los Angeles Revitalization Zone" means the area designated pursuant to Section 7102 of the Government Code.

(5) "Construction work" means any work performed by a qualified employee directly related to the erection, demolition, repair, or renovation of a structure located within the Los Angeles Revitalization Zone.

(6) "Taxpayer" means a bank or corporation engaged in a trade or business within the Los Angeles Revitalization Zone.

(c) If an employer acquires the major portion of a trade or business of another employer (hereafter in this subdivision referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for the purposes of applying this section, other than subdivision (h), for any income year ending after the acquisition, the employment relationship between a

qualified employee and employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(d) The credit shall be reduced by the credits allowable under Sections 23621, 23622, 23623, and 23623.5 claimed for the same qualified employee. The credit shall also be reduced by the credit allowed under Section 51 of the Internal Revenue Code for the same qualified employee.

(e) Any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of credit, prior to any reduction required by subdivision (f) or (g).

(f) In the case where the credit otherwise allowed under this section exceeds the tax for the income year, that portion of the credit that exceeds the tax may be carried over and added to the credit, if any, in succeeding income years for the number of income years in which the designation of the Los Angeles Revitalization Zone under Section 7102 of the Government Code is operative, or 15 income years, if longer, until the credit is exhausted. The credit shall be applied first to the earliest income year possible.

(g) (1) The amount of credit otherwise allowed under this section and Sections 23612.6 and 23623.5, including any credit carryover from prior years, that may reduce the tax for the income year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributable to the Los Angeles Revitalization Zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be that portion of the taxpayer's California source business income which is apportioned to the Los Angeles Revitalization Zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the Los Angeles Revitalization Zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the income year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the income year.

(3) The portion of the credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the tax for the income year, as provided in subdivision (f).

(h) (1) If the employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that qualified employee.

(iii) A termination of employment of a qualified employee, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that qualified employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that qualified employee is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(vi) A termination of employment due to a contractual agreement.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the qualified employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(i) Except as provided in subparagraph (B) of paragraph (1) of subdivision (b), this section shall cease to be operative on the first day of the income year beginning on or after the determination date, and each income year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area determined pursuant to Section 7104 of the Government Code. For purposes of this subdivision, "determination date" means the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused credit amount as of the date this section becomes inoperative, that unused credit amount may continue to be carried forward as provided in subdivision (f).

(j) This section shall remain in effect only until December 1, 1998, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (f).

SEC. 44. Section 23645 of the Revenue and Taxation Code is amended to read:

23645. (a) For each income year beginning on or after January 1, 1995, and before January 1, 2003, there shall be allowed as a credit against the "tax" (as defined by Section 23036) for the income year an amount equal to the sales or use tax paid or incurred by the taxpayer in connection with the purchase of qualified property to the extent that the qualified property does not exceed a value of twenty million dollars ($20,000,000).

(b) For purposes of this section:

(1) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(2) "Taxpayer" means a bank or corporation that conducts a trade or business within a LAMBRA and, for the first two income years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA.

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the income year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second income year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the income year prior to commencing business operations in the LAMBRA shall be zero. If the taxpayer has a net increase in jobs in

the state, the credit shall be allowed only if one or more full-time employees is employed within the LAMBRA.

(B) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(i) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(ii) The total number of months worked in the LAMBRA for the taxpayer by employees that are salaried employees divided by 12.

(C) In the case of a taxpayer who first commences doing business in the LAMBRA during the income year, for purposes of clauses (i) and (ii), respectively, of subparagraph (B) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the income year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(3) "Qualified property" means the purchase of any of the following for exclusive use in a LAMBRA:

(A) High technology equipment, including, but not limited to, computers and electronic processing equipment.

(B) Aircraft maintenance equipment, including, but not limited to, engine stands, hydraulic mules, power carts, test equipment, handtools, aircraft start carts, and tugs.

(C) Aircraft components, including, but not limited to, engines, fuel control units, hydraulic pumps, avionics, starts, wheels, and tires.

(D) Any property that is Section 1245 property, as defined in Section 1245(a)(3) of the Internal Revenue Code.

(c) The credit provided under subdivision (a) shall only be allowed for qualified property manufactured in California unless qualified property of a comparable quality and price is not available for timely purchase and delivery from a California manufacturer.

(d) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit which exceeds the "tax" may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the purchase of qualified property.

(f) (1) The amount of the credit otherwise allowed under this section and Section 23646, including any credit carryovers from prior years, that may reduce the "tax" for the income year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributed to a LAMBRA determined as if that attributable income represented all the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section as follows:

(A) Income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor, plus the payroll factor, and the denominator of which is two.

(B) "The LAMBRA" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (d).

(g) (1) If the qualified property is disposed of or no longer used by the taxpayer in the LAMBRA, at any time before the close of the second taxable year after the property is placed in service, the amount of the credit previously claimed, with respect to that property, shall be added to the taxpayer's tax liability in the taxable year of that disposition or nonuse.

(2) At the close of the second income year, if the taxpayer has not increased the number of its employees as determined by paragraph (2) of subdivision (b), then the amount of the credit previously claimed shall be added to the taxpayer's tax for the taxpayer's second income year.

(h) In the case where "qualified property" qualifies for a credit under more than one section in this part, the taxpayer shall make an election as to which section applies to the qualified property.

(i) This section shall remain in effect only until December 1, 2003, and as of that date is repealed. However, any unused credit may continue to be carried forward as provided in subdivision (d), until the credit is exhausted.

SEC. 45. Section 23646 of the Revenue and Taxation Code is amended to read:

23646. (a) For each income year beginning on or after January 1, 1995, and before January 1, 2003, there shall be allowed as a credit against the "tax" (as defined in Section 23036) to a qualified taxpayer for hiring a qualified disadvantaged individual or a qualified displaced employee during the income year for employment in the LAMBRA. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of the qualified wages in the first year of employment.

(2) Forty percent of the qualified wages in the second year of employment.

(3) Thirty percent of the qualified wages in the third year of employment.

(4) Twenty percent of the qualified wages in the fourth year of employment.

(5) Ten percent of the qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the employer during the income year to qualified disadvantaged individuals or qualified displaced employees that does not exceed 150 percent of the minimum wage.

(B) The total amount of qualified wages which may be taken into account for purposes of claiming the credit allowed under this section shall not exceed two million dollars ($2,000,000) per income year.

(C) Wages received during the 60-month period beginning with the day the individual commences employment with the taxpayer.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "LAMBRA" means a local agency military base recovery area designated in accordance with the provisions of Section 7114 of the Government Code.

(4) "Qualified disadvantaged individual" means an individual who satisfies all of the following requirements:

(A) (i) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in a LAMBRA.

(ii) Who performs at least 50 percent of his or her services for the taxpayer during the income year in the LAMBRA.

(B) Who is hired by the employer after the designation of the area as a LAMBRA in which the individual's services were primarily performed.

(C) Who is any of the following immediately preceding the individual's commencement of employment with the taxpayer:

(i) An individual who has been determined eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.).

(ii) Any voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who has been certified eligible by the Employment Development Department under the federal Targeted Jobs Tax Credit Program whether or not this program is in effect.

(5) "Qualified taxpayer" means a bank or corporation that conducts a trade or business within a LAMBRA and, for the first two income years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees as determined below in the LAMBRA.

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the income year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second income year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the income year prior to commencing business operations in the LAMBRA shall be zero. If the taxpayer has a net increase in jobs in the state, the credit shall be allowed only if one or more full-time employees is employed within the LAMBRA.

(B) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(i) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(ii) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(C) In the case of a qualified taxpayer that first commences doing business in the LAMBRA during the income year, for purposes of clauses (i) and (ii), respectively, of subparagraph (B) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the income year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(6) "Qualified displaced employee" means an individual who satisfies all of the following requirements:

(A) Any civilian or military employee of a base or former base that has been displaced as a result of a federal base closure act.

(B) (i) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in a LAMBRA.

(ii) Who performs at least 50 percent of his or her services for the taxpayer during the income year in a LAMBRA.

(C) Who is hired by the employer after the designation of the area in which services were performed as a LAMBRA.

(c) (1) For purposes of this section, both of the following apply:

(A) All employees of all corporations that are members of the same controlled group of corporations shall be treated as employed by a single employer.

(B) The credit (if any) allowable by this section to each member shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit.

(2) For purposes of this subdivision, "controlled group of corporations" has the meaning given to that term by Section 1563(a)

of the Internal Revenue Code, except that both of the following apply:

(A) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(B) The determination shall be made without regard to Section 1563(a)(4) and Section 1563(e)(3)(C) of the Internal Revenue Code.

(3) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (d)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(d) (1) If the employment of any employee with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable unemployment compensation laws that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by either of the following:

(i) A transaction to which Section 381(a) of the Internal Revenue Code applies, if the employee continues to be employed by the acquiring corporation.

(ii) A mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(4) At the close of the second income year, if the taxpayer has not increased the number of its employees as determined by paragraph (5) of subdivision (b), then the amount of the credit previously claimed shall be added to the taxpayer's tax for the taxpayer's second income year.

(e) In the case of an organization to which Section 593 of the Internal Revenue Code applies, and a regulated investment company or a real estate investment trust subject to taxation under this part, rules similar to the rules provided in Section 46(e) and Section 46(h) of the Internal Revenue Code shall apply.

(f) The credit shall be reduced by the credit allowed under Section 23621. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (g) or (h).

(g) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit that exceeds the "tax" may be carried over and added to the credit, if any, in succeeding years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(h) (1) The amount of credit otherwise allowed under this section and Section 23645, including any prior year carryovers, that may reduce the "tax" for the income year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributed to a LAMBRA determined as if that attributed income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section as follows:

(A) Income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The LAMBRA" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (g).

(i) (1) In the case where "qualified wages" qualify for a credit under more than one section in this part, the taxpayer shall make an election as to which section applies to those qualified wages.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(j) This section shall remain in effect only until December 1, 2003, and as of that date is repealed. However, any unused credit may continue to be carried over as provided in subdivision (g), until the credit is exhausted.

SEC. 46. Section 23801 of the Revenue and Taxation Code is amended to read:

23801. (a) (1) A corporation may not elect to be treated as an "S corporation" unless it has in effect for federal purposes a valid election under Section 1362(a) of the Internal Revenue Code for the same year.

(2) For income years beginning in 1987, the following shall apply:

(A) A corporation that has in effect a valid federal election for the income year beginning in 1987, shall be deemed to have elected to be treated as an "S corporation" for purposes of this part, unless that corporation elects on its return to continue to be treated as a "C corporation" for purposes of this part.

(B) A corporation to which subparagraph (A) applies, but is not required to file a return under this part, may elect to be treated as a "C corporation" for purposes of this part in the form and in the manner as the Franchise Tax Board may prescribe.

(C) A corporation that is deemed to have elected to be treated as an "S corporation" under subparagraph (A) shall, for purposes of applying the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, and Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income, be deemed to have made the election to be treated as an "S corporation" on the same date as the date of its federal election under Section 1362(a) of the Internal Revenue Code.

(3) For income years beginning in 1988 or 1989, the following shall apply:

(A) A corporation that had in effect a valid federal election for the preceding year, but was a "C corporation" for purposes of this part for that preceding year, may elect to be treated as an "S corporation" for purposes of this part by making an election in accordance with the provisions of Section 1362 of the Internal Revenue Code in the form and in the manner as the Franchise Tax Board may prescribe.

(B) A corporation that did not have in effect a valid federal election for the preceding year and that makes a federal election for

the income year under Section 1362(a) of the Internal Revenue Code shall be deemed to have made an election to be treated as an "S corporation" for purposes of this part on the same date as the date of its federal election, unless that corporation elects on its return to continue to be treated as a "C corporation" for purposes of this part.

(C) A corporation to which subparagraph (B) applies, but is not required to file a return under this part, may elect to be treated as a "C corporation" for purposes of this part in a form and manner as the Franchise Tax Board may prescribe.

(D) A corporation that elects to be treated as an "S corporation" under subparagraph (A) for an income year beginning in 1988 shall, for purposes of applying the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, and Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income, be deemed to have made the election to be treated as an "S corporation" on the same date as the date of its federal election under Section 1362(a) of the Internal Revenue Code.

(4) For income years beginning on or after January 1, 1990, the following shall apply:

(A) An election under Section 1362(a) of the Internal Revenue Code, that is first effective for an income year beginning on or after January 1, 1990, shall be an election to which subdivision (e) of Section 23051.5 applies and shall be deemed to have been made for purposes of this part on the same date as the date of the federal election, unless the corporation files a California election under clause (ii) to be treated as a "C corporation" for purposes of this part.

(i) The federal "S" election shall be reported for purposes of this part in the form and manner as prescribed by the Franchise Tax Board no later than the last date allowed for filing the federal election under Section 1362(a) of the Internal Revenue Code for that income year.

(ii) The California election to be a "C corporation" may only be made by a corporation incorporated in California or qualified to do business in California and shall be made in the form and manner prescribed by the Franchise Tax Board no later than the last date allowed for filing the federal "S" election under Section 1362(a) of the Internal Revenue Code for that income year.

(B) A corporation that has in effect a valid election under Section 1362(a) of the Internal Revenue Code, but is a "C corporation" for purposes of this part, may elect to be treated as an "S corporation" by making an election in the form and manner as prescribed by the Franchise Tax Board at the time required for making an "S" election under Section 1362(a) of the Internal Revenue Code for that income year, unless prohibited from doing so by Section 1362(g) of the Internal Revenue Code, relating to election after termination.

(C) In the event a corporation which has in effect a valid election under Section 1362(a) of the Internal Revenue Code and is not doing

business in California becomes subject to this part by qualifying to do business in California, the corporation is deemed to have made an election to be treated as an "S corporation" for the income year during which the corporation qualifies to do business in California, unless the corporation files a California election in accordance with clause (ii) to be treated as a "C corporation" for that income year.

(i) The federal "S" election shall be reported for purposes of this part within two and one-half months after qualifying to do business in California in the form and manner as prescribed by the Franchise Tax Board.

(ii) The California election to be a "C corporation" shall be made in the form and manner as prescribed by the Franchise Tax Board no later than the following:

(I) For an income year beginning in 1990, two and one-half months after qualifying to do business in California.

(II) For an income year beginning on or after January 1, 1991, the last date allowed for filing a federal "S" election under Section 1362(a) of the Internal Revenue Code for that income year.

(D) (i) A corporation that is not qualified to do business in California, but is treated as an "S corporation" for federal purposes, shall be treated as an "S corporation" for purposes of this part, and its shareholders shall be treated as shareholders of an "S corporation."

(ii) If a corporation described in clause (i) elected to be treated as a "C corporation" under this section prior to its amendment by the act adding this paragraph during the 1989–90 Regular Session, that election shall be revoked for income years beginning on or after January 1, 1990. The corporation shall be treated as an "S corporation" for purposes of this part, and its shareholders shall be treated as shareholders of an "S corporation."

(E) For purposes of this section, "qualified to do business in California" or "qualifying to do business in California" means incorporating or obtaining a certificate of qualification pursuant to the Corporations Code.

(F) For purposes of this section:

(i) A timely election to be treated as a "C corporation" shall be treated as a revocation and Section 1362(g), relating to election after termination, shall apply.

(ii) An untimely election to be treated as a "C corporation" shall be null and void and shall not be applied to either the current or any subsequent income year.

(b) If a corporation subject to tax under this part elects to be treated as an "S corporation" and has one or more shareholders who are nonresidents of this state or is a trust with a nonresident fiduciary, each of the following shall be required:

(1) Each nonresident shareholder or fiduciary shall file with the return a statement of consent by that shareholder or fiduciary to be subject to the jurisdiction of the State of California to tax the

shareholder's pro rata share of the income attributable to California sources.

(2) An "S corporation" shall include in its return for each income year a list of shareholders in the form and in the manner prescribed by the Franchise Tax Board.

(3) Failure to meet the requirements of this subdivision shall be grounds for retroactive revocation by the Franchise Tax Board of the election pursuant to this chapter.

(c) Except as provided in subdivision (d), a corporation that makes a valid election to be treated as an "S corporation" for purposes of this part shall not be included in a combined report pursuant to Article 1 (commencing with Section 25101) of Chapter 17.

(d) (1) In cases where the Franchise Tax Board determines that the reported income or loss of a group of commonly owned or controlled corporations (within the meaning of Section 25105), which includes one or more corporations electing to be treated as an "S corporation" under Chapter 4.5 (commencing with Section 23800), does not clearly reflect income (or loss) of a member of that group or represents an evasion of tax by one or more members of that group, and the Franchise Tax Board determines that the comparable uncontrolled price method prescribed by regulations pursuant to Section 482 of the Internal Revenue Code cannot practically be applied, the Franchise Tax Board may, in lieu of other methods prescribed by regulations pursuant to Section 482 of the Internal Revenue Code, apply methods of unitary combination, pursuant to Article 1 (commencing with Section 25101) of Chapter 17, to properly reflect the income or loss of the members of the group.

(2) The application of the provisions of this subdivision shall not affect the election of any corporation to be treated as an "S corporation."

(e) The tax for a "C corporation" for a short year shall be determined in accordance with Chapter 13 (commencing with Section 24631), in lieu of Section 1362(e)(5) of the Internal Revenue Code.

(f) (1) A termination of a federal election pursuant to Section 1362(d) of the Internal Revenue Code, that is not an inadvertent termination pursuant to Section 1362(f) of the Internal Revenue Code, shall simultaneously terminate the "S corporation" election for purposes of Part 10 (commencing with Section 17001) and this part.

(2) A federal termination by revocation shall be effective for purposes of this part and shall be reported to the Franchise Tax Board in the form and manner prescribed by the Franchise Tax Board no later than the last date allowed for filing federal termination for that year under Section 1362(d) of the Internal Revenue Code.

(3) A corporation which is qualified to do business in California and has in effect a valid "S" election under Section 1362(a) of the Internal Revenue Code, may revoke its "S" election for purposes of

this part without revoking its federal election. The revocation for purposes of this part shall be made by providing a written notification to the Franchise Tax Board in the form and manner prescribed by the Franchise Tax Board which includes the California corporation number and meets the requirements of Section 1362(d)(1) of the Internal Revenue Code.

(g) For income years beginning on or after January 1, 1990, if a corporation, which has in effect a valid "S" election under Section 1362(a) of the Internal Revenue Code, fails to make a "C corporation" election under clause (ii) of subparagraphs (A) and (C) of paragraph (4) of subdivision (a) or to terminate by revocation under paragraph (3) of subdivision (f), the corporation shall be treated as an "S corporation" pursuant to subparagraph (A) of paragraph (4) of subdivision (a).

SEC. 47. Section 23804 of the Revenue and Taxation Code is repealed.

SEC. 48. Section 24327 is added to the Revenue and Taxation Code, to read:

24327. Section 892 of the Internal Revenue Code, relating to the tax treatment of foreign governments and international organizations, shall apply.

SEC. 49. Section 24347.5 of the Revenue and Taxation Code is amended to read:

24347.5. (a) An excess disaster loss, as defined in subdivision (c), shall be carried to other income years as provided in subdivision (b), with respect to losses resulting from any of the following disasters:

(1) Forest fire or any other related casualty occurring in 1985 in California.

(2) Storm, flooding, or any other related casualty occurring in 1986 in California.

(3) Any loss sustained during 1987 as a result of a forest fire or any other related casualty.

(4) Earthquake, aftershock, or any other related casualty occurring in October 1987 in California.

(5) Earthquake, aftershock, or any other related casualty occurring in October 1989 in California.

(6) Any loss sustained during 1990 as a result of fire or any other related casualty in California.

(7) Any loss sustained as a result of the Oakland/Berkeley Fire of 1991, or any other related casualty.

(8) Any loss sustained as a result of storm, flooding, or any other related casualty occurring in February 1992 in California.

(9) Earthquake, aftershock, or any other related casualty occurring in April 1992 in the County of Humboldt.

(10) Riots, arson, or any other related casualty occurring in April or May 1992 in California.

(11) Any loss sustained as a result of the earthquakes or any other related casualty that occurred in the County of San Bernardino in June and July of 1992.

(12) Any loss sustained as a result of the Fountain Fire that occurred in the County of Shasta, or as a result of either of the fires in the Counties of Calaveras and Trinity that occurred in August 1992, or any other related casualty.

(13) Any loss sustained as a result of storm, flooding, or any other related casualty that occurred in the Counties of Alpine, Contra Costa, Fresno, Humboldt, Imperial, Lassen, Los Angeles, Madera, Mendocino, Modoc, Monterey, Napa, Orange, Plumas, Riverside, San Bernardino, San Diego, Santa Barbara, Sierra, Siskiyou, Sonoma, Tehama, Trinity, and Tulare, and the City of Fillmore in January 1993.

(14) Any loss sustained as a result of a fire that occurred in the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, during October or November of 1993, or any other related casualty.

(15) Any loss sustained as a result of the earthquake, aftershocks, or any other related casualty that occurred in the Counties of Los Angeles, Orange, and Ventura on or after January 17, 1994.

(16) Any loss sustained as a result of a fire that occurred in the County of San Luis Obispo during August of 1994, or any other related casualty.

(17) Any loss sustained as a result of the storms or flooding occurring in 1995, or any other related casualty, sustained in any county of this state subject to a disaster declaration with respect to the storms and flooding.

(b) (1) In the case of any loss allowed under Section 165 of the Internal Revenue Code, relating to losses, any excess disaster loss shall be carried forward to each of the five income years following the income year for which the loss is claimed. However, if there is any excess disaster loss remaining after the five-year period, then 50 percent of that excess disaster loss shall be carried forward to each of the next 10 income years.

(2) The entire amount of any excess disaster loss as defined in subdivision (c) shall be carried to the earliest of the income years to which, by reason of subdivision (b), the loss may be carried. The portion of the loss which shall be carried to each of the other income years shall be the excess, if any, of the amount of excess disaster loss over the sum of the net income for each of the prior income years to which that excess disaster loss is carried.

(c) "Excess disaster loss" means a disaster loss computed pursuant to Section 165 of the Internal Revenue Code, which exceeds the net income of the year of loss or, if the election under Section 165(i) of the Internal Revenue Code is made, the net income of the year preceding the loss.

(d) For purposes of this section, "disaster losses" are losses that either qualified for treatment under Section 165(i) of the Internal Revenue Code, or were sustained in any county or city in this state which is proclaimed by the Governor to be in a state of disaster.

(e) Any corporation subject to the provisions of Section 25101 or 25101.15 that has disaster losses pursuant to this section, shall determine the excess disaster loss to be carried to other income years under the principles specified in Section 25108 relating to net operating losses.

(f) Losses allowable under this section may not be taken into account in computing a net operating loss deduction under Section 172 of the Internal Revenue Code.

(g) For losses described in paragraphs (15), (16), and (17) of subdivision (a), the election under Section 165(i) of the Internal Revenue Code may be made on a return or amended return filed on or before the due date of the return (determined with regard to extension) for the income year in which the disaster occurred.

SEC. 50. Section 24347.51 of the Revenue and Taxation Code is repealed.

SEC. 51. Section 24672 of the Revenue and Taxation Code is amended to read:

24672. (a) Where a taxpayer reports income arising from the sale or other disposition of property as provided in this article, and the entire income therefrom has not been reported prior to the year that the taxpayer ceases to be subject to the tax imposed by Chapter 2 (commencing with Section 23101) or Chapter 3 (commencing with Section 23501), the unreported income shall be included in the measure of the tax for the last year in which the taxpayer is subject to the tax imposed by Chapter 2 (commencing with Section 23101) or Chapter 3 (commencing with Section 23501).

(b) Subdivision (a) shall not be applicable where the installment obligation is transferred pursuant to a reorganization (as defined in Section 368(a) of the Internal Revenue Code) to another taxpayer that is a party to the reorganization (as defined in Section 368(b) of the Internal Revenue Code) subject to tax under the same chapter as the transferor, or is transferred to any exempt nonprofit cemetery corporation as defined in Section 23701c of this code.

(c) The determination of any deficiency resulting from this section shall be made under Article 3 (commencing with Section 19032) of Chapter 4 of Part 10.2, but the period of limitation under that article, and the accrual of interest under Article 6 (commencing with Section 19101) of Chapter 4 of Part 10.2, shall commence on the date the taxpayer ceases to be subject to the tax imposed by Chapter 2 (commencing with Section 23101) or Chapter 3 (commencing with Section 23501).

SEC. 52. Section 25128 of the Revenue and Taxation Code is amended to read:

25128. (a) Notwithstanding Section 38006, all business income shall be apportioned to this state by multiplying the business income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor, and the denominator of which is four, except as provided in subdivision (b) or (c).

(b) If an apportioning trade or business derives more than 50 percent of its "gross business receipts" from conducting one or more qualified business activities, all business income of the apportioning trade or business shall be apportioned to this state by multiplying business income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

(c) For purposes of this section, a "qualified business activity" means the following:

(1) An agricultural business activity.

(2) An extractive business activity.

(3) A savings and loan activity.

(4) A banking or financial business activity.

(d) For purposes of this section:

(1) "Gross business receipts" means gross receipts described in subdivision (e) of Section 25120 (other than gross receipts from sales or other transactions within an apportioning trade or business between members of a group of corporations whose income and apportionment factors are required to be included in a combined report under Section 25101, limited, if applicable, by Section 25110), whether or not the receipts are excluded from the sales factor by operation of Section 25137.

(2) "Agricultural business activity" means activities relating to any stock, dairy, poultry, fruit, furbearing animal, or truck farm, plantation, ranch, nursery, or range. "Agricultural business activity" also includes activities relating to cultivating the soil or raising or harvesting any agricultural or horticultural commodity, including, but not limited to, the raising, shearing, feeding, caring for, training, or management of animals on a farm as well as the handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated.

(3) "Extractive business activity" means activities relating to the production, refining, or processing of oil, natural gas, or mineral ore.

(4) "Savings and loan activity" means any activities performed by savings and loan associations or savings banks which have been chartered by federal or state law.

(5) "Banking or financial business activity" means activities attributable to dealings in money or moneyed capital in substantial competition with the business of national banks.

(6) "Apportioning trade or business" means a distinct trade or business whose business income is required to be apportioned under

Sections 25101 and 25120, limited, if applicable, by Section 25110, using the same denominator for each of the applicable payroll, property, and sales factors.

(7) Paragraph (4) of subdivision (c) shall apply only if the Franchise Tax Board adopts the Proposed Multistate Tax Commission Formula for the Uniform Apportionment of Net Income from Financial Institutions, or its substantial equivalent, and shall become operative upon the same operative date as the adopted formula.

(8) In any case where the income and apportionment factors of two or more affiliated banks, savings associations, or corporations are required to be included in a combined report under Section 25101, limited, if applicable, by Section 25110, both of the following shall apply:

(A) The application of the more than 50 percent test of subdivision (b) shall be made with respect to the "gross business receipts" of the entire apportioning trade or business of the group.

(B) The entire business income of the group shall be apportioned in accordance with either subdivision (a) or (b), as applicable.

SEC. 53. The amendments made by this act to Sections 19602 and 19604 of, and the addition of Section 19607 to, the Revenue and Taxation Code, are not intended to change and shall not require the change of any existing practice or procedure with respect to the deposit of funds relating to partnerships and limited liability companies that are currently and shall continue to be deposited into the Bank and Corporation Tax Fund.

SEC. 54. The Legislature finds and declares that the amendments to Section 25128 of the Revenue and Taxation Code made by Section 52 of this act are declaratory of existing law.

SEC. 55. The Legislature finds and declares that the amendments to the Revenue and Taxation Code made by Sections 5 to 12, inclusive, and 38 to 45, inclusive, of this act are consistent with the intent of the Enterprise Zone Act, the Employment and Economic Incentive Act, the Los Angeles Revitalization Zone Act, and the Local Military Base Recovery Area Act, and as such shall apply from the original effective dates of those acts.

SEC. 56. Except as otherwise provided, the provisions of this act shall be applied to taxable years beginning on or after January 1, 1997.

CHAPTER 953

An act to repeal Chapter 12.9 (commencing with Section 7080) of, and to repeal and add Chapter 12.8 (commencing with Section 7070) of, Division 7 of Title 1 of the Government Code, and to amend Sections 17039, 17276.1, 17276.2, 23036, 24416.1, and 24416.2 of, to add Sections 17053.70, 17053.73, 17053.75, 17235, 17267, 23612.2, 23622.5,

24356.7, and 24384.5 to, and to repeal Sections 17052.13, 17053.8, 17053.9, 17053.11, 17231, 17252.5, 17265, 23612, 23622, 23623, 24356.2, 24356.3, and 24384 of, the Revenue and Taxation Code, relating to economic development.

[Approved by Governor September 26, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code is repealed.

SEC. 2. Chapter 12.8 (commencing with Section 7070) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 12.8. ENTERPRISE ZONE ACT

7070. This chapter shall be known and may be cited as the Enterprise Zone Act.

7071. The Legislature finds and declares as follows:

(a) The health, safety, and welfare of the people of California depend upon the development, stability, and expansion of private business, industry, and commerce, and there are certain areas within the state that are economically depressed due to a lack of investment in the private sector. Therefore, it is declared to be the purpose of this chapter to stimulate business and industrial growth in the depressed areas of the state by relaxing regulatory controls that impede private investment.

(b) It is in the economic interest of the state to have one strong, combined, and business-friendly incentive program to help attract business and industry to the state, to help retain and expand existing state business and industry, and to create increased job opportunities for all Californians.

(c) No enterprise zone shall be designated in which any boundary thereof is drawn in a manner so as to include larger stable businesses or heavily residential areas to the detriment of areas that are truly economically depressed.

(d) Nothing in this chapter shall be construed to infringe upon regulations relating to the civil rights, equal employment rights, equal opportunity rights, or fair housing rights of any person.

7072. For purposes of this chapter, the following definitions shall apply:

(a) "Agency" means the Trade and Commerce Agency.

(b) "Date of original designation" means the earlier of the following:

(1) The date the eligible area receives designation as an enterprise zone by the agency pursuant to this chapter.

(2) In the case of an enterprise zone deemed designated pursuant to subdivision (e) of Section 7073, the date the enterprise zone or program area received original designation by the agency pursuant to Chapter 12.8 (commencing with Section 7070) or Chapter 12.9 (commencing with Section 7080), as those chapters read prior to January 1, 1997.

(c) "Eligible area" means either of the following:

(1) An area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070), as it read prior to January 1, 1997, or as a targeted economic development area, neighborhood development area, or program area pursuant to Chapter 12.9 (commencing with Section 7080), as it read prior to January 1, 1997.

(2) A geographic area that, based upon the determination of the agency, fulfills at least one of the following:

(A) The proposed geographic area meets the Urban Development Action Grant criteria of the United States Department of Housing and Urban Development.

(B) The area within the proposed zone has experienced plant closures within the past two years affecting more than 100 workers.

(C) The city or county has submitted material to the agency for a finding that the proposed geographic area meets criteria of economic distress related to those used in determining eligibility under the Urban Development Action Grant Program and is therefore an eligible area.

(D) The area within the proposed zone has a history of gang-related activity, whether or not crimes of violence have been committed.

(d) "Enterprise zone" means any area within a city, county, or city and county that is designated as such by the agency in accordance with the provisions of Section 7073.

(e) "Governing body" means a county board of supervisors or a city council, as appropriate.

(f) "High technology industries" include, but are not limited to, the computer, biological engineering, electronics, and telecommunications industries.

(g) "Resident," unless otherwise defined, means a person whose principal place of residence is within a targeted employment area.

(h) "Targeted employment area" means an area within a city, county, or city and county that is composed solely of those census tracts designated by the United States Department of Housing and Urban Development as having at least 51 percent of its residents of low- or moderate-income levels, using the most recent United States Department of Census data available at the time of application to determine that eligibility. The purpose of a "targeted employment area" is to encourage businesses in an enterprise zone to hire eligible residents of certain geographic areas within a city, county, or city and county. A targeted employment area may be, but is not required to be, the same as all or part of an enterprise zone. A targeted

employment area's boundaries need not be contiguous. A targeted employment area does not need to encompass each eligible census tract within a city, county, or city and county. The governing body of each city, county or city and county that has jurisdiction of the enterprise zone shall identify those census tracts whose residents are in the most need of this employment targeting. Only those census tracts within the jurisdiction of the city, county, or city and county that has jurisdiction of the enterprise zone may be included in a targeted employment area.

At least a part of each eligible census tract within a targeted employment area shall be within the territorial jurisdiction of the city, county, or city and county that has jurisdiction for an enterprise zone. If an eligible census tract encompasses the territorial jurisdiction of two or more local governmental entities, all of those entities shall be a party to the designation of a targeted employment area. However, any one or more of those entities, by resolution or ordinance, may specify that it shall not participate in the application as an applicant, but shall agree to complete all actions stated within the application that apply to its jurisdiction, if the area is designated.

Each local governmental entity of each city, county, or city and county that has jurisdiction of an enterprise zone shall approve, by resolution or ordinance, the boundaries of its targeted employment area, regardless of whether a census tract within the proposed targeted employment area is outside the jurisdiction of the local governmental entity.

7073. (a) Except as provided in subdivision (e), any city, county, or city and county with an eligible area within its jurisdiction may complete a preliminary application for designation as an enterprise zone. The applying entity shall establish definitive boundaries for the proposed enterprise zone and the targeted employment area.

(b) (1) In designating enterprise zones, the agency shall select from the applications submitted those proposed enterprise zones that, upon a comparison of all of the applications submitted, indicate that they propose the most effective, innovative, and comprehensive regulatory, tax, program, and other incentives in attracting private sector investment in the zone proposed.

(2) For purposes of this subdivision, regulatory incentives include, but are not limited to, all of the following:

(A) The suspension or relaxation of locally originated or modified building codes, zoning laws, general development plans, or rent controls.

(B) The elimination or reduction of fees for applications, permits, and local government services.

(C) The establishment of a streamlined permit process.

(3) For purposes of this subdivision, tax incentives include, but are not limited to, the elimination or reduction of construction taxes or business license taxes.

(4) For the purposes of this subdivision, program and other incentives may include, but are not limited to, all of the following:

(A) The provision or expansion of infrastructure.

(B) The targeting of federal block grant moneys, including small cities, education, and health and welfare block grants.

(C) The targeting of economic development grants and loan moneys, including grant and loan moneys provided by the federal Urban Development Action Grant program and the federal Economic Development Administration.

(D) The targeting of state and federal job disadvantaged and vocational education grant moneys, including moneys provided by the federal Job Training Partnership Act of 1982 (P.L. 97-300).

(E) The targeting of federal or state transportation grant moneys.

(F) The targeting of federal or state low-income housing and rental assistance moneys.

(G) The use of tax allocation bonds, special assessment bonds, bonds under the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2), industrial development bonds, revenue bonds, private activity bonds, housing bonds, bonds issued pursuant to the Marks-Ross Local Bond Pooling Act of 1985 Article 4 (commencing with Section 6584) of Chapter 5), certificates of participation, hospital bonds, redevelopment bonds, and school bonds, and including all special provisions provided for under federal tax law for enterprise community or empowerment zone bonds.

(5) In the process of designating new enterprise zones, the agency shall take into consideration the location of existing zones and make every effort to locate new zones in a manner that will not adversely affect any existing zones.

(6) In designating new enterprise zones, the agency shall include in its criteria the fact that jurisdictions have been declared disaster areas by the President of the United States within the last seven years.

(c) In evaluating applications for designation, the agency shall ensure that applications are not disqualified solely because of technical deficiencies, and shall provide applicants with an opportunity to correct the deficiencies. Applications shall be disqualified if the deficiencies are not corrected within two weeks.

(d) A designation made by the agency shall be binding for a period of 15 years from the date of the original designation.

(e) (1) Notwithstanding any other provision of law, any area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or as a targeted economic development area, neighborhood economic development area, or program area pursuant to Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997, or any program area or part of a program area deemed designated as an enterprise zone pursuant to Section 7085.5 as it read prior to January 1, 1997, shall be deemed to be designated as an

enterprise zone pursuant to this chapter. The effective date of designation of the enterprise zone shall be that of the original designation of the enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or of the program area pursuant to Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997, and in no event shall the total designation period exceed 15 years.

(2) Notwithstanding any other provision of law, any enterprise zone authorized, but not designated, pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, shall be allowed to complete the application process started pursuant to that chapter, and to receive final designation as an enterprise zone pursuant to this chapter.

(3) Notwithstanding any other provision of law, any expansion of a designated enterprise zone or program area authorized pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997, shall be deemed to be authorized as an expansion for a designated enterprise zone pursuant to this chapter.

(4) No part of this chapter shall be construed to require a new application for designation by an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or a targeted economic development area, neighborhood economic development area, or program area designated pursuant to Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997.

(f) No more than 39 enterprise zones shall be designated pursuant to this chapter, including those deemed designated pursuant to subdivision (e).

7074. (a) In the case of any enterprise zone, including an enterprise zone formerly designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or as a program area pursuant to Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997, a city or county, or city and county may propose that the enterprise zone be expanded by 15 percent to include definitive boundaries that are contiguous to the enterprise zone. The agency may approve that expansion based upon the criterion specified in subdivision (b) of Section 7073.

(b) An enterprise zone that is located in the unincorporated area of a county may propose to use eligible expansion allotment to expand into an adjacent city or cities pursuant to this section if, in addition to approving the expansion based on the criterion described in subdivision (b) of Section 7073, the agency finds that all of the following conditions exist:

(1) Each of the cities' governing bodies approves the expansion by adoption of an ordinance or resolution.

(2) Land included within the proposed expansion is zoned for industrial or commercial use.

(3) Basic infrastructure, including, but not limited to, gas, water, electrical service, and sewer systems, is available to the area that would be included in the expansion.

(c) In no event shall an enterprise zone be permitted to expand more than 15 percent in size from its size on the date of original designation, including any expansion authorized pursuant to Chapter 12.8 (commencing with Section 7070), or Chapter 12.9 (commencing with Section 7080), as those chapters read prior to January 1, 1997.

7075. (a) Upon filing a preliminary application, the applicant, as lead agency, shall submit an initial study and a notice of preparation to the agency, the state clearinghouse, and all responsible agencies.

(b) Only a city, county, or city and county chosen by the agency as a final applicant shall prepare, or cause to be prepared, a draft environmental impact report, which shall set forth the potential environmental impacts of any and all development planned within the enterprise zone. The draft environmental impact report shall be submitted to the agency with the final application.

(c) Prior to final designation by the agency, the applicant shall complete and certify the final environmental impact report.

(d) The environmental impact report shall comply with the information disclosure provisions and the substantive requirements of Division 13 (commencing with Section 21000) of the Public Resources Code.

(e) No further environmental impact report shall be required if the effects of the project were any of the following:

(1) Mitigated or avoided as a result of the environmental impact report prepared for the area.

(2) Examined at a sufficient level of detail in the environmental impact report for the area to enable those effects to be mitigated or avoided by specific site revisions, the imposition of conditions, or other means in connection with the designation of the area.

(3) Identified in the final environmental impact report and the lead agency made written findings that specific economic, social, or other considerations made the mitigation measures or project alternatives identified in the final environmental impact report unfeasible.

7076. (a) (1) The agency shall provide technical assistance to the enterprise zones designated pursuant to this chapter with respect to all of the following activities:

(A) Furnish limited onsite assistance to the enterprise zones when appropriate.

(B) Ensure that the locality has developed a method to make residents, businesses, and neighborhood organizations aware of the opportunities to participate in the program.

(C) Help the locality develop a marketing program for the enterprise zone.

(D) Coordinate activities of other state agencies regarding the enterprise zones.

(E) Monitor the progress of the program.

(F) Help businesses to participate in the program.

(2) Notwithstanding existing law, the provision of services in subparagraphs (A) to (F), inclusive, shall be a high priority of the agency.

(3) The agency may, at its discretion, undertake other activities in providing management and technical assistance for successful implementation of this chapter.

(b) The applicant shall be required to begin implementation of the enterprise zone plan contained in the final application within six months after notification of final designation or the enterprise zone shall lose its designation.

7077. Notwithstanding any other provision of law, state and local agencies may lease land to businesses in a designated enterprise zone at a price below fair market value, provided that it serves a public purpose to lease at below fair market value.

7078. (a) The limitations in Section 91503 on the allowable uses of proceeds of bonds issued pursuant to Title 10 (commencing with Section 91500) shall not apply to bonds issued on behalf of any enterprise zone or any portion of that zone.

(b) (1) Notwithstanding the bonding limitation specified in Section 91573, the California Industrial Development Financing Advisory Commission shall authorize an annual maximum amount of qualifying bonds of seventy-five million dollars ($75,000,000). This annual maximum bonding authority is exclusive of, and in addition to, the maximum bonding authority specified in Section 91573.

(2) Notwithstanding Section 91503, the bonding authorization contained in paragraph (1) shall be used for providing funds to businesses within designated enterprise zones. However, any portion of the annual maximum amount specified in paragraph (1) that in any year is not used for the purpose specified in this paragraph may be used in the next succeeding year for the purpose of any program administered by the California Industrial Development Financing Advisory Commission.

7079. Notwithstanding any other provision of law, the Office of Small Business shall establish regulations for loans and loan guarantees administered by the office that give high priority to businesses in a designated enterprise zone.

7080. Notwithstanding Sections 32646 and 32647 of the Financial Code, a high priority in ranking loan applications by the State Assistance Fund for Energy, California Business and Development Corporation, shall be given to businesses in a designated enterprise zone, that are purchasing or providing alternative energy systems.

7081. Notwithstanding any other provision of state law, and to the extent permitted by federal law, the Employment Development Department and the State Department of Education shall give high priority to the training of unemployed individuals who reside in a targeted employment area or a designated enterprise zone. The agency may assist localities in designating local business, labor, and education consortia to broker activities between the employment community and educational and training institutions. Any available discretionary funds may be used to assist the creation of those consortia.

7082. Notwithstanding any other provision of law, the Office of Criminal Justice Planning shall give high priority to designated enterprise zones in the allocation of its program resources.

7083. Any designation of an enterprise zone in accordance with the provisions of this chapter shall be deemed appropriate state designation of an enterprise zone for purposes of qualifying that zone as an enterprise community or empowerment zone under federal law.

7084. (a) Whenever the state prepares an invitation for bid for a contract for goods in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference to California-based companies who certify under penalty of perjury that no less than 50 percent of the labor required to perform the contract shall be accomplished at a worksite or worksites located in an enterprise zone.

(b) In evaluating proposals for contracts for services in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference on the price submitted by California-based companies who certify under penalty of perjury that they shall perform the contract at a worksite or worksites located in an enterprise zone.

(c) Where a bidder complies with subdivision (a) or (b), the state shall award a 1-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 5 to 9 percent of its work force during the period of contract performance; a 2-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 10 to 14 percent of its work force during the period of contract performance; a 3-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 15 to 19 percent of its work force during the period of contract performance; and a 4-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone

eligible employees equal to 20 or more percent of its work force during the period of contract performance.

(d) The maximum preference a bidder may be awarded pursuant to this chapter and any other provision of law shall be 15 percent. However, in no case shall the maximum preference cost under this section exceed fifty thousand dollars ($50,000) for any bid, nor shall the combined cost of preferences granted pursuant to this section and any other provision of law exceed one hundred thousand dollars ($100,000). In those cases where the 15-percent cumulated preference cost would exceed the one hundred thousand dollar ($100,000) maximum preference cost limit, the one hundred thousand dollar ($100,000) maximum preference cost limit shall apply.

(e) Notwithstanding any other provision of this section, small business bidders qualified in accordance with Section 14838 shall have precedence over nonsmall business bidders in that the application of any bidder preference for which nonsmall business bidders may be eligible, including the preference contained in this section, shall not result in the denial of the award to a small business bidder. This subdivision shall apply to those cases where the small business bidder is the lowest responsible bidder, as well as to those cases where the small business bidder is eligible for award as the result of application of the 5-percent small business bidder preference.

(f) All state contracts issued to bidders who are awarded preferences under this section shall contain conditions to ensure that the contractor performs the contract at the location specified and meets any commitment to employ persons with high risk of unemployment.

(g) (1) A business that requests and is given the preference provided for in subdivision (a) or (b) by reason of having furnished a false certification, and that by reason of this certification has been awarded a contract to which it would not otherwise have been entitled, shall be subject to all of the following:

(A) Pay to the state any difference between the contract amount and what the state's cost would have been if the contract had been properly awarded.

(B) In addition to the amount specified in subparagraph (A), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.

(C) Be ineligible to transact any business with the state for a period of not less than three months and not more than 24 months.

(2) Prior to the imposition of any sanction under this subdivision, the business shall be entitled to a public hearing and to five days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

(h) In each instance in this section an enterprise zone shall also mean any enterprise zone or program area previously authorized under any other provision of state law.

(i) As used in this section, "enterprise zone eligible employees" means employees who meet any of the requirements of clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b) of Section 17053.73, or clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b) of Section 23622.5 of the Revenue and Taxation Code.

7085. The agency shall submit a report to the Legislature every five years, beginning January 1, 1998, that evaluates the effect of the program on employment, investment, and incomes, and on state and local tax revenues in designated enterprise zones. The report shall include an agency review of the progress and effectiveness of each enterprise zone. The Franchise Tax Board shall make available to the agency and the Legislature aggregate information on the dollar value of enterprise zone tax credits that are claimed each year by businesses.

7086. (a) The agency shall design, develop, and make available the applications and the criteria for selection of enterprise zones pursuant to Section 7073, and shall adopt all regulations necessary to carry out this chapter.

(b) The agency shall adopt regulations concerning the designation procedures and application process as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2. The adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare, notwithstanding subdivision (e) of Section 11346.1. Notwithstanding subdivision (e) of Section 11346.1, the regulations shall not remain in effect more than 180 days unless the agency complies with all provisions of Chapter 3.5 as required by subdivision (e) of Section 11346.1.

(c) The Department of General Services, with the cooperation of the Employment Development Department, the Department of Industrial Relations, and the Office of Planning and Research, and under the direction of the State and Consumer Services Agency, shall adopt appropriate rules, regulations, and guidelines to implement Section 7084.

SEC. 3. Chapter 12.9 (commencing with Section 7080) of Division 7 of Title 1 of the Government Code is repealed.

SEC. 4. Section 17039 of the Revenue and Taxation Code is amended to read:

17039. (a) Notwithstanding any provision in this part to the contrary, for the purposes of computing tax credits, the term "net tax" means the tax imposed under either Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to lump-sum distributions) less the credits allowed by Section 17054 (relating to personal exemption credits) and any amount imposed under

paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560. Notwithstanding the preceding sentence, the "net tax" shall not be less than the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions), if any. Credits shall be allowed against "net tax" in the following order:

(1) Credits that do not contain carryover or refundable provisions, except those described in paragraphs (4) and (5).

(2) Credits that contain carryover provisions but do not contain refundable provisions.

(3) Credits that contain both carryover and refundable provisions.

(4) The minimum tax credit allowed by Section 17063 (relating to the alternative minimum tax).

(5) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(6) Credits that contain refundable provisions but do not contain carryover provisions.

The order within each paragraph shall be determined by the Franchise Tax Board.

(b) Notwithstanding the provisions of Sections 17053.5 (relating to the renter's credit), 17061 (relating to refunds pursuant to the Unemployment Insurance Code), and 19002 (relating to tax withholding), the credits provided in those sections shall be allowed in the order provided in paragraph (6) of subdivision (a).

(c) (1) Notwithstanding any other provision of this part, no tax credit shall reduce the tax imposed under Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions) below the tentative minimum tax, as defined by Section 17062, except the following credits, but only after allowance of the credit allowed by Section 17063—

(A) The credit allowed by former Section 17052.4 (relating to solar energy).

(B) The credit allowed by former Section 17052.5 (relating to solar energy).

(C) The credit allowed by Section 17052.5 (relating to solar energy).

(D) The credit allowed by Section 17052.12 (relating to research expenses).

(E) The credit allowed by former Section 17052.13 (relating to sales and use tax credit).

(F) The credit allowed by Section 17052.15 (relating to Los Angeles Revitalization Zone sales tax credit).

(G) The credit allowed by Section 17053.5 (relating to the renter's credit).

(H) The credit allowed by former Section 17053.8 (relating to enterprise zone hiring credit).

(I) The credit allowed by Section 17053.10 (relating to Los Angeles Revitalization Zone hiring credit).

(J) The credit allowed by former Section 17053.11 (relating to program area hiring credit).

(K) For each taxable year beginning on or after January 1, 1994, the credit allowed by Section 17053.17 (relating to Los Angeles Revitalization Zone hiring credit).

(L) The credit allowed by Section 17053.70 (relating to enterprise zone sales or use tax credit).

(M) The credit allowed by Section 17053.73 (relating to enterprise zone hiring credit).

(N) The credit allowed by Section 17053.49 (relating to qualified property).

(O) The credit allowed by Section 17057 (relating to clinical testing expenses).

(P) The credit allowed by Section 17058 (relating to low-income housing).

(Q) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(R) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(S) The credit allowed by Section 19002 (relating to tax withholding).

(2) Any credit which is partially or totally denied under paragraph (1) shall be allowed to be carried over and applied to the net tax in succeeding taxable years, if the provisions relating to that credit include a provision to allow a carryover when that credit exceeds the net tax.

(d) Unless otherwise provided, any remaining carryover of a credit allowed by a section that has been repealed or made inoperative shall continue to be allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(e) (1) Unless otherwise provided, if two or more taxpayers (other than husband and wife) share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred.

(2) In the case of a partnership, the credit may be divided among the partners pursuant to a written partnership agreement in accordance with Section 704 of the Internal Revenue Code, relating to partner's distributive share.

(3) In the case of a husband and wife who file separate returns, the credit may be taken by either or equally divided between them.

SEC. 4.5. Section 17039 of the Revenue and Taxation Code is amended to read:

17039. (a) Notwithstanding any provision in this part to the contrary, for the purposes of computing tax credits, the term "net tax" means the tax imposed under either Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to lump-sum

distributions) less the credits allowed by Section 17054 (relating to personal exemption credits) and any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560. Notwithstanding the preceding sentence, the "net tax" shall not be less than the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions), if any. Credits shall be allowed against "net tax" in the following order:

(1) Credits that do not contain carryover or refundable provisions, except those described in paragraphs (4) and (5).

(2) Credits that contain carryover provisions but do not contain refundable provisions.

(3) Credits that contain both carryover and refundable provisions.

(4) The minimum tax credit allowed by Section 17063 (relating to the alternative minimum tax).

(5) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(6) Credits that contain refundable provisions but do not contain carryover provisions.

The order within each paragraph shall be determined by the Franchise Tax Board.

(b) Notwithstanding the provisions of Sections 17053.5 (relating to the renter's credit), 17061 (relating to refunds pursuant to the Unemployment Insurance Code), and 19002 (relating to tax withholding), the credits provided in those sections shall be allowed in the order provided in paragraph (6) of subdivision (a).

(c) (1) Notwithstanding any other provision of this part, no tax credit shall reduce the tax imposed under Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions) below the tentative minimum tax, as defined by Section 17062, except the following credits, but only after allowance of the credit allowed by Section 17063:

(A) The credit allowed by former Section 17052.4 (relating to solar energy).

(B) The credit allowed by former Section 17052.5 (relating to solar energy).

(C) The credit allowed by Section 17052.5 (relating to solar energy).

(D) The credit allowed by Section 17052.12 (relating to research expenses).

(E) The credit allowed by former Section 17052.13 (relating to sales and use tax credit).

(F) The credit allowed by Section 17052.15 (relating to Los Angeles Revitalization Zone sales tax credit).

(G) The credit allowed by Section 17053.5 (relating to the renter's credit).

(H) The credit allowed by former Section 17053.8 (relating to enterprise zone hiring credit).

(I) The credit allowed by Section 17053.10 (relating to Los Angeles Revitalization Zone hiring credit).

(J) The credit allowed by former Section 17053.11 (relating to program area hiring credit).

(K) For each taxable year beginning on or after January 1, 1994, the credit allowed by Section 17053.17 (relating to Los Angeles Revitalization Zone hiring credit).

(L) The credit allowed by Section 17053.49 (relating to qualified property).

(M) The credit allowed by Section 17053.70 (relating to enterprise zone sales or use tax credit).

(N) The credit allowed by Section 17053.73 (relating to enterprise zone hiring credit).

(O) The credit allowed by Section 17057 (relating to clinical testing expenses).

(P) The credit allowed by Section 17058 (relating to low-income housing).

(Q) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(R) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(S) The credit allowed by Section 19002 (relating to tax withholding).

(2) Any credit that is partially or totally denied under paragraph (1) shall be allowed to be carried over and applied to the net tax in succeeding taxable years, if the provisions relating to that credit include a provision to allow a carryover when that credit exceeds the net tax.

(d) Unless otherwise provided, any remaining carryover of a credit allowed by a section that has been repealed or made inoperative shall continue to be allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(e) (1) Unless otherwise provided, if two or more taxpayers (other than husband and wife) share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred.

(2) In the case of a partnership, the credit shall be allocated among the partners pursuant to a written partnership agreement in accordance with Section 704 of the Internal Revenue Code, relating to partner's distributive share.

(3) In the case of a husband and wife who file separate returns, the credit may be taken by either or equally divided between them.

(f) Unless otherwise provided, in the case of a partnership, any credit allowed by this part shall be computed at the partnership level, and any limitation on the expenses qualifying for the credit or

limitation upon the amount of the credit shall be applied to the partnership and to each partner.

SEC. 5. Section 17052.13 of the Revenue and Taxation Code is repealed.

SEC. 6. Section 17053.8 of the Revenue and Taxation Code is repealed.

SEC. 7. Section 17053.9 of the Revenue and Taxation Code is repealed.

SEC. 8. Section 17053.11 of the Revenue and Taxation Code is repealed.

SEC. 9. Section 17053.70 is added to the Revenue and Taxation Code, to read:

17053.70. (a) There shall be allowed as a credit against the "net tax" (as defined in Section 17039) for the taxable year an amount equal to the sales or use tax paid or incurred during the taxable year by the taxpayer in connection with the taxpayer's purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means a person or entity engaged in a trade or business within an enterprise zone.

(2) "Qualified property" means:

(A) Any of the following:

(i) Machinery and machinery parts used for fabricating, processing, assembling, and manufacturing.

(ii) Machinery and machinery parts used for the production of renewable energy resources.

(iii) Machinery and machinery parts used for either of the following:

(I) Air pollution control mechanisms.

(II) Water pollution control mechanisms.

(B) The total cost of qualified property purchased and placed in service in any taxable year that may be taken into account by any taxpayer for purposes of claiming this credit shall not exceed one million dollars ($1,000,000).

(C) The qualified property is used by the taxpayer exclusively in an enterprise zone.

(D) The qualified property is purchased and placed in service before the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(3) "Enterprise zone" means the area designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(c) If the taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided by this section shall be allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(d) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the

credit that exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding taxable years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the qualified property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the taxpayer's purchase of qualified property.

(f) (1) The amount of the credit otherwise allowed under this section and Section 17053.73, including any credit carryover from prior years, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section by substituting "the enterprise zone" for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (d).

SEC. 10. Section 17053.73 is added to the Revenue and Taxation Code, to read:

17053.73. (a) There shall be allowed a credit against the "net tax" (as defined in Section 17039) to a taxpayer who employs a qualified employee in an enterprise zone during the taxable year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the taxpayer during the taxable year to qualified employees that does not exceed 150 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the employee commences employment with the taxpayer.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(4) (A) "Qualified employee" means an individual who meets all of the following requirements:

(i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.) and is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act.

(II) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(III) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was eligible as determined by the Employment Development Department under the federal Targeted Jobs Tax Credit Program as long as that program is in effect.

(IV) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a resident of a targeted employment area, as defined in Section 7072 of the Government Code.

(V) An employee who qualified the taxpayer for the enterprise zone hiring credit under former Section 17058.3 or the program area hiring credit under former Section 17053.11.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible under the federal Targeted Jobs Tax Credit Program.

(5) "Taxpayer" means a person or entity engaged in a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of the Government Code.

(c) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification which provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b).

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(d) (1) For purposes of this section:

(A) All employees of trades or businesses, which are not incorporated, that are under common control shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit, and shall be allocated in such manner.

(C) Principles that apply in the case of controlled groups of corporations, as specified in subdivision (d) of Section 23622.5, shall apply with respect to determining employment.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (e)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(e) (1) If the employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in paragraph (1), becomes

disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that employee.

(iii) A termination of employment of a qualified employee, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the qualified employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(f) In the case of an estate or trust, both of the following apply:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated, for purposes of this part, as the employer with respect to those wages.

(g) For purposes of this section, "enterprise zone" means an area designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(h) The credit allowable under this section shall be reduced by the credit allowed under Sections 17053.10, 17053.17 and 17053.46 claimed for the same employee. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (i) or (j).

(i) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit that exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding taxable years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 17053.70, including any credit carryover from prior years, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section by substituting "the enterprise zone" for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (i).

SEC. 11. Section 17053.75 is added to the Revenue and Taxation Code, to read:

17053.75. (a) There shall be allowed as a credit against the "net tax" (as defined by Section 17039) for the taxable year an amount equal to five percent of the qualified wages received by the taxpayer during the taxable year.

(b) For purposes of this section:

(1) "Qualified employee" means a taxpayer who meets both of the following:

(A) Is described in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b) of Section 17053.73.

(B) Is not an employee of the federal government or of this state or of any political subdivision of this state.

(2) (A) "Qualified wages" means "wages," as defined in subsection (b) of Section 3306 of the Internal Revenue Code, attributable to services performed for an employer with respect to whom the taxpayer is a qualified employee in an amount that does not exceed one and one-half times the dollar limitation specified in that subsection.

(B) "Qualified wages" does not include any compensation received from the federal government or this state or any political subdivision of this state.

(C) "Qualified wages" does not include any wages received on or after the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(3) "Enterprise zone" means any area designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(c) For each dollar of income received by the taxpayer in excess of qualified wages, as defined in this section, the credit shall be reduced by nine cents ($0.09).

(d) The amount of the credit allowed by this section in any taxable year shall not exceed the amount of tax that would be imposed on the taxpayer's income attributable to employment within the enterprise zone as if that income represented all of the income of the taxpayer subject to tax under this part.

SEC. 12. Section 17231 of the Revenue and Taxation Code is repealed.

SEC. 13. Section 17235 is added to the Revenue and Taxation Code, to read:

17235. (a) There shall be allowed as a deduction the amount of net interest received by the taxpayer in payment on indebtedness of a person or entity engaged in the conduct of a trade or business located in an enterprise zone.

(b) No deduction shall be allowed under this section unless at the time the indebtedness is incurred each of the following requirements are met:

(1) The trade or business is located solely within an enterprise zone.

(2) The indebtedness is incurred solely in connection with activity within the enterprise zone.

(3) The taxpayer has no equity or other ownership interest in the debtor.

(c) "Enterprise zone" means an area designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

SEC. 14. Section 17252.5 of the Revenue and Taxation Code is repealed.

SEC. 15. Section 17265 of the Revenue and Taxation Code is repealed.

SEC. 16. Section 17267 is added to the Revenue and Taxation Code, to read:

17267. (a) A taxpayer may elect to treat 40 percent of the cost of any Section 17267 property as an expense which is not chargeable to a capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the taxpayer places the Section 17267 property in service.

(b) In the case of a husband and wife filing separate returns for a taxable year, the applicable amount under subdivision (a) shall be equal to 50 percent of the percentage specified in subdivision (a).

(c) (1) An election under this section for any taxable year shall do both of the following:

(A) Specify the items of Section 17267 property to which the election applies and the percentage of the cost of each of those items that are to be taken into account under subdivision (a).

(B) Be made on the taxpayer's original return of the tax imposed by this part for the taxable year.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(d) (1) For purposes of this section, "Section 17267 property" means any recovery property that is:

(A) Section 1245 property (as defined in Section 1245(a) (3) of the Internal Revenue Code).

(B) Purchased and placed in service by the taxpayer for exclusive use in a trade or business conducted within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(C) Purchased and placed in service before the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(2) For purposes of paragraph (1), "purchase" means any acquisition of property, but only if both of the following apply:

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under Section 267 or Section 707 (b) of the Internal Revenue Code. However, in applying Section 267(b) and 267(c) for purposes of this section, Section 267(c) (4) shall be treated as providing that the family of an individual shall include only the individual's spouse, ancestors, and lineal descendants.

(B) The basis of the property in the hands of the person acquiring it is not determined in whole or in part by reference to the adjusted basis of that property in the hands of the person from whom it is acquired.

(3) For purposes of this section, the cost of property does not include that portion of the basis of the property that is determined by reference to the basis of other property held at any time by the person acquiring the property.

(4) This section shall not apply to estates and trusts.

(5) This section shall not apply to any property for which the taxpayer may not make an election for the taxable year under Section 179 of the Internal Revenue Code because of the application of the provisions of Section 179(d) of the Internal Revenue Code.

(6) In the case of a partnership, the percentage limitation specified in subdivision (a) shall apply at the partnership level and at the partner level.

(e) For purposes of this section, "taxpayer" means a person or entity who conducts a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(f) Any taxpayer who elects to be subject to this section shall not be entitled to claim for the same property, the deduction under Section 179 of the Internal Revenue Code, relating to an election to expense certain depreciable business assets. However, the taxpayer may claim depreciation by any method permitted by Section 168 of

the Internal Revenue Code, commencing with the taxable year following the taxable year in which the Section 17267 property is placed in service.

(g) The aggregate cost of all Section 17267 property that may be taken into account under subdivision (a) for any taxable year shall not exceed the following applicable amount for the taxable year of the designation of the relevant enterprise zone and taxable years thereafter:

	The applicable amount is:
Taxable year of designation	$100,000
1st taxable year thereafter	100,000
2nd taxable year thereafter	75,000
3rd taxable year thereafter	75,000
Each taxable year thereafter	50,000

(h) Any amounts deducted under subdivision (a) with respect to property subject to this section that ceases to be used in the taxpayer's trade or business within an enterprise zone at any time before the close of the second taxable year after the property is placed in service shall be included in income in the taxable year in which the property ceases to be so used.

SEC. 17. Section 17276.1 of the Revenue and Taxation Code is amended to read:

17276.1. (a) A qualified taxpayer, as defined in Section 17276.2, may elect to take the deduction provided by Section 172 of the Internal Revenue Code, relating to the net operating loss deduction, as modified by Section 17276, with the following exceptions:

(1) Subdivision (a) of Section 17276, relating to years in which allowable losses are sustained, shall not be applicable.

(2) Subdivision (b) of Section 17276, relating to the 50-percent reduction of losses, shall not be applicable.

(b) The election to compute the net operating loss under this section shall be made in a statement attached to the original return, timely filed for the year in which the net operating loss is incurred and shall be irrevocable. In addition to the exceptions specified in subdivision (a), the provisions of Section 17276.2 shall be applicable.

(c) Any carryover of a net operating loss sustained by a qualified taxpayer, as defined in subdivision (a) or (b) of Section 17276.2 as that section read immediately prior to January 1, 1997, shall, if previously elected, continue to be a deduction, as provided in subdivision (a), applied as if the provisions of subdivision (a) or (b) of Section 17276.2, as that section read prior to January 1, 1997, still applied.

SEC. 17.5. Section 17276.2 of the Revenue and Taxation Code is amended to read:

17276.2. The term "qualified taxpayer" as used in Section 17276.1 means any of the following:

(a) A person or entity engaged in the conduct of a trade or business within an enterprise zone designated pursuant to chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(1) A net operating loss shall not be a net operating loss carryback to any taxable year and a net operating loss for any taxable year beginning on or after the date that the area in which the taxpayer conducts a trade or business is designated as an enterprise zone shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of loss.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the taxpayer's business activities within the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) prior to the enterprise zone expiration date. That attributable loss shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section by substituting "enterprise zone" for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section by substituting "enterprise zone" for "this state."

(C) "Enterprise zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(b) A person or entity engaged in the conduct of a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(1) A net operating loss shall not be a net operating loss carryback for any taxable year, and a net operating loss for any taxable year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated the Los Angeles Revitalization Zone shall be a net operating loss carryover to each following taxable year that ends before the Los Angeles Revitalization Zone expiration date or to each of the 15 taxable years following the taxable year of loss, if longer.

(2) For the purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the taxpayer's business activities within the Los Angeles Revitalization Zone (as defined in Section 7102 of the

Government Code) prior to the Los Angeles Revitalization Zone expiration date. The attributable loss shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified as follows:

(i) Loss shall be apportioned to the Los Angeles Revitalization Zone by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The Los Angeles Revitalization Zone" shall be substituted for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) determined in accordance with the provisions of paragraph (3).

(3) Attributable income shall be that portion of the taxpayer's California source business income which is apportioned to the Los Angeles Revitalization Zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11. That business income shall be further apportioned to the Los Angeles Revitalization Zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.

(4) "Los Angeles Revitalization Zone expiration date" means the date the Los Angeles Revitalization Zone designation expires, is repealed, or becomes inoperative pursuant to Section 7102, 7103, or 7104 of the Government Code.

(5) This subdivision shall be inoperative on the first day of the taxable year beginning on or after the determination date, and each taxable year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded

area determined pursuant to Section 7104 of the Government Code. The determination date is the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused loss amount as of the date this section becomes inoperative, that unused loss amount may continue to be carried forward as provided in this subdivision.

(6) This subdivision shall cease to be operative on January 1, 1998. However, any unused net operating loss may continue to be carried over to following years as provided in this subdivision.

(c) For each taxable year beginning on or after January 1, 1995, and before January 1, 2003, a taxpayer engaged in the conduct of a trade or business within a LAMBRA.

(1) A net operating loss shall not be a net operating loss carryback for any taxable year, and a net operating loss for any taxable year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated a LAMBRA shall be a net operating loss carryover to each following taxable year that ends before the LAMBRA expiration date or to each of the 15 taxable years following the taxable year of loss, if longer.

(2) For the purposes of this subdivision:

(A) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(B) "Taxpayer" means a person or entity that conducts a trade or business within a LAMBRA and, for the first two taxable years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA and this state.

(i) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the taxable year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second taxable year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the taxable year prior to commencing business operations in the LAMBRA shall be zero. The deduction shall be allowed only if the taxpayer has a net increase in jobs in the state, and if one or more full-time employees is employed within the LAMBRA.

(ii) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(I) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(II) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(iii) In the case of a taxpayer who first commences doing business in the LAMBRA during the taxable year, for purposes of subclauses (I) and (II), respectively, of clause (ii) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the taxable year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(C) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the taxpayer's business activities within a LAMBRA prior to the LAMBRA expiration date. The attributable loss shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified as follows:

(i) Loss shall be apportioned to a LAMBRA by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The LAMBRA" shall be substituted for "this state."

(D) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to a LAMBRA determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified as follows:

(i) Business income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The LAMBRA" shall be substituted for "this state."

(iii) If a loss carryover is allowable pursuant to this section for any taxable year after the LAMBRA designation has expired, the LAMBRA shall be deemed to remain in existence for purposes of computing this limitation.

(E) "LAMBRA expiration date" means the date the LAMBRA designation expires, is no longer binding, or becomes inoperative pursuant to Section 7110 of the Government Code.

(d) A taxpayer who qualifies as a "qualified taxpayer" shall, for the taxable year of the net operating loss and any taxable year to which that net operating loss may be carried, designate on the original return filed for each year the subdivision of this section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one subdivision of this section, the designation is to be made after taking into account subdivision (e).

(e) If a taxpayer is eligible to qualify under more than one subdivision of this section as a "qualified taxpayer," with respect to a net operating loss in a taxable year, the taxpayer shall designate which subdivision of this section is to apply to the taxpayer.

(f) Notwithstanding Section 17276, the amount of the loss determined under this section shall be the only net operating loss allowed to be carried over from that taxable year and the designation under subdivision (d) shall be included in the election under Section 17276.1.

SEC. 18. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) (1) The term "tax" includes any of the following:

(A) The tax imposed under Chapter 2 (commencing with Section 23101).

(B) The tax imposed under Chapter 3 (commencing with Section 23501).

(C) The tax on unrelated business taxable income, imposed under Section 23731.

(D) The tax on S corporations imposed under Section 23802.

(2) The term "tax" does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(b) For purposes of Article 5 (commencing with Section 18661) of Chapter 2, Article 3 (commencing with Section 19031) of Chapter 4, Article 6 (commencing with Section 19101) of Chapter 4, and Chapter 7 (commencing with Section 19501) of Part 10.2, and for purposes of Sections 18601, 19001, and 19005, the term "tax" shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 23081, the tax on limited liability companies, imposed under Section 23091, and the tax on registered limited liability partnerships and foreign limited liability partnerships imposed under Section 23097.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of S corporations, imposed under Section 23809.

(4) The tax on excess passive investment income of S corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits shall be allowed against the "tax" in the following order:

(1) Credits that do not contain carryover provisions.

(2) Credits that, when the credit exceeds the "tax," allow the excess to be carried over to offset the "tax" in succeeding taxable years. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits for taxes withheld under Section 18662.

(d) Notwithstanding any other provision of this part, each of the following shall be applicable:

(1) No credit shall reduce the "tax" below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455),

except the following credits, but only after allowance of the credit allowed by Section 23453:

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by former Section 23601.4 (relating to solar energy).

(C) The credit allowed by Section 23601.5 (relating to solar energy).

(D) The credit allowed by Section 23609 (relating to research expenditures).

(E) The credit allowed by Section 23609.5 (relating to clinical testing expenses).

(F) The credit allowed by Section 23610.5 (relating to low-income housing).

(G) The credit allowed by former Section 23612 (relating to sales and use tax credit).

(H) The credit allowed by Section 23612.2 (relating to enterprise zone sales or use tax credit).

(I) The credit allowed by Section 23612.6 (relating to Los Angeles Revitalization Zone sales tax credit).

(J) The credit allowed by former Section 23622 (relating to enterprise zone hiring credit).

(K) The credit allowed by Section 23622.5 (relating to enterprise zone hiring credit).

(L) The credit allowed by former Section 23623 (relating to program area hiring credit).

(M) For each income year beginning on or after January 1, 1994, the credit allowed by Section 23623.5 (relating to Los Angeles Revitalization Zone hiring credit).

(N) The credit allowed by Section 23625 (relating to Los Angeles Revitalization Zone hiring credit).

(O) The credit allowed by Section 23649 (relating to qualified property).

(2) No credit against the tax shall reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) shall be allowed to be carried over to reduce the "tax" in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit that has been repealed or made inoperative shall continue to be allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the costs paid or incurred.

SEC. 18.5. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) (1) The term "tax" includes any of the following:

(A) The tax imposed under Chapter 2 (commencing with Section 23101).

(B) The tax imposed under Chapter 3 (commencing with Section 23501).

(C) The tax on unrelated business taxable income, imposed under Section 23731.

(D) The tax on S corporations imposed under Section 23802.

(2) The term "tax" does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(b) For purposes of Article 5 (commencing with Section 18661) of Chapter 2, Article 3 (commencing with Section 19031) of Chapter 4, Article 6 (commencing with Section 19101) of Chapter 4, and Chapter 7 (commencing with Section 19501) of Part 10.2, and for purposes of Sections 18601, 19001, and 19005, the term "tax" shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 17935 or Section 23081, the tax on limited liability companies, imposed under Section 17941 or Section 23091, and the tax on registered limited liability partnerships and foreign limited liability partnerships imposed under Section 17948 or Section 23097.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of S corporations, imposed under Section 23809.

(4) The tax on excess passive investment income of S corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits shall be allowed against the "tax" in the following order:

(1) Credits that do not contain carryover provisions.

(2) Credits that, when the credit exceeds the "tax," allow the excess to be carried over to offset the "tax" in succeeding taxable years. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits for taxes withheld under Section 18662.

(d) Notwithstanding any other provision of this part, each of the following shall be applicable:

(1) No credit shall reduce the "tax" below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits, but only after allowance of the credit allowed by Section 23453:

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by former Section 23601.4 (relating to solar energy).

(C) The credit allowed by Section 23601.5 (relating to solar energy).

(D) The credit allowed by Section 23609 (relating to research expenditures).

(E) The credit allowed by Section 23609.5 (relating to clinical testing expenses).

(F) The credit allowed by Section 23610.5 (relating to low-income housing).

(G) The credit allowed by former Section 23612 (relating to sales and use tax credit).

(H) The credit allowed by Section 23612.2 (relating to enterprise zone sales or use tax credit).

(I) The credit allowed by Section 23612.6 (relating to Los Angeles Revitalization Zone sales tax credit).

(J) The credit allowed by former Section 23622 (relating to enterprise zone hiring credit).

(K) The credit allowed by Section 23622.5 (relating to enterprise zone hiring credit).

(L) The credit allowed by former Section 23623 (relating to program area hiring credit).

(M) For each income year beginning on or after January 1, 1994, the credit allowed by Section 23623.5 (relating to Los Angeles Revitalization Zone hiring credit).

(N) The credit allowed by Section 23625 (relating to Los Angeles Revitalization Zone hiring credit).

(O) The credit allowed by Section 23649 (relating to qualified property).

(2) No credit against the tax shall reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) shall be allowed to be carried over to reduce the "tax" in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit that has been repealed or made inoperative shall continue to be allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the costs paid or incurred.

(h) Unless otherwise provided, in the case of an S corporation, any credit allowed by this part shall be computed at the S corporation level, and any limitation on the expenses qualifying for the credit or

limitation upon the amount of the credit shall be applied to the S corporation and to each shareholder.

SEC. 19. Section 23612 of the Revenue and Taxation Code is repealed.

SEC. 20. Section 23612.2 is added to the Revenue and Taxation Code, to read:

23612.2. (a) There shall be allowed as a credit against the "tax" (as defined by Section 23036) for the income year an amount equal to the sales or use tax paid or incurred during the income year by the taxpayer in connection with the taxpayer's purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means either a bank or corporation engaged in a trade or business within an enterprise zone.

(2) "Qualified property" means:

(A) Any of the following:

(i) Machinery and machinery parts used for fabricating, processing, assembling, and manufacturing.

(ii) Machinery and machinery parts used for the production of renewable energy resources.

(iii) Machinery and machinery parts used for either of the following:

(I) Air pollution control mechanisms.

(II) Water pollution control mechanisms.

(B) The total cost of qualified property purchased and placed in service in any income year that may be taken into account by any taxpayer for purposes of claiming this credit shall not exceed twenty million dollars ($20,000,000).

(C) The qualified property is used by the taxpayer exclusively in an enterprise zone.

(D) The qualified property is purchased and placed in service before the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(3) "Enterprise zone" means the area designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(c) If the taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided by this section shall be allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(d) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit which exceeds the "tax" may be carried over and added to the credit, if any, in the following year, and succeeding years if necessary, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the qualified property as otherwise

required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the taxpayer's purchase of qualified property.

(f) (1) The amount of credit otherwise allowed under this section and Section 23622.5, including any credit carryover from prior years, that may reduce the "tax" for the income year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting "the enterprise zone" for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (d).

SEC. 21. Section 23622 of the Revenue and Taxation Code is repealed.

SEC. 22. Section 23622.5 is added to the Revenue and Taxation Code, to read:

23622.5. (a) There shall be allowed a credit against the "tax" (as defined by Section 23036) to a taxpayer who employs a qualified employee in an enterprise zone during the income year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the taxpayer during the income year to qualified employees that does not exceed 150 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the employee commences employment with the taxpayer.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1

(commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(4) (A) "Qualified employee" means an individual who meets all of the following requirements:

(i) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the income year in an enterprise zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.) and is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act.

(II) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was eligible to be a voluntary or mandatory registrant under the Greater Avenues for independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(III) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was eligible as determined by the Employment Development Department under the federal Targeted Jobs Tax Credit Program as long as that program is in effect.

(IV) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a resident of a targeted employment area (as defined in Section 7072 of the Government Code).

(V) An employee who qualified the taxpayer for the enterprise zone hiring credit under former Section 23622 or the program area hiring credit under former Section 23623.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible under the federal Targeted Jobs Tax Credit Program.

(5) "Taxpayer" means a bank or corporation engaged in a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(c) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification that provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b).

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(d) (1) For purposes of this section:

(A) All employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section to each member shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit, and shall be allocated in that manner.

(C) For purposes of this subdivision, "controlled group of corporations" means "controlled group of corporations" as defined in Section 1563(a) of the Internal Revenue Code, except that:

(i) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(ii) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue Code.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (e)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(e) (1) If the employment of any qualified employee with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment, whether or not consecutive, or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that employee.

(iii) A termination of employment of a qualified employee, if it is determined under the applicable unemployment compensation provisions that the termination was due to the misconduct of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified employee shall not be treated as terminated by either of the following:

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the qualified employee continues to be employed by the acquiring corporation.

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the qualified employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(f) Rules similar to the rules provided in Section 46(e) and (h) of the Internal Revenue Code shall apply to both of the following:

(1) An organization to which Section 593 of the Internal Revenue Code applies:

(2) A regulated investment company or a real estate investment trust subject to taxation under this part.

(g) For purposes of this section, "enterprise zone" means an area designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(h) The credit allowable under this section shall be reduced by the credit allowed under Sections 23623.5, 23625, and 23646 claimed for the same employee. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (i) or (j).

(i) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the

credit that exceeds the "tax" may be carried over and added to the credit, if any, in succeeding income years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 23612.2, including any credit carryover from prior years, that may reduce the "tax" for the income year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting "the enterprise zone" for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (i).

SEC. 23. Section 23623 of the Revenue and Taxation Code is repealed.

SEC. 24. Section 24356.2 of the Revenue and Taxation Code is repealed.

SEC. 25. Section 24356.3 of the Revenue and Taxation Code is repealed.

SEC. 26. Section 24356.7 is added to the Revenue and Taxation Code, to read:

24356.7. (a) A taxpayer may elect to treat 40 percent of the cost of any Section 24356.7 property as an expense that is not chargeable to a capital account. Any cost so treated shall be allowed as a deduction for the income year in which the taxpayer places the Section 24356.7 property in service.

(b) (1) An election under this section for any income year shall do both of the following:

(A) Specify the items of Section 24356.7 property to which the election applies and the percentage of the cost of each of those items that are to be taken into account under subdivision (a).

(B) Be made on the taxpayer's original return of the tax imposed by this part for the income year.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(c) (1) For purposes of this section, "Section 24356.7 property" means any recovery property that is:

(A) Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code).

(B) Purchased and placed in service by the taxpayer for exclusive use in a trade or business conducted within an enterprise zone

designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(C) Purchased and placed in service before the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(2) For purposes of paragraph (1), "purchase" means any acquisition of property, but only if all of the following apply:

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under Sections 24427 through 24429. However, in applying Sections 24428 and 24429 for purposes of this section, subdivision (d) of Section 24429 shall be treated as providing that the family of an individual shall include only his or her spouse, ancestors, and lineal descendants.

(B) The property is not acquired by one member of an affiliated group from another member of the same affiliated group.

(C) The basis of the property in the hands of the person acquiring it is not determined in whole or in part by reference to the adjusted basis of that property in the hands of the person from whom it is acquired.

(3) For purposes of this section, the cost of property does not include that portion of the basis of that property that is determined by reference to the basis of other property held at any time by the person acquiring that property.

(4) This section shall not apply to any property for which the taxpayer could not make a federal election under Section 179 of the Internal Revenue Code because of the application of the provisions of Section 179 (d) of the Internal Revenue Code.

(5) For purposes of subdivision (b) of this section, both of the following apply:

(A) All members of an affiliated group shall be treated as one taxpayer.

(B) The taxpayer shall apportion the dollar limitation contained in subdivision (f) among the members of the affiliated group in whatever manner the board shall prescribe.

(6) For purposes of paragraphs (2) and (5), "affiliated group" means "affiliated group" as defined in Section 1504 of the Internal Revenue Code, except that, for these purposes, the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in Section 1504(a) of the Internal Revenue Code.

(d) For purposes of this section, "taxpayer" means a bank or corporation that conducts a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to claim additional depreciation pursuant to Section 24356 with respect to any property that constitutes Section 24356.7

property. However, the taxpayer may claim depreciation by any method permitted by Section 24349 commencing with the income year following the income year in which Section 24356.7 property is placed in service.

(f) The aggregate cost of all Section 24356.7 property that may be taken into account under subdivision (a) for any income years shall not exceed the following applicable amount for the income year of the designation of the relevant enterprise zone and income years thereafter:

	The applicable amount is:
Income year of designation	$100,000
1st income year thereafter	100,000
2nd income year thereafter	75,000
3rd income year thereafter	75,000
Each income year thereafter	50,000

(g) Any amounts deducted under subdivision (a) with respect to Section 24356.7 property that ceases to be used in the taxpayer's trade or business within an enterprise zone at any time before the close of the second income year after the property is placed in service shall be included in income in the income year in which the property ceases to be so used.

SEC. 27. Section 24384 of the Revenue and Taxation Code is repealed.

SEC. 28. Section 24384.5 is added to the Revenue and Taxation Code, to read:

24384.5. (a) There shall be allowed as a deduction the amount of net interest received by the taxpayer in payment of indebtedness of a person or entity engaged in a trade or business located in an enterprise zone.

(b) No deduction shall be allowed under this section unless at the time the indebtedness is incurred each of the following requirements are met:

(1) The trade or business is located solely within an enterprise zone.

(2) The indebtedness is incurred solely in connection with activity within the enterprise zone.

(3) The taxpayer has no equity or other ownership interest in the debtor.

(c) "Enterprise zone" means an area designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

SEC. 29. Section 24416.1 of the Revenue and Taxation Code is amended to read:

24416.1. (a) A qualified taxpayer, as defined in Section 24416.2, may elect to take the deduction provided by Section 172 of the Internal Revenue Code, relating to the net operating loss deduction, as modified by Section 24416, in computing net income under Section 24341, with the following exceptions to Section 24416:

(1) Subdivision (a) of Section 24416, relating to years in which allowable losses are sustained, shall not be applicable.

(2) Subdivision (b) of Section 24416, relating to the 50-percent reduction of losses, shall not be applicable.

(3) The provisions of subparagraphs (B) and (C) of Section 172 (b) (1) of the Internal Revenue Code shall not apply. To the extent applicable to California law, net operating losses attributable to entities with losses described by Section 172(b)(1)(J) shall be applied in accordance with Section 172(b)(1)(A) and (B) of the Internal Revenue Code.

(b) Corporations whose income is subject to the provisions of Section 25101 or 25101.15 shall make the computations required by Section 25108.

(c) The election to compute the net operating loss under this section shall be made in a statement attached to the original return, timely filed for the year in which the net operating loss is incurred and shall be irrevocable. In addition to the exceptions specified in subdivision (a), Section 24416.2 shall be applicable.

(d) Any carryover of a net operating loss sustained by a qualified taxpayer, as defined in a subdivision (a) or (b) of Section 24416.2 as that section read immediately prior to January 1, 1997, shall, if previously elected, continue to be a deduction, as provided in subdivision (a), applied as if the provisions of subdivision (a) or (b) of Section 24416.2, as that section read prior to January 1, 1997, still applied.

SEC. 30. Section 24416.2 of the Revenue and Taxation Code is amended to read:

24416.2. The term "qualified taxpayer" as used in Section 24416.1 means any of the following:

(a) A bank or corporation engaged in the conduct of a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(1) A net operating loss shall not be a net operating loss carryback for any income year and a net operating loss for any income year beginning on or after the date that the area in which the taxpayer conducts a trade or business is designated as an enterprise zone shall be a net operating loss carryover to each of the 15 income years following the income year of loss.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer's business activities within the enterprise

zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) prior to the enterprise zone expiration date. That attributable loss shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting "enterprise zone" for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting "enterprise zone" for "this state."

(C) "Enterprise zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(b) A bank or corporation engaged in the conduct of a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(1) (A) A net operating loss shall not be a net operating loss carryback for any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated the Los Angeles Revitalization Zone shall be a net operating loss carryover to each following income year that ends before the Los Angeles Revitalization Zone expiration date or to each of the 15 income years following the income year of loss, if longer.

(B) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five years following the income year of the loss. Subdivision (b) of Section 24416.1 shall not apply.

(2) For the purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer's business activities within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) prior to the Los Angeles Revitalization Zone expiration date. The attributable loss shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified as follows:

(i) The loss shall be apportioned to the Los Angeles Revitalization Zone by multiplying the loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The Los Angeles Revitalization Zone" shall be substituted for this state.

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) determined in accordance with the provisions of paragraph (3).

(3) Attributable income shall be that portion of the taxpayer's California source business income which is apportioned to the Los Angeles Revitalization Zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the Los Angeles Revitalization Zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the income year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the income year.

(4) "Los Angeles Revitalization Zone expiration date" means the date the Los Angeles Revitalization Zone designation expires, is repealed, or becomes inoperative pursuant to Section 7102, 7103, or 7104 of the Government Code.

(5) This subdivision shall be inoperative on the first day of the income year beginning on or after the determination date, and each income year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area determined pursuant to Section 7104 of the Government Code. The determination date is the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused loss amount as of the

date this section becomes inoperative, that unused loss amount may continue to be carried forward as provided in this subdivision.

(6) This subdivision shall cease to be operative on January 1, 1998. However, any unused net operating loss may continue to be carried over to following years as provided in this subdivision.

(c) For each income year beginning on or after January 1, 1995, and before January 1, 2003, a taxpayer engaged in the conduct of a trade or business within a LAMBRA.

(1) (A) A net operating loss shall not be a net operating loss carryback for any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated a LAMBRA shall be a net operating loss carryover to each following income year that ends before the LAMBRA expiration date or to each of the 15 income years following the income year of loss, if longer.

(B) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five years following the income year of the loss. Subdivision (b) of Section 24416.1 shall not apply.

(2) For the purposes of this subdivision:

(A) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(B) "Taxpayer" means a bank or corporation that conducts a trade or business within a LAMBRA and, for the first two income years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA and this state.

(i) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the income year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second income year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the income year prior to commencing business operations in the LAMBRA shall be zero. The deduction shall be allowed only if the taxpayer has a net increase in jobs in the state, and if one or more full-time employees is employed within the LAMBRA.

(ii) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(I) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(II) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(iii) In the case of a taxpayer that first commences doing business in the LAMBRA during the income year, for purposes of subclauses (I) and (II), respectively, of clause (ii) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the income year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(C) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer's business activities within a LAMBRA prior to the LAMBRA expiration date. The attributable loss shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified as follows:

(i) Loss shall be apportioned to a LAMBRA by multiplying the loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The LAMBRA" shall be substituted for "this state."

(D) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to a LAMBRA determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified as follows:

(i) Business income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The LAMBRA" shall be substituted for "this state."

(iii) If a loss carryover is allowable pursuant to this section for any income year after the LAMBRA designation has expired, the LAMBRA shall be deemed to remain in existence for purposes of computing this limitation.

(E) "LAMBRA expiration date" means the date the LAMBRA designation expires, is no longer binding, or becomes inoperative pursuant to Section 7110 of the Government Code.

(d) A taxpayer who qualifies as a "qualified taxpayer" shall, for the income year of the net operating loss and any income year to which that net operating loss may be carried, designate on the original return filed for each year the subdivision of this section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one subdivision of this section, the designation is to be made after taking into account subdivision (e).

(e) If a taxpayer is eligible to qualify under more than one subdivision of this section as a "qualified taxpayer," with respect to a net operating loss in an income year, the taxpayer shall designate which subdivision of this section is to apply to the taxpayer.

(f) Notwithstanding Section 24416, the amount of the loss determined under this section shall be the only net operating loss allowed to be carried over from that income year and the designation under subdivision (d) shall be included in the election under Section 24416.1.

SEC. 31. (a) The Legislature finds and declares the following:

(1) The National Aeronautics and Space Administration (NASA) has contracted for the construction of a Reusable Launch Vehicle (RLV), also known as the "X-33."

(2) NASA plans for the RLV's first launch to occur on January 1, 1999, at Edwards Air Force Base, located in the Northern portion of the Antelope Valley.

(3) The RLV site will stimulate economic development of the area surrounding the base but may also encourage incompatible development within the RLV's flight path.

(4) Though the base is located in an unincorporated area of Los Angeles County that is not within the sphere of influence of the City of Lancaster, it is the Legislature's intent that the city and the county encourage compatible development within the RLV's flight path.

(5) It is the Legislature's intent to temporarily expand the City of Lancaster's sphere of influence to include the base and adjacent territory so that the city and the county may cooperate to discourage incompatible development in the areas that will be affected by the RLV's flight path.

(6) It is also the Legislature's intent to allow the City of Lancaster to expend specified funds outside its city limits but within its temporary sphere of influence to promote commercial space efforts, to retain and create commercial space jobs, and to develop commercial space infrastructure on and around the Edwards Air Force Base.

(b) Notwithstanding Chapter 4 (commencing with Section 56425) of Part 2 of Division 3 of Title 5 of the Government Code, the Legislature deems the City of Lancaster's sphere of influence to include the area described in subdivision (d).

(c) Notwithstanding Section 56133 of the Government Code, the Los Angeles County Local Agency Formation Commission shall not disapprove the City of Lancaster's expenditures for the following improvements and services pursuant to an interagency agreement entered into to expend grant moneys and technical assistance pursuant to Item 2920-001-0001 of the Budget Act of 1996, Chapter 162 of the Statutes of 1996, to promote commercial space efforts, to retain and create commercial space jobs, and to develop commercial space infrastructure at the Edwards Air Force Base:

(1) The acquisition, construction, improvement, and maintenance of transportation facilities and improvements.

(2) The acquisition, construction, improvement, and maintenance of fuel facilities and improvements.

(3) The acquisition, construction, improvement and maintenance of drainage facilities and improvements.

(4) The acquisition of rights-of-way.

(5) The relocation of utility transmission facilities.

(d) Pursuant to subdivision (b), the City of Lancaster's sphere of influence shall be deemed to include the territory that is bounded by the Los Angeles County line on the north and east, by Avenue J on the south, and by 120th Street East on the west.

(e) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2000, deletes or extends that date.

SEC. 32. It is the intent of the Legislature that the Los Angeles County Local Agency Formation Commission, on or before December 31, 1999, amend or revise the City of Lancaster's sphere of influence in a manner that will facilitate the establishment and operation of the National Aeronautics and Space Administration Reusable Launch Vehicle site, as described in Section 31 of this act.

SEC. 33. The Legislature finds and declares that, for Sections 31 and 32 of this act, a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances of the City of Lancaster. The facts constituting the special circumstances are these:

The National Aeronautics and Space Administration has contracted for the construction of a Reusable Launch Vehicle that may be launched from Edwards Air Force Base in the northern portion of the Antelope Valley in 1999. To ensure that the land surrounding the base does not develop with incompatible land uses, the City of Lancaster's sphere of influence must be temporarily extended.

SEC. 34. If this bill and Senate Bill 715 of the 1995–96 Regular Session are both enacted, the changes made to Sections 17052.13, 17052.15, 17053.8, 17053.10, 17053.11, 17053.17, 17053.45, 17053.46, 23612, 23612.6, 23622, 23623, 23623.5, 23625, 23645, and 23646 of the Revenue and Taxation Code by Senate Bill 715 of the 1995–96 Regular Session shall be applied in the computation of taxes for taxable or income years beginning before December 31, 1996.

SEC. 35. This act shall become operative only if Senate Bill 2023 of the 1995–96 Regular Session is enacted and becomes operative on or before January 1, 1997.

SEC. 36. Section 4.5 of this bill incorporates amendments to Section 17039 of the Revenue and Taxation Code proposed by both this bill and SB 715. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 17039 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 715, in which case Section 4 of this bill shall not become operative.

SEC. 37. Section 18.5 of this bill incorporates amendments to Section 23036 of the Revenue and Taxation Code proposed by both this bill and SB 715. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 23036 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 715, in which case Section 18 of this bill shall not become operative.

CHAPTER 954

An act to add Section 17008.7 to, and to add Chapter 3.7 (commencing with Section 50199.50) to Part 1 of Division 31 of, the Health and Safety Code, to amend Sections 6358, 6366, 6377, 17052.12, 17053.8, 17053.49, 17062, 17072, 17076, 17144, 17250, 17271, 17276, 17507, 19144, 19147, 19148, 19191, 19192, 23221, 23609, 23622, 23649, 24307, 24344, 24358, 24411, 24416, 24424, and 24443 of, to amend, repeal, and add Sections 17151, 18042, and 24611 of, to add Sections 6244.5, 17052.8, 17053.12, 17053.14, 17053.42, 17053.73, 17077.5, 17084, 17134.5, 17138.5, 17141.5, 17150, 17201.5, 17210, 17213, 17218, 17255, 17267, 17279.5, 17330, 17570, 17859, 17860, 18044, 23604, 23608, 23608.2, 23608.3, 23622.5, 23642, 23701z, 24343.3, 24344.7, 24472, 24710, 24903, and 24905.5 to, and to add and repeal Sections 17052.10 and 23610 of, the Revenue and Taxation Code, and to amend Section 1088.5 of the Unemployment Insurance Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 26, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Section 17008.7 is added to the Health and Safety Code, to read:

17008.7. All housing assisted pursuant to Chapter 3.7 (commencing with Section 50199.50) of Part 1 of Division 31 shall be deemed employee housing, without regard to the number of dwelling accommodations or spaces or whether the owner is an entity exempted pursuant to Section 17024, and shall be subject to all requirements of this chapter.

SEC. 2. Chapter 3.7 (commencing with Section 50199.50) is added to Part 1 of Division 31 of the Health and Safety Code, to read:

CHAPTER 3.7. FARMWORKER HOUSING ASSISTANCE PROGRAM

50199.50. For the purposes of this chapter:

(a) "Agricultural worker" or "farmworker" shall have the same meaning as specified in subdivision (b) of Section 1140.4 of the Labor Code.

(b) "Compliance period" means, with respect to any farmworker housing, the period of 30 consecutive taxable or income years, beginning with the taxable or income year in which the credit is allowable.

(c) "Employee Housing Act" means Part 1 (commencing with Section 17000) of Division 13.

(d) "Farmworker housing" means housing subject to the Employee Housing Act, and, for the purposes of this chapter, it shall also include projects with less than five dwelling spaces or units in nonrural areas.

(e) "Farmworker housing tax credits" means the tax credits authorized by Sections 17053.14, 23608.2, and 23608.3 of the Revenue and Taxation Code.

(f) "Household" has the same meaning as defined in Section 7602 of Title 25 of the California Code of Regulations.

(g) "Committee" means the California Tax Credit Allocation Committee as defined in Section 50199.7.

50199.51. The committee shall perform those duties delegated to it pursuant to this chapter and the responsibilities related to receipt by taxpayers of farmworker housing tax credits.

50199.52. All housing assisted pursuant to this chapter shall comply with the following requirements:

(a) Before claiming any farmworker housing tax credits, the taxpayer shall provide the committee with a copy of a current Employee Housing Act permit to operate.

(b) (1) The recipient of a tax credit pursuant to Section 17053.14, 23608.2, or 23608.3 of the Revenue and Taxation Code, or the owner of the farmworker housing assisted pursuant to Section 17053.14 or 23608.2 of the Revenue and Taxation Code, shall enter into those agreements required by the committee to further the purposes of this chapter and the applicable farmworker housing tax credit sections.

(2) The owner shall agree that the farmworker housing units assisted with the farmworker housing tax credits shall be utilized, maintained, and operated pursuant to this chapter for the compliance term specified by the applicable farmworker housing tax credit statute.

(c) (1) The farmworker housing assisted pursuant to this chapter shall be available to, and occupied by, only farmworkers and their households. However, in the event of a natural disaster or other critical occurrence, as determined by the committee, the housing may be utilized at the discretion of the owner for households needing shelter for up to 60 days if there are no farmworkers who have submitted an application to reside, or to continue to reside, in the housing. The occupants of the housing need not be limited to farmworkers employed by the property owner.

(2) In addition, where the housing is designed and operated as a dormitory, the owner and operator may restrict occupancy by sex. However, in awarding credits pursuant to this chapter, the committee shall give preference to proposed farmworker housing that is designed and operated for families rather than for single sex dormitories.

(d) The expenditures upon which the amount of the farmworker housing tax credit is based shall be costs paid or incurred only for construction or repairs necessary to bring the housing into compliance with the Employee Housing Act and general improvement costs necessary and directly related thereto, including, but not limited to, improvements to ensure compliance with laws governing access for persons with handicaps, building and permit fees, and costs related to reducing utility expenses, including additional insulation, solar water heating, or similar improvements.

50199.53. The committee shall enter into an agreement with the owner of the farmworker housing to ensure compliance with the terms and conditions of the program. The agreement shall be subordinated, when required, to a lien or encumbrance of any bank or other institutional lender to the project. The provisions in the agreement shall include, but not be limited to, all of the following:

(a) Provisions establishing the location and number of units or sleeping areas and their rents.

(b) The requirement of an annual report, including occupancy, income, and maintenance information and, if applicable, a copy of a current operating permit issued pursuant to the Employee Housing Act.

(c) Provisions allowing and governing state approval of the assignment, transfer, and assumption of the housing, to ensure that the requirements of this program are binding on successors.

(d) Provisions ensuring a term of use at least equal to the compliance period.

(e) A requirement that the agreement be recorded in the official records of the county in which the qualified farmworker housing project is located.

(f) A provision stating that the agreement is enforceable by the committee, and by the city or county in which the farmworker housing is located, and by the tenants as third-party beneficiaries.

(g) Provisions defining how the affordable rents will be established and maintained.

50199.54. (a) In the event that the owner who receives a credit pursuant to Section 17053.14 or 23608.2 of the Revenue and Taxation Code demonstrates, to the committee's satisfaction, that there is no further need for farmworker housing or that it is no longer economically feasible to operate the farmworker housing, the owner shall pay to the Franchise Tax Board a pro rata portion of the credit previously allowed equal to the amount of any tax credit previously

allowed, multiplied by the ratio of the number of years not elapsed in the compliance period divided by 30.

(b) In the event that the farmworker housing is damaged or destroyed by a casualty not caused by the owner, the compliance period has not expired, and the owner commences reasonable action to repair or replace the farmworker housing, the taxpayer may continue to claim the credit as if no destruction had taken place.

50199.55. (a) The committee shall allocate farmworker housing credits on a regular basis in each calendar year during which applications may be filed and considered. The committee shall establish application forms and instructions, application filing deadlines, and the approximate date on which allocations shall be made. As a condition of submitting an application, or as a condition of receiving an allocation or reservation of tax credits, the committee may charge a fee to a tax credit applicant to defray the committee's costs in administering this chapter. In review of applications, the committee shall require the following criteria in order to ensure compliance with all provisions of this chapter:

(1) The project's proposed financing, including tax credit proceeds, shall be sufficient to complete the project.

(2) The proposed operating budget shall be adequate to operate the project for the compliance period.

(3) The recipient or owner shall have sufficient expertise and the financial capacity to ensure project completion and operation for the compliance period.

(4) The project shall have enforceable financing commitments, either construction or permanent financing, for at least 50 percent of the total estimated financing of the project.

(5) Development fees and costs not included in subdivision (d) of Section 50199.54 shall not exceed a percentage of the eligible basis of the project prior to the inclusion of the fees and costs in the basis, as determined by the committee.

(b) Following approval, the committee shall issue a certificate to the taxpayer that states the total amount of the allocated tax credit to which the taxpayer is entitled for each income or taxable year.

50199.56. The committee may adopt regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for the administration of this chapter.

50199.57. The committee shall be responsible for enforcement of the agreement described in Section 50199.55, and shall report promptly to the Franchise Tax Board any violations of this chapter or the farmworker housing tax credit statutes.

50199.58. The Legislature finds and declares both of the following:

(a) It is too speculative to determine the income levels of the agricultural workers residing in farmworker housing at any given time, and many agricultural workers earn sufficient income, when

they are fully employed, to qualify as persons and families of moderate income.

(b) The farmworker housing assisted pursuant to this chapter is not a low-rent housing project, as defined by Section 1 of Article XXXIV of the California Constitution.

SEC. 3. Section 6244.5 is added to the Revenue and Taxation Code, to read:

6244.5. (a) Notwithstanding any other provision of law, a lessor of tangible personal property described in Section 17053.49 or 23649, who is the manufacturer of that property and who leases that property to a qualified taxpayer, as defined in Sections 17053.49 and 23649, in a form that is not substantially the same form as acquired, may, in lieu of reporting use tax measured by the rentals payable, elect to pay tax measured by his or her cost price of that property if the election is made on or before the due date of the return for the period in which the property is first leased. The election shall be made by reporting use tax measured by the cost price on the return for that period. The election shall not be revoked with respect to the property as to which it is made. The lease of that property for which an election is made pursuant to this section shall thereafter be excluded from the terms "sale" and "purchase."

(b) "Cost price," as used in subdivision (a), means the price at which similar property has been previously sold or offered for sale. If that property has not been previously sold or offered for sale, then the cost price shall be deemed to be the aggregate of the following:

(1) Cost of materials.

(2) Direct labor.

(3) The pro rata share of all overhead costs attributable to the manufacture of the property.

(4) Reasonable profit from the manufacturing operations which, in the absence of evidence to the contrary, shall be deemed to be 5 percent of the sum of the factors listed in paragraphs (1) to (3), inclusive.

SEC. 3.5. Section 6358 of the Revenue and Taxation Code is amended to read:

6358. There are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of:

(a) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption.

(b) Feed for any form of animal life of a kind the products of which ordinarily constitute food for human consumption, or are to be sold in the regular course of business.

(c) Seeds and annual plants the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business.

(d) Fertilizer to be applied to land the products of which are to be used as food for human consumption or sold in the regular course of business.

(e) On or after January 1, 1997, drugs or medicines, the primary purpose of which is the prevention or control of disease, that are administered to animal life of a kind the products of which ordinarily constitute food for human consumption.

SEC. 4. Section 6366 of the Revenue and Taxation Code is amended to read:

6366. (a) There are exempted from the taxes imposed by this part the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, the following:

(1) Aircraft sold to any person using the aircraft as a common carrier of persons or property under authority of the laws of this state, of the United States, or of any foreign government, or sold to any foreign government for use by that government outside of this state, or sold to any person who is not a resident of this state and who will not use that aircraft in this state otherwise than in the removal of the aircraft from this state.

(2) Tangible personal property that is purchased on or after October 1, 1996, and becomes a component part of any aircraft described in paragraph (1), as a result of the maintenance, repair, overhaul, or improvement of that aircraft in compliance with Federal Aviation Administration requirements, and any charges made for labor and services rendered with respect to that maintenance, repair, overhaul, or improvement.

(b) With respect to aircraft sold on or after January 1, 1997, it shall be presumed that a person is not engaged in business as a common carrier if the person's yearly gross receipts from the use of the aircraft as a common carrier do not exceed 20 percent of the purchase cost of the aircraft to him or her, or fifty thousand dollars ($50,000), whichever is less. This presumption may be rebutted by contrary evidence satisfactory to the board showing that the person is engaged in business as a common carrier.

In no event shall "gross receipts" include compensation by the person or related parties for use of the aircraft as a common carrier.

(c) With respect to aircraft leased, or sold for the purpose of leasing, on or after January 1, 1997, it shall be presumed that the aircraft is not regularly used in the business of transporting for hire property or persons if the lessor's yearly gross receipts from the lease of that aircraft to persons using the aircraft as common carriers of property or persons do not exceed 20 percent of the cost of the aircraft to the lessor, or fifty thousand dollars ($50,000), whichever is less. This presumption may be rebutted by contrary evidence satisfactory to the board showing that the aircraft is regularly used as a common carrier of property or persons.

In no event shall "gross receipts" include compensation by the lessor or related parties for use of the aircraft as a common carrier.

SEC. 6. Section 6377 of the Revenue and Taxation Code is amended to read:

6377. (a) There are exempted from the taxes imposed by this part the gross receipts from the sale of, and the storage, use, or other consumption in this state of, any of the following:

(1) Tangible personal property purchased for use by a qualified person to be used primarily in any stage of the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point any raw materials are received by the qualified person and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered property to its completed form, including packaging, if required.

(2) Tangible personal property purchased for use by a qualified person to be used primarily in research and development.

(3) Tangible personal property purchased for use by a qualified person to be used primarily to maintain, repair, measure, or test any property described in paragraph (1) or (2).

(4) Tangible personal property purchased for use by a contractor purchasing that property either as an agent of a qualified person or for the contractor's own account and subsequent resale to a qualified person for use in the performance of a construction contract for the qualified person who will use the tangible personal property as an integral part of the manufacturing, processing, refining, fabricating, or recycling process, or as a research or storage facility for use in connection with the manufacturing process.

This exemption shall not apply to any tangible personal property that is used primarily in administration, general management, or marketing.

(b) For purposes of this section:

(1) "Fabricating" means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(2) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(3) "Primarily" means tangible personal property used 50 percent or more of the time in an activity described in subdivision (a).

(4) "Process" means the period beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer has altered tangible

personal property to its completed form, including packaging, if required. Raw materials shall be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified taxpayer's manufacturing, processing, refining, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified taxpayer's manufacturing, processing, refining, fabricating, or recycling activity is conducted, shall not be considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.

(5) "Processing" means the physical application of the materials and labor necessary to modify or change the characteristics of property.

(6) "Qualified person" means any person that is both of the following:

(A) A new trade or business. In determining whether a trade or business activity qualifies as a new trade or business, the following rules shall apply:

(i) In any case where a person purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by that person (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including, real, personal, tangible, and intangible property) used by that person (or any related person) in the conduct of his or her trade or business exceed 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the person (or any related person). For purposes of this subparagraph only, the following rules shall apply:

(I) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the month following the quarterly period in which the person (or any related person) first uses any of the acquired trade or business assets in his or her business activity.

(II) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring person (or related person).

(ii) In any case where a person (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months ("prior trade or business activity"), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified

under a different division of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the person's (or any related person's) current or prior trade or business activities in this state.

(iii) In any case where a person, including all related persons, is engaged in trade or business activities wholly outside of this state and that person first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in clause (i)), the trade or business activity shall be treated as a new business.

(iv) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the person as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of clause (i).

(v) "Related person" means any person that is related to that person under either Section 267 or 318 of the Internal Revenue Code.

(vi) "Acquire" includes any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(B) Engaged in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition.

(7) Notwithstanding paragraph (6), "qualified person" shall not include any person who has conducted business activities in a new trade or business for three or more years.

(8) "Refining" means the process of converting a natural resource to an intermediate or finished product.

(9) "Research and development" means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(10) "Tangible personal property" does not include any of the following:

(A) Consumables with a normal useful life of less than one year, except as provided in subparagraph (E) of paragraph (10).

(B) Furniture, inventory, equipment used in the extraction process, or equipment used to store finished products that have completed the manufacturing process.

(C) Any property for which a credit is claimed under either Section 17053.49 or 23649.

(11) "Tangible personal property" includes, but is not limited to, all of the following:

(A) Machinery and equipment, including component parts and contrivances such as belts, shafts, moving parts, and operating structures.

(B) All equipment or devices used or required to operate, control, regulate, or maintain the machinery, including, without limitation, computers, data processing equipment, and computer software, together with all repair and replacement parts with a useful life of one or more years therefor, whether purchased separately or in conjunction with a complete machine and regardless of whether the machine or component parts are assembled by the taxpayer or another party.

(C) Property used in pollution control that meets or exceed standards established by this state or any local or regional governmental agency within this state.

(D) Special purpose buildings and foundations used as an integral part of the manufacturing, processing, refining, or fabricating process, or that constitute a research or storage facility used during the manufacturing process. Buildings used solely for warehousing purposes after completion of the manufacturing process are not included.

(E) Fuels used or consumed in the manufacturing process.

(F) Property used in recycling.

(c) No exemption shall be allowed under this section unless the purchaser furnishes the retailer with an exemption certificate, completed in accordance with any instructions or regulations as the board may prescribe, and the retailer subsequently furnishes the board with a copy of the exemption certificate. The exemption certificate shall contain the sales price of the machinery or equipment that is exempt pursuant to subdivision (a).

(d) Notwithstanding any provision of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), the exemption established by this section shall not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of those laws.

(e) (1) Notwithstanding subdivision (a), the exemption provided by this section shall not apply to any sale or use of property which, within one year from the date of purchase, is either removed from California or converted from an exempt use under subdivision (a) to some other use not qualifying for the exemption.

(2) Notwithstanding subdivision (a), on or after January 1, 1995, the exemption established by this section shall not apply with respect to any tax levied pursuant to Sections 6051.2 and 6201.2, or pursuant to Section 35 of Article XIII of the California Constitution.

(f) If a purchaser certifies in writing to the seller that the property purchased without payment of the tax will be used in a manner entitling the seller to regard the gross receipts from the sale as exempt from the sales tax, and within one year from the date of purchase, the purchaser (1) removes that property outside California, (2) converts that property for use in a manner not qualifying for the exemption, or (3) uses that property in a manner

not qualifying for the exemption, the purchaser shall be liable for payment of sales tax, with applicable interest, as if the purchaser were a retailer making a retail sale of the property at the time the property is so removed, converted, or used, and the sales price of the property to the purchaser shall be deemed the gross receipts from that retail sale.

(g) (1) This section shall remain in effect until the date specified in paragraph (2), on which date this section shall cease to be operative, and as of that date is repealed.

(2) (A) This section shall cease to be operative on January 1, 2001, or on January 1 of the earliest year thereafter, if the total employment in this state, as determined by the Employment Development Department on the preceding January 1, does not exceed by 100,000 jobs the total employment in this state on January 1, 1994. The department shall report annually to the Legislature with respect to the determination required by the preceding sentence.

(B) For purposes of this paragraph, "total employment" means the total employment in the manufacturing sector, excluding employment in the aerospace sector.

(h) This section applies to leases of tangible personal property classified as "continuing sales" and "continuing purchases" in accordance with Sections 6006.1 and 6010.1. The exemption established by this section shall apply to the rentals payable pursuant to such a lease, provided the lessee is a qualified person and the property is used in an activity described in subdivision (a). Rentals which meet the foregoing requirements are eligible for the exemption for a period of six years from the date of commencement of the lease. At the close of the six-year period from the date of commencement of the lease, lease receipts are subject to tax without exemption.

SEC. 6.1. Section 17052.8 is added to the Revenue and Taxation Code, to read:

17052.8. For each taxable year beginning on or after January 1, 1996, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) an amount determined as follows:

(a) (1) (A) The amount of the credit shall be equal to one-third of the federal credit computed in accordance with Section 43 of the Internal Revenue Code.

(B) If a taxpayer elects, under Section 43(e) of the Internal Revenue Code, not to apply Section 43 for federal tax purposes, this election is binding and irrevocable for state purposes, and for purposes of subparagraph (A), the federal credit shall be zero.

(2) "Qualified enhanced oil recovery project" shall include only projects located within California.

(3) The credit allowed under this subdivision shall not be allowed to any taxpayer for whom a depletion allowance is not permitted to be computed under Section 613 of the Internal Revenue Code by

reason of paragraphs (2), (3), or (4) of subsection (d) of Section 613A of the Internal Revenue Code.

(b) Section 43(d) of the Internal Revenue Code shall apply.

(c) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" for the succeeding 15 years.

(d) In the case where property which qualifies as part of the taxpayer's "qualified enhanced oil recovery costs" also qualifies for a credit under any other section in this part, the taxpayer shall make an election on its original return as to which section applies to all costs allocable to that item of qualified property. Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(e) No deduction shall be allowed as otherwise provided in this part for that portion of any costs paid or incurred for the taxable year which is equal to the amount of the credit allowed under this section attributable to those costs.

(f) The basis of any property for which a credit is allowed under this section shall be reduced by the amount of the credit attributable to the property. The basis adjustment shall be made for the taxable year for which the credit is allowed.

(g) No credit may be claimed under this section with respect to any amount for which any other credit has been claimed under this part.

SEC. 6.2. Section 17052.10 is added to the Revenue and Taxation Code, to read:

17052.10. (a) For each taxable year beginning on or after January 1, 1997, and before January 1, 2008, there shall be allowed as a credit against the amount of "net tax," as defined in Section 17039, an amount equal to fifteen dollars ($15) for each ton of rice straw, as defined in Section 18944.33 of the Health and Safety Code, that is grown within California and purchased during the taxable year by the taxpayer.

(b) The aggregate amount of tax credits granted to all taxpayers pursuant to this section and Section 23610 shall not exceed four hundred thousand dollars ($400,000) for each calendar year.

(c) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" for the next 10 taxable years, or until the credit has been exhausted, whichever occurs first.

(d) No deduction shall be claimed for the purchase of rice straw for which a tax credit has been claimed pursuant to this section.

(e) No credit shall be claimed for the purchase of rice straw for which a tax credit has otherwise already been claimed pursuant to this part.

(f) The Department of Food and Agriculture shall do all of the following:

(1) Certify that the taxpayer has purchased the rice straw as specified in subdivision (a).

(2) Issue certificates in an aggregate amount that shall not exceed the limit specified in subdivision (b). The certificates shall be issued on a "first come, first served" basis to reflect the chronological order that the taxpayer submitted a valid request to the Department of Food and Agriculture.

(3) Provide an annual listing to the Franchise Tax Board (preferably on computer readable form, and in a form or manner agreed upon by the Franchise Tax Board and the Department of Food and Agriculture) of the qualified taxpayers who were issued certificates and the amount of rice straw purchased by each taxpayer.

(4) Provide the taxpayer with a copy of the certification to retain for his or her records.

(5) Obtain the taxpayer's identification number, or in the case of a partnership, the taxpayer identification numbers of all partners.

(6) On or before each June 1 immediately following each year for which the credit under this section is available, provide to the Legislature an informational report with respect to that year that includes all of the following:

(A) The number of tax credit certificates requested and issued.

(B) The type of businesses receiving the tax credit certificates.

(C) A general list of the methods used to process the rice straw.

(D) Recommendations on how the credits can be issued in a manner which will maximize the long term use of the California grown rice straw.

(g) To be eligible for the credit under this section the taxpayer shall do all of the following:

(1) As part of the taxpayer's allocation request for tax credits, provide the Department of Food and Agriculture with documents, as deemed necessary by the department, verifying the purchase of rice straw and that it meets the requirements specified in this section.

(2) Retain for his or her records a copy of the certificate issued by the Department of Food and Agriculture as specified in subdivision (f).

(3) Provide a copy of the certification specified in subdivision (f) to the Franchise Tax Board upon request. If the taxpayer fails to comply with the requirements of this subdivision, no credit shall be allowed to that taxpayer under this section for any taxable year unless the taxpayer subsequently complies.

(4) Provide the Department of Food and Agriculture with his or her taxpayer identification number, or in the case of a partnership, the taxpayer identification numbers of all partners.

(h) (1) For purposes of this section, a credit shall be allowed only if the taxpayer is the "end user" of the rice straw. For purposes of this section, "end user" shall mean anyone who uses the rice straw for processing, generation of energy, manufacturing, export, prevention

of erosion, or for any other purpose, exclusive of open burning, that consumes the rice straw.

(2) The credit shall not be allowed if the taxpayer is related, within the meaning of Section 267 or 318 of the Internal Revenue Code, to any person who grew the rice straw within California.

(i) This section shall remain in effect only until December 1, 2008, and as of that date is repealed.

SEC. 7. Section 17052.12 of the Revenue and Taxation Code is amended to read:

17052.12. For each taxable year beginning on or after January 1, 1987, there shall be allowed as a credit against the "net tax" (as defined by Section 17039) for the taxable year an amount determined in accordance with Section 41 of the Internal Revenue Code, except as follows:

(a) For each taxable year beginning before January 1, 1997, the reference to "20 percent" in Section 41(a)(1) of the Internal Revenue Code is modified to read "8 percent."

(b) For each taxable year beginning on or after January 1, 1997, the reference to "20 percent" in Section 41(a)(1) of the Internal Revenue Code is modified to read "11 percent."

(c) Section 41(a)(2) of the Internal Revenue Code, relating to basic research payments, shall not apply.

(d) "Qualified research" shall include only research conducted in California.

(e) In the case where the credit allowed under this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(f) Section 41(c)(5) of the Internal Revenue Code, relating to gross receipts, is modified to take into account only those gross receipts from the sale of property held primarily for sale to customers in the ordinary course of the taxpayer's trade or business that is delivered or shipped to a purchaser within this state, regardless of f.o.b. point or other conditions of sale.

(g) Section 41(h) of the Internal Revenue Code, relating to termination, shall not apply.

(h) Except as provided in subdivision (i), the amendments to this section by the act adding this subdivision shall apply only to taxable years beginning on or after January 1, 1993.

(i) The amendments made by Section 13112 of the Revenue Reconciliation Act of 1993 (P.L. 103-66) to Section 41 of the Internal Revenue Code, relating to the credit for increased research activities, shall apply to taxable years beginning on or after January 1, 1994.

(j) Section 41(g) of the Internal Revenue Code, relating to special rule for passthrough of credit, is modified by each of the following:

(1) The last sentence shall not apply.

(2) If the amount determined under Section 41(a) of the Internal Revenue Code for any taxable year exceeds the limitation of Section

41(g) of the Internal Revenue Code, that amount may be carried over to other taxable years under the rules of subdivision (e); except that the limitation of Section 41(g) of the Internal Revenue Code shall be taken into account in each subsequent taxable year.

SEC. 8. Section 17053.8 of the Revenue and Taxation Code is amended to read:

17053.8. (a) There shall be allowed as a credit against the "net tax" (as defined in Section 17039) for the taxable year an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) (i) Except as provided in clause (ii), that portion of wages paid or incurred by the employer during the taxable year to qualified disadvantaged individuals that does not exceed 150 percent of the minimum wage.

(ii) For up to 1,350 qualified employees who are employed by the taxpayer in the Long Beach Enterprise Zone in aircraft manufacturing activities described in Codes 3721 to 3728, inclusive, and Code 3812 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "qualified wages" means that portion of hourly wages that does not exceed 202 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the individual commences employment with the taxpayer.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(c) For purposes of this section:

(1) "Qualified disadvantaged individual" means an individual—

(A) Who is a qualified employee within the meaning of subdivision (d).

(B) Who is hired by the employer after the designation of the area in which services were performed as an enterprise zone (under Section 7073 of the Government Code).

(C) Who is any of the following immediately preceding the individual's commencement of employment with the taxpayer:

(i) An individual who is eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.) and who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act.

(ii) Any individual who is eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who is eligible as determined by the Employment Development Department under the federal Targeted Jobs Tax Credit Program as long as that program is in effect.

(2) Priority shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible under the federal Targeted Jobs Tax Credit Program.

(d) For purposes of this section:"qualified employee" means an individual—

(1) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone, and

(2) Who performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone.

(e) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification which provides that a qualified individual meets the eligibility requirements specified in subparagraph (C) of paragraph (1) of subdivision (c).

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(f) (1) For purposes of this section:

(A) All employees of trades or businesses (which are not incorporated) which are under common control shall be treated as employed by a single employer, and

(B) The credit (if any) allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit.

The regulations prescribed under this paragraph shall be based on principles similar to the principles which apply in the case of controlled groups of corporations as specified in subdivision (f) of Section 23622.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (g)) for any calendar year ending

after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(g) (1) If the employment of any employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount (determined under those regulations) equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(h) In the case of an estate or trust—

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each, and

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated (for purposes of this part) as the employer with respect to those wages.

(i) For purposes of this section, "enterprise zone" means an area for which designation as an enterprise zone is in effect under Section 7073 of the Government Code.

(j) The credit shall be reduced by the credit allowed under Section 17053.7. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (k) or (*l*).

(k) In the case where the credit allowed under this section exceeds the net tax for the taxable year, that portion of the credit which exceeds the net tax may be carried over and added to the credit, if any, in succeeding taxable years for the number of taxable years in which the designation of an enterprise zone is binding, or 15 taxable years, if longer, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(*l*) The amount of the credit otherwise allowed under this section and Section 17052.13, including any credit carryover from prior years, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributed to the enterprise zone determined as if that attributed income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section as follows:

(A) For taxable years beginning on or after January 1, 1991, and ending on or before December 31, 1996, income shall be apportioned to the enterprise zone by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The enterprise zone" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (k).

SEC. 9. Section 17053.12 is added to the Revenue and Taxation Code, to read:

17053.12. (a) In the case of a taxpayer who transports any agricultural product donated in accordance with Chapter 5 (commencing with Section 58501) of Part 1 of Division 21 of the Food and Agricultural Code, for taxable years beginning on or after January 1, 1996, there shall be allowed as a credit against the "net tax"

(as defined by Section 17039), an amount equal to 50 percent of the transportation costs paid or incurred by the taxpayer in connection with the transportation of that donated agricultural product.

(b) If any credit allowed by this section is claimed by the taxpayer, any deduction otherwise allowed under this part for that amount of the cost paid or incurred by the taxpayer which is eligible for the credit that is claimed shall be reduced by the amount of the credit allowed.

(c) Upon delivery of the donated agricultural product by a taxpayer authorized to claim a credit pursuant to subdivision (a), the nonprofit charitable organization shall provide a certificate to the taxpayer who transported the agricultural product. The certificate shall contain a statement signed and dated by a person authorized by that organization that the product is donated under Chapter 5 (commencing with Section 58501) of Part 1 of Division 21 of the Food and Agricultural Code. The certificate shall also contain the following information: the type and quantity of product donated, the distance transported, the name of the transporter, the name of the taxpayer donor, and the name and address of the donee. Upon the request of the Franchise Tax Board, the taxpayer shall provide a copy of the certification to the Franchise Tax Board.

(d) In the case where any credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

SEC. 10. Section 17053.14 is added to the Revenue and Taxation Code, to read:

17053.14. (a) (1) For taxable years beginning on or after January 1, 1997, there shall be allowed as a credit against the "net tax," as defined in Section 17039, an amount equal to the lesser of 50 percent of the qualified amount, as determined under subdivision (b), or the amount allocated under paragraph (2) of subdivision (e).

(2) Notwithstanding paragraph (1), no credit shall be allowed until the qualified year, as defined in paragraph (3).

(3) For purposes of this section, the "qualified year" is the first taxable year during which the construction or rehabilitation of the qualified farmworker housing is completed and there is occupancy of the qualified farmworker housing by eligible farmworkers.

(b) (1) For purposes of this section, the "qualified amount" shall be equal to the sum of all costs paid or incurred to construct, in the case of new construction, or rehabilitate, farmworker housing to meet the requirements of the Employee Housing Act (Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code), and any general improvement costs directly related thereto, including, but not limited to, improvements to ensure compliance with laws governing access for persons with disabilities and costs related to reducing utility expenses.

(2) For purposes of paragraph (1), construction or rehabilitation of the farmworker housing shall have commenced on or after January 1, 1997.

(3) Notwithstanding any other provision of this part, the qualified amount shall not include any costs paid or incurred prior to January 1, 1997.

(c) Notwithstanding any other provision of this part, no credit shall be allowed under this section unless the taxpayer first obtains a certification from the committee that the amounts described in subdivision (b) qualify for the credit under this section and the total amount of the credit allocated to the taxpayer pursuant to the Farmworker Housing Assistance Program.

(d) The taxpayer shall do all of the following:

(1) Apply to the committee for credit certification prior to the payment or incurrence of costs described in paragraph (1) of subdivision (b).

(2) Retain a copy of the certification.

(3) Make the certification available to the Franchise Tax Board upon request.

(e) The committee shall do all of the following:

(1) Provide forms and instructions for applications for credit certification, as specified pursuant to the Farmworker Housing Assistance Program.

(2) Accept applications and issue a certificate to the taxpayer that includes a certification as to the qualified expenditures described in subdivision (b) that qualify for the credit and the total amount of the credit to which the taxpayer is entitled for the taxable year. Credits shall be allocated through a minimum of one competitive funding round per year.

(3) Obtain the taxpayer's taxpayer identification number, or each partner's taxpayer identification number in the case of a partnership, for tax administration purposes.

(4) Provide an annual listing to the Franchise Tax Board, in the form and manner agreed upon by the Franchise Tax Board and the committee, containing the names, taxpayer identification numbers pursuant to paragraph (3), qualified expenditures, and total amount of credit certified to each taxpayer.

(f) For purposes of this section:

(1) "Compliance period" means, with respect to any farmworker housing, the period of 30 consecutive taxable years, beginning with the taxable year in which the credit is allowable.

(2) "Construct or rehabilitate" includes reconstruction, but does not include any costs related to acquisition or refinancing of property or structures thereon.

(3) "Employee Housing Act" means Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code.

(4) "Farmworker Housing Assistance Program" means Chapter 3.7 (commencing with Section 50199.50) of Part 1 of Division 31 of the Health and Safety Code.

(5) "Qualified farmworker housing" means housing located within this state which satisfies the requirements of the Farmworker Housing Assistance Program. The housing may be vacant or occupied, and it need not be licensed pursuant to the Employee Housing Act at the time of the initiation of construction or rehabilitation.

(6) "Committee" means the California Tax Credit Allocation Committee as defined in Section 50199.7 of the Health and Safety Code.

(7) "Qualified accountant" means an accountant licensed or certified in this state who is neither an employee of the taxpayer nor related to the taxpayer, within the meaning of Section 267 of the Internal Revenue Code.

(g) No deduction or other credit shall be allowed under this part or Part 11 (commencing with Section 23001) to the extent of any qualified amounts, as defined in subdivision (b), that are taken into account in computing the credit allowed under this section.

(h) The farmworker housing tax credit shall not be allowed unless the taxpayer:

(1) Constructs or rehabilitates the property subject to the covenants, conditions, and restrictions imposed by this section and pursuant to the Farmworker Housing Assistance Program, which shall include, but not necessarily be limited to, a requirement that the taxpayer obtain, for approval by the committee, a construction cost audit and certification of qualified expenditures from a qualified accountant.

(2) Subsequent to construction or rehabilitation of the farmworker housing, owns or operates the farmworker housing pursuant to the requirements of this section, or ensures the ownership and operation of the farmworker housing pursuant to the requirements of this section.

(i) The requirements of this section shall be set forth in a written agreement between the committee and the taxpayer. The agreement shall include, but not necessarily be limited to, the requirements set forth in the Farmworker Housing Assistance Program.

(j) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(k) (1) In the case of any disqualifying event, as defined in paragraph (2), there shall be added to the "net tax," as defined in Section 17039, for the taxable year in which the disqualifying event occurs, the recapture amount computed under paragraph (3) and the interest amount computed under paragraph (4).

(2) For purposes of this subdivision, "disqualifying event" shall mean:

(A) The committee determines that the certification provided under subdivision (e) was obtained by fraud or misrepresentation.

(B) The taxpayer fails to comply with the requirements of the Employee Housing Act, if applicable, the Farmworker Housing Assistance Program, or any other requirement imposed under this section.

(3) For purposes of this subdivision, "recapture amount" means:

(A) In the case of any disqualifying event described in subparagraph (A) of paragraph (2), the entire amount of any credit previously allowed under this section.

(B) In the case of any disqualifying event described in subparagraph (B) of paragraph (2), an amount determined by multiplying the entire amount of the credit previously allowed under this section by a fraction, the numerator of which is the number of years remaining in the compliance period and the denominator of which is 30.

(4) For purposes of this subdivision, "interest amount" means:

(A) In the case of any disqualifying event described in subparagraph (A) of paragraph (2), the amount of interest computed using the adjusted annual rate established in Section 19521 from the due date of the return for each taxable year in which the credit was claimed to the date of the payment of the additional tax resulting from the application of this subdivision.

(B) In the case of any disqualifying event described in subparagraph (B) of paragraph (2), zero.

(*l*) The annual amount of credit granted pursuant to this section and Sections 23608.2 and 23608.3 shall not exceed five hundred thousand dollars ($500,000), provided that the aggregate amount of the credit granted pursuant to this section and Sections 23608.2 and 23608.3 for the 1998 calendar year and thereafter may exceed five hundred thousand dollars ($500,000) per calendar year by an amount equal to any unallocated credits under this section and Sections 23608.2 and 23608.3 for the preceding calendar year or years.

SEC. 11. Section 17053.42 is added to the Revenue and Taxation Code, to read:

17053.42. (a) For each taxable year beginning on or after January 1, 1996, there shall be allowed as a credit against the "net tax," as defined in Section 17039, the amount paid or incurred for eligible access expenditures. The credit shall be allowed in accordance with Section 44 of the Internal Revenue Code, relating to expenditures to provide access to disabled individuals, except that the credit amount specified in subdivision (b) shall be substituted for the credit amount specified in Section 44(a) of the Internal Revenue Code.

(b) The credit amount allowed under this section shall be 50 percent of so much of the eligible access expenditures for the taxable year as do not exceed two hundred fifty dollars ($250).

(c) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years if necessary, until the credit is exhausted.

SEC. 12. Section 17053.49 of the Revenue and Taxation Code is amended to read:

17053.49. (a) (1) A qualified taxpayer shall be allowed a credit against the "net tax," as defined in Section 17039, equal to 6 percent of the qualified cost of qualified property that is placed in service in this state.

(2) In the case of any qualified costs paid or incurred on or after January 1, 1994, and prior to the first taxable year of the qualified taxpayer beginning on or after January 1, 1995, the credit provided under paragraph (1) shall be claimed by the qualified taxpayer on the qualified taxpayer's return for the first taxable year beginning on or after January 1, 1995. No credit shall be claimed under this section on a return filed for any taxable year commencing prior to the qualified taxpayer's first taxable year beginning on or after January 1, 1995.

(b) (1) For purposes of this section, "qualified cost" means any cost that satisfies each of the following conditions:

(A) Except as otherwise provided in this subparagraph, is a cost paid or incurred by the qualified taxpayer for the construction, reconstruction, or acquisition of qualified property on or after January 1, 1994, and prior to the date this section ceases to be operative under paragraph (2) of subdivision (i). In the case of any qualified property constructed, reconstructed, or acquired by the qualified taxpayer (or any person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) pursuant to a binding contract in existence on or prior to January 1, 1994, costs paid pursuant to that contract shall be subject to allocation as follows: contract costs shall be allocated to qualified property based on a ratio of costs actually paid prior to January 1, 1994, and total contract costs actually paid. "Cost paid" shall include, without limitation, contractual deposits and option payments. To the extent of costs allocated, whether or not currently deductible or depreciable for tax purposes, to a period prior to January 1, 1994, the cost shall be deemed allocated to property acquired before January 1, 1994, and is thus not a "qualified cost."

(B) Except as provided in paragraph (2) of subdivision (d) and subparagraph (B) of paragraph (3) of subdivision (d), is an amount upon which the qualified taxpayer has paid, directly or indirectly as a separately stated contract amount or as determined from the records of the qualified taxpayer, sales or use tax under Part 1 (commencing with Section 6001).

(C) Is an amount properly chargeable to the capital account of the qualified taxpayer.

(2) (A) For purposes of this subdivision, any contract entered into on or after January 1, 1994, that is a successor or replacement

contract to a contract that was binding prior to January 1, 1994, shall be treated as a binding contract in existence prior to January 1, 1994.

(B) If a successor or replacement contract is entered into on or after January 1, 1994, and the subject of the successor or replacement contract relates both to amounts for the construction, reconstruction, or acquisition of qualified property described in the original binding contract and to costs for the construction, reconstruction, or acquisition of qualified property not described in the original binding contract, then the portion of those amounts described in the successor or replacement contract that were not described in the original binding contract shall not be treated as costs paid or incurred pursuant to a binding contract in existence on or prior to January 1, 1994, under subparagraph (A) of paragraph (1).

(3) (A) For purposes of this section, an option contract in existence prior to January 1, 1994, under which a qualified taxpayer (or any other person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) had an option to acquire qualified property, shall be treated as a binding contract under the rules in paragraph (2). For purposes of this subparagraph, an option contract shall not include an option under which the option holder will forfeit an amount less than 10 percent of the fixed option price in the event the option is not exercised.

(B) For purposes of this section, a contract shall be treated as binding even if the contract is subject to a condition.

(c) (1) For purposes of this section, "qualified taxpayer" means any taxpayer or partnership engaged in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) In the case of any pass-through entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level and any credit under this section or Section 23649 shall be allowed to the pass-through entity and passed through to the partners or shareholders in accordance with applicable provisions of Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). For purposes of this paragraph, the term "pass-through entity" means any partnership or S corporation.

(3) The Franchise Tax Board may prescribe regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the effect of this section through splitups, shell corporations, partnerships, tiered ownership structures, sale-leaseback transactions, or otherwise.

(d) For purposes of this section, "qualified property" means property that is described as either of the following:

(1) Tangible personal property that is defined in Section 1245(a) of the Internal Revenue Code for use by a qualified taxpayer in those lines of business described in Codes 2011 to 3999, inclusive, of the

Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, that is primarily used for any of the following:

(A) For the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered tangible personal property to its completed form, including packaging, if required.

(B) In research and development.

(C) To maintain, repair, measure, or test any property described in this paragraph.

(D) For pollution control that meets or exceeds standards established by the state or by any local or regional governmental agency within the state.

(E) For recycling.

(2) The value of any capitalized labor costs that are directly allocable to the construction or modification of property described in paragraph (1).

(3) In the case of any qualified taxpayer engaged in manufacturing activities described in SIC Code 357 or 367, those activities related to biotechnology described in SIC Code 8731, those activities related to biopharmaceutical establishments only that are described in SIC Codes 2833 to 2836, inclusive, those activities related to space vehicles and parts described in SIC Codes 3761 to 3769, inclusive, those activities related to space satellites and communications satellites and equipment described in SIC Codes 3663 and 3812 (but only with respect to "qualified property" that is placed in service on or after January 1, 1996), or those activities related to semiconductor equipment manufacturing described in SIC Code 3559 (but only with respect to "qualified property" that is placed in service on or after January 1, 1997), "qualified property" also includes the following:

(A) Special purpose buildings and foundations that are constructed or modified for use by the qualified taxpayer primarily in a manufacturing, processing, refining, or fabricating process, or as a research or storage facility primarily used in connection with a manufacturing process.

(B) The value of any capitalized labor costs that are directly allocable to the construction or modification of special purpose buildings and foundations that are used primarily in the manufacturing, processing, refining, or fabricating process, or as a research or storage facility primarily used in connection with a manufacturing process.

(C) (i) For purposes of this paragraph, "special purpose building and foundation" means only a building and the foundation immediately underlying the building that is specifically designed and

constructed or reconstructed for the installation, operation, and use of specific machinery and equipment with a special purpose, which machinery and equipment, after installation, will become affixed to or a fixture of the real property, and the construction or reconstruction of which is specifically designed and used exclusively for the specified purposes as set forth in subparagraph (A) ("qualified purpose").

(ii) A building is specifically designed and constructed or modified for a qualified purpose if it is not economic to design and construct the building for the intended purpose and then use the structure for a different purpose.

(iii) For purposes of clause (i) and clause (vi), a building is used exclusively for a qualified purpose only if its use does not include a use for which it was not specifically designed and constructed or modified. Incidental use of a building for nonqualified purposes does not preclude the building from being a special purpose building. "Incidental use" means a use which is both related and subordinate to the qualified purpose. It will be conclusively presumed that a use is not subordinate if more than one-third of the total usable volume of the building is devoted to a use which is not a qualified purpose.

(iv) In the event an entire building does not qualify as a special purpose building, a taxpayer may establish that a portion of a building, and the foundation immediately underlying the portion, qualifies for treatment as a special purpose building and foundation if the portion satisfies all of the definitional provisions in this subparagraph.

(v) To the extent that a building is not a special purpose building as defined above, but a portion of the building qualifies for treatment as a special purpose building, then all equipment which exclusively supports the qualified purpose occurring within that portion and which would qualify as Internal Revenue Code Section 1245 property if it were not a fixture or affixed to the building shall be treated as a cost of the portion of the building which qualifies for treatment as a special purpose building.

(vi) Buildings and foundations which do not meet the definition of a special purpose building and foundation set forth above include, but are not limited to: buildings designed and constructed or reconstructed principally to function as a general purpose manufacturing, industrial, or commercial building; research facilities that are used primarily prior to or after, or prior to and after, the manufacturing process; or storage facilities that are used primarily prior to or after, or prior to and after, completion of the manufacturing process. A research facility shall not be considered to be used primarily prior to or after, or prior to and after, the manufacturing process if its purpose and use relate exclusively to the development and regulatory approval of the manufacturing process for specific biopharmaceutical products. A research facility which is used primarily in connection with the discovery of an organism from

which a biopharmaceutical product or process is developed does not meet the requirements of the preceding sentence.

(4) Subject to the provisions in subparagraph (B) of paragraph (1) of subdivision (b), qualified property also includes computer software that is primarily used for those purposes set forth in paragraph (1) of this subdivision.

(5) Qualified property does not include any of the following:

(A) Furniture.

(B) Facilities used for warehousing purposes after completion of the manufacturing process.

(C) Inventory.

(D) Equipment used in the extraction process.

(E) Equipment used to store finished products that have completed the manufacturing process.

(F) Any tangible personal property that is used in administration, general management, or marketing.

(G) Any vehicle for which a credit is claimed pursuant to Section 17052.11 or 23603.

(e) For purposes of this section:

(1) "Biopharmaceutical activities" means those activities which use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities which make use of chemical compounds to produce commercial products.

(2) "Fabricating" means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(3) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(4) "Other biotechnology activities" means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(5) "Primarily" means tangible personal property used 50 percent or more of the time in an activity described in subdivision (d).

(6) "Process" means the period beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer and ending at the point

at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer has altered tangible personal property to its completed form, including packaging, if required. Raw materials shall be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified taxpayer's manufacturing, processing, refining, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified taxpayer's manufacturing, processing, refining, fabricating, or recycling activity is conducted, shall not be considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.

(7) "Processing" means the physical application of the materials and labor necessary to modify or change the characteristics of property.

(8) "Refining" means the process of converting a natural resource to an intermediate or finished product.

(9) "Research and development" means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(10) "Small business" means a qualified taxpayer that meets any of the following requirements during the taxable year for which the credit is allowed:

(A) Has gross receipts of less than fifty million dollars ($50,000,000).

(B) Has net assets of less than fifty million dollars ($50,000,000).

(C) Has a total credit of less than one million dollars ($1,000,000).

(D) For taxable years beginning on or after January 1, 1997, is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and as further amended, and has not received regulatory approval for any product from the United States Food and Drug Administration.

(f) The credit allowed under subdivision (a) shall apply to qualified property that is acquired by or subject to lease by a qualified taxpayer, subject to the following special rules:

(1) A lessor of qualified property, irrespective of whether the lessor is a qualified taxpayer, shall not be allowed the credit provided under subdivision (a) with respect to any qualified property leased to another qualified taxpayer.

(2) For purposes of paragraphs (2) and (3) of subdivision (b), "binding contract" shall include any lease agreement with respect to the qualified property.

(3) (A) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is not treated as a sale under Part 1 (commencing with Section 6001), the following rules shall apply:

(i) Except as provided by subparagraph (C) of this paragraph, subparagraphs (A) and (C) of paragraph (1) of subdivision (b) shall not apply.

(ii) Except as provided in subparagraph (B) and clause (iii), the "qualified cost" upon which the lessee shall compute the credit provided under this section shall be equal to the original cost to the lessor (within the meaning of Section 18031) of the qualified property that is the subject of the lease.

(iii) Except as provided in clause (iv), the requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied only if the lessor has made a timely election under either Section 6094.1 or subdivision (d) of Section 6244 and has paid sales tax reimbursement or use tax measured by the purchase price of the qualified property (within the meaning of paragraph (5) of subdivision (g) of Section 6006). For purposes of this subdivision and clause (iv), the amount of original cost to the lessor which may be taken into account under clause (ii) shall not exceed the purchase price upon which sales tax reimbursement or use tax has been paid under the preceding sentence or under clause (iv).

(iv) With respect to leases entered into between January 1, 1994, and the effective date of this clause, the lessor may elect to pay use tax measured by the purchase price of the property by reporting and paying the tax with the return of the lessor for the fourth calendar quarter of 1994. In computing the use tax under the preceding sentence, a credit shall be allowed under Part 1 (commencing with Section 6001) for all sales or use tax previously paid on the lease.

(B) For purposes of applying subparagraph (A) only, the following special rules shall apply:

(i) The original cost to the lessor of the qualified property shall be reduced by the amount of any original cost of that property that was taken into account by any predecessor lessee in computing the credit allowable under this section.

(ii) Clause (i) shall not apply in any case where the predecessor lessee was required to recapture the credit provided under this section pursuant to the provisions of subdivision (g).

(iii) For purposes of this section only, in any case where a successor lessor has acquired qualified property from a predecessor lessor in a transaction not treated as a sale under Part 1 (commencing with Section 6001), the original cost to the successor lessor of the qualified property shall be reduced by the amount of the original cost of the qualified property that was taken into account by any lessee of the predecessor lessor in computing the credit allowable under this section.

(C) In determining the original cost of any qualified property under this paragraph, only amounts paid or incurred by the lessor on or after January 1, 1994, and prior to the date this section ceases to be operative under paragraph (2) of subdivision (i), shall be taken into account. In the case of any qualified property constructed,

reconstructed, or acquired by a lessor pursuant to a binding contract in existence on or prior to January 1, 1994, the allocation rule specified in subparagraph (A) of paragraph (1) of subdivision (b) shall apply in determining the original cost to the lessor of qualified property.

(D) Notwithstanding subparagraph (A), in the case of any leasing transaction for which the lessee is allowed the credit under this section and thereafter the lessee (or any party related to the lessee within the meaning of Section 267 or 318 of the Internal Revenue Code) acquires the qualified property from the lessor (or any successor lessor) within one year from the date the qualified property is first used by the lessee under the terms of the lease, the lessee's (or related party's) acquisition of the qualified property from the lessor (or successor lessor) shall be treated as a disposition by the lessee of the qualified property that was subject to the lease under subdivision (g).

(4) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is treated as a sale under Part 1 (commencing with Section 6001), the following rules shall apply:

(A) Subparagraph (A) of paragraph (1) of subdivision (b) shall be applied by substituting the term "purchase" for the term "construction, reconstruction, or acquisition."

(B) Subparagraph (C) of paragraph (1) of subdivision (b) shall apply.

(C) The requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied at the time that either the lessor or the qualified taxpayer pays sales or use tax under Part 1 (commencing with Section 6001).

(5) (A) In the case of any leasing transaction described in paragraph (3), the lessor shall provide a statement to the lessee specifying the amount of the lessor's original cost of the qualified property and the amount of that cost upon which a sales or use tax was paid within 45 days after the close of the lessee's taxable year in which the credit is allowable to the lessee under this section.

(B) The statement required under subparagraph (A) shall be made available to the Franchise Tax Board upon request.

(g) No credit shall be allowed if the qualified property is removed from the state, is disposed of to an unrelated party, or is used for any purpose not qualifying for the credit provided in this section in the same taxable year in which the qualified property is first placed in service in this state. If any qualified property for which a credit is allowed pursuant to this section is thereafter removed from this state, disposed of to an unrelated party, or used for any purpose not qualifying for the credit provided in this section within one year from the date the qualified property is first placed in service in this state, the amount of the credit allowed by this section for that qualified property shall be recaptured by adding that credit amount to the net

tax of the qualified taxpayer for the taxable year in which the qualified property is disposed of, removed, or put to an ineligible use.

(h) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and succeeding years as follows:

(1) Except as provided in paragraph (2), for the seven succeeding years if necessary, until the credit is exhausted.

(2) In the case of a small business, for the nine succeeding years, if necessary, until the credit is exhausted.

(i) (1) This section shall remain in effect until the date specified in paragraph (2), on which date this section shall cease to be operative, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (h), until the credit is exhausted.

(2) (A) This section shall cease to be operative on January 1, 2001, or on January 1 of the earliest year thereafter, if the total employment in this state, as determined by the Employment Development Department on the preceding January 1, does not exceed by 100,000 jobs the total employment in this state on January 1, 1994. The department shall report to the Legislature annually with respect to the determination required by the preceding sentence.

(B) For purposes of this paragraph, "total employment" means the total employment in the manufacturing sector, excluding employment in the aerospace sector.

(j) The amendments made by the act adding this subdivision shall be operative for taxable years beginning on or after January 1, 1997, except as provided in paragraph (3) of subdivision (d).

SEC. 13. Section 17053.73 is added to the Revenue and Taxation Code, to read:

17053.73. (a) There shall be allowed a credit against the "net tax" (as defined in Section 17039) to a taxpayer who employs a qualified employee in an enterprise zone during the taxable year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) (i) Except as provided in clause (ii), that portion of wages paid or incurred by the taxpayer during the taxable year to qualified employees that does not exceed 150 percent of the minimum wage.

(ii) For up to 1,350 qualified employees who are employed by the taxpayer in the Long Beach Enterprise Zone in aircraft manufacturing activities described in Codes 3721 to 3728, inclusive, and Code 3812 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "qualified wages" means that portion of hourly wages that does not exceed 202 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the employee commences employment with the taxpayer.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Zone expiration date" means the date the enterprise and employment zone designation expires, is no longer binding, or becomes inoperative.

(4) (A) "Qualified employee" means an individual who meets all of the following requirements:

(i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in an enterprise and employment zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise and employment zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise and employment zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.) and is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act.

(II) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(III) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was eligible, as determined by the Employment Development Department, under the federal Targeted Jobs Tax Credit Program as long as that program is in effect.

(IV) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a resident of a targeted employment area, as defined in Section 7072 of the Government Code.

(V) An employee who qualified the taxpayer for the enterprise zone hiring credit under former Section 17053.8 or the program area hiring credit under former Section 17053.11.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible under the federal Targeted Jobs Tax Credit Program.

(5) "Taxpayer" means a person or entity engaged in a trade or business within an enterprise and employment zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of the Government Code.

(c) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification which provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b).

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(d) (1) For purposes of this section:

(A) All employees of trades or businesses, which are not incorporated, that are under common control shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit, and shall be allocated in such manner.

(C) Principles that apply in the case of controlled groups of corporations, as specified in subdivision (d) of Section 23622.5, shall apply with respect to determining employment.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (e)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(e) (1) If the employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the

first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that employee.

(iii) A termination of employment of a qualified employee, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the qualified employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(f) In the case of an estate or trust, both of the following apply:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated, for purposes of this part, as the employer with respect to those wages.

(g) For purposes of this section, "enterprise and employment zone" means an area designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(h) The credit allowable under this section shall be reduced by the credit allowed under Sections 17053.10, 17053.17 and 17053.46 claimed for the same employee. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (i) or (j).

(i) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit that exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding taxable years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 17053.70, including any credit carryover from prior years, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section by substituting "the enterprise and employment zone" for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (i).

SEC. 14. Section 17062 of the Revenue and Taxation Code is amended to read:

17062. (a) In addition to the other taxes imposed by this part, there is hereby imposed for each taxable year, a tax equal to the excess, if any, of—

(1) The tentative minimum tax for the taxable year, over

(2) The regular tax for the taxable year.

(b) For purposes of this chapter, each of the following shall apply:

(1) The tentative minimum tax shall be computed in accordance with Sections 55 to 59, inclusive, of the Internal Revenue Code, except as otherwise provided in this part.

(2) The regular tax shall be the amount of tax imposed by Section 17041 or 17048, before reduction for any credits against the tax, less any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560.

(3) (A) The provisions of Section 55(b)(1) of the Internal Revenue Code shall be modified to provide that the tentative

minimum tax for the taxable year shall be equal to the following percent of so much of the alternative minimum taxable income for the taxable year as exceeds the exemption amount, before reduction for any credits against the tax:

(i) For any taxable year beginning on or after January 1, 1991, and before January 1, 1996, 8.5 percent.

(ii) For any taxable year beginning on or after January 1, 1996, 7 percent.

(B) In the case of a nonresident or part-year resident, the tentative minimum tax shall be computed as if the nonresident or part-year resident were a resident for the entire year multiplied by the ratio of California adjusted gross income (as modified for purposes of this chapter) to total adjusted gross income from all sources (as modified for purposes of this chapter). For purposes of computing the tax under subparagraph (A) and gross income from all sources, the net operating loss deduction provided in Section 56(d) of the Internal Revenue Code shall be computed as if the taxpayer were a resident for all prior years.

(C) For purposes of this section, the term "California adjusted gross income" includes each of the following:

(i) For any period during which the taxpayer was a resident of this state (as defined by Section 17014), all items of adjusted gross income (as modified for purposes of this chapter), regardless of source.

(ii) For any period during which the taxpayer was not a resident of this state, only those items of adjusted gross income (as modified for purposes of this chapter) which were derived from sources within this state, determined in accordance with Chapter 11 (commencing with Section 17951).

(4) The provisions of Section 55(b)(2) of the Internal Revenue Code, relating to alternative minimum taxable income, shall be modified to provide that alternative minimum taxable income shall not include the income, adjustments, and items of tax preference attributable to any trade or business of a qualified taxpayer.

(A) For purposes of this paragraph, "qualified taxpayer" means a taxpayer who meets both of the following:

(i) Is the owner of, or has an ownership interest in, a trade or business.

(ii) Has aggregate gross receipts, less returns and allowances, of less than one million dollars ($1,000,000) during the taxable year from all trades or businesses of which the taxpayer is the owner or has an ownership interest, in the amount of that taxpayer's proportionate interest in each trade or business.

(B) (i) For purposes of this paragraph, "proportionate interest" includes an interest in a pass-through entity.

(ii) For purposes of this paragraph, "pass-through entity" means any of the following:

(I) A partnership, as defined by Section 17008.

(II) An S corporation, as provided in Chapter 4.5 (commencing with Section 23800) of Part 11.

(III) A regulated investment company, as provided in Section 24871.

(IV) A real estate investment trust, as provided in Section 24872.

(V) A real estate mortgage investment conduit, as provided in Section 24874.

(c) (1) Section 56(b)(1)(E) of the Internal Revenue Code, relating to standard deduction and deduction for personal exemptions not allowed, is modified, for purposes of this part, to deny the standard deduction allowed by Section 17073.5.

(2) The provisions of Section 56(h) of the Internal Revenue Code, relating to adjustment based on energy preferences, shall not apply.

(d) The provisions of Section 57(a)(5) of the Internal Revenue Code, relating to tax-exempt interest shall not apply.

(e) The last two sentences of Section 57(a)(6)(B) of the Internal Revenue Code, relating to tangible personal property, shall not apply.

(f) Section 57(a) of the Internal Revenue Code, relating to items of tax preference, is modified to include as an item of tax preference an amount equal to one-half of the amount excluded from gross income for the taxable year under Section 18152.5.

(g) The provisions of Section 59(a) of the Internal Revenue Code, relating to the alternative minimum tax foreign tax credit, shall not apply.

SEC. 14.1. Section 17072 of the Revenue and Taxation Code is amended to read:

17072. (a) Section 62 of the Internal Revenue Code, relating to adjusted gross income defined, shall apply, except as otherwise provided.

(b) The amendments to Section 62 of the Internal Revenue Code, made by Section 13213 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to modifications to deduction for moving expenses, shall apply to taxable years beginning on or after January 1, 1996.

(c) The deduction allowed by Section 17267 shall be allowed in computing adjusted gross income.

SEC. 14.2. Section 17076 of the Revenue and Taxation Code is amended to read:

17076. (a) Section 67 of the Internal Revenue Code, relating to the 2 percent floor on miscellaneous itemized deductions, shall apply, except as otherwise provided.

(b) The amendments to Section 67 of the Internal Revenue Code, made by Section 13213 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to modifications to deduction for moving expenses, shall apply to taxable years beginning on or after January 1, 1996.

SEC. 14.25. Section 17077.5 is added to the Revenue and Taxation Code, to read:

17077.5. For each taxable year beginning on or after January 1, 1997, the amendments made to Section 988 of the Internal Revenue Code by Section 13223 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to mark to market accounting method for securities dealers, shall apply.

SEC. 14.3. Section 17084 is added to the Revenue and Taxation Code, to read:

17084. The amendments to Section 82 of the Internal Revenue Code, relating to reimbursement for expenses of moving, made by Section 13213 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to modifications to deduction for moving expenses, shall apply to taxable years beginning on or after January 1, 1996.

SEC. 14.4. Section 17134.5 is added to the Revenue and Taxation Code, to read:

17134.5. The amendments to Section 132 of the Internal Revenue Code, relating to certain fringe benefits, made by Section 13213 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to modifications to deduction for moving expenses, shall apply to taxable years beginning on or after January 1, 1996.

SEC. 14.5. Section 17138.5 is added to the Revenue and Taxation Code, to read:

17138.5. Section 106 of the Internal Revenue Code shall be modified to provide that in the case of an employee who is an eligible individual, as defined by Section 220 of the Internal Revenue Code, as added by Section 301 of Public Law 104-191, amounts contributed by that employee's employer to any medical savings account, as defined in Section 17267, of that employee shall be treated as employer-provided coverage for medical expenses under an accident or health plan to the extent those amounts are excluded from income by that individual under Section 106 of the Internal Revenue Code, as amended by Section 301(c) of Public Law 104-191 on the federal income tax return filed for the same taxable year.

SEC. 14.6. Section 17141.5 is added to the Revenue and Taxation Code, to read:

17141.5. For each taxable year beginning on or after January 1, 1997, gross income does not include any interest or dividends accruing during the taxable year to a medical savings account, as defined in Section 17267.

SEC. 15. Section 17144 of the Revenue and Taxation Code is amended to read:

17144. (a) Section 108(b)(2)(B) of the Internal Revenue Code, relating to general business credit, is modified by substituting "this part" in lieu of "Section 38 (relating to general business credit)."

(b) Section 108(b)(2)(G) of the Internal Revenue Code, relating to foreign tax credit carryovers, shall not apply.

(c) Section 108(b)(3)(B) of the Internal Revenue Code, relating to credit carryover reduction, is modified by substituting "11.1 cents" in lieu of "33 $^{1}/_{3}$ cents" in each place in which it appears. In the case where more than one credit is allowable under this part, the credits shall be reduced on a pro rata basis.

(d) Section 108(g)(3)(B) of the Internal Revenue Code, relating to adjusted tax attributes, is modified by substituting "($9)" in lieu of "($3)."

(e) (1) The amendments to Section 108 of the Internal Revenue Code made by Section 13150 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to exclusion from gross income for income from discharge of qualified real property business indebtedness, shall apply to discharges occurring on or after January 1, 1996, in taxable years beginning on or after January 1, 1996.

(2) If a taxpayer makes an election for federal income tax purposes under Section 108(c) of the Internal Revenue Code, relating to treatment of discharge of qualified real property business indebtedness, a separate election shall not be allowed under paragraph (3) of subdivision (e) of Section 17024.5 and the federal election shall be binding for purposes of this part.

(3) If a taxpayer has not made an election for federal income tax purposes under Section 108(c) of the Internal Revenue Code, relating to treatment of discharge of qualified real property business indebtedness, then the taxpayer shall not be allowed to make that election for purposes of this part.

(f) The amendments to Section 108 of the Internal Revenue Code made by Section 13226 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to modifications of discharge of indebtedness provisions, shall apply to discharges occurring on or after January 1, 1996, in taxable years beginning on or after January 1, 1996.

SEC. 15.1. Section 17150 is added to the Revenue and Taxation Code, to read:

17150. Section 125(f) of the Internal Revenue Code, relating to qualified benefits defined, is modified to provide that the term "qualified benefit" shall not include the benefit excluded from an employee's gross income under Section 17138.5.

SEC. 16. Section 17151 of the Revenue and Taxation Code is amended to read:

17151. (a) Except as provided in subdivision (b), Section 127 of the Internal Revenue Code, relating to educational assistance programs, shall apply.

(b) (1) The provisions of Section 127(d) of the Internal Revenue Code, relating to terminations, shall not apply.

(2) The provisions of Section 127 of the Internal Revenue Code, relating to educational assistance programs, shall not apply to any taxable year (or portion thereof) that those provisions (or similar provisions) are not applicable for federal income tax purposes.

(c) This section shall remain in effect only with respect to expenses relating to courses beginning before July 1, 1996, and as of that date is repealed.

SEC. 17. Section 17151 is added to the Revenue and Taxation Code, to read:

17151. (a) Gross income of an employee does not include any amounts, not exceeding an aggregate amount of five thousand two hundred fifty dollars ($5,250) per calendar year, that is paid or incurred by the employer for educational assistance to the employee pursuant to an educational assistance program.

(b) For purposes of this section, the following definitions shall apply:

(1) "Educational assistance" means the payment by an employer of expenses incurred by or on behalf of an employee for the employee's education, and includes, but is not limited to, payments for books, supplies, equipment, tuition, and fees, and similar payments. "Educational assistance" includes the provision by an employer of courses of instruction for an employee, including the provision of books, supplies, and equipment. "Educational assistance" does not include any payment for, or the provision of, any of the following:

(A) Any tools or supplies that may be retained by the employee after completion of a course of instruction.

(B) Any meals, lodging, or transportation.

(C) Any course or education involving sports, games, or hobbies.

(D) Any course or education taken at the graduate level beginning after June 30, 1996, of a kind normally taken by an individual pursuing a program leading to a law, business, medical, or other advanced academic or professional degree.

(2) "Educational assistance program" means a separate written plan of an employer for the exclusive benefit of his or her employees to provide those employees with educational assistance. The program shall meet the following requirements:

(A) The program benefits employees who qualify under a classification established by the employer and found by the Franchise Tax Board not to be discriminatory in favor of employees who are highly compensated employees (within the meaning of Section 414(q) of the Internal Revenue Code) or their dependents. For purposes of this subparagraph, there shall be excluded from consideration employees who are not included in the program and who are included in a unit of employees covered by an agreement that the Franchise Tax Board finds to be a collective bargaining agreement between employee representatives and one or more employers, if there is evidence that educational assistance benefits were the subject of good faith bargaining between the employee representatives and the employer or employers.

(B) Not more than 5 percent of the amounts paid or incurred by the employer for educational assistance during the year may be

provided for the class of individuals who are owners (or their spouses or dependents), each of whom, on any day of the year, owns more than 5 percent of the capital or profits interest in the employer.

(C) The program does not provide eligible employees with a choice between educational assistance and other remuneration includable in gross income. For purposes of this section, the business practices of the employer, as well as the written program, shall be taken into account.

(D) The program need not be funded.

(E) Reasonable notification of the availability and terms of the program is provided to eligible employees.

(3) "Employee" includes self-employed individuals within the meaning of Section 401(c)(1) of the Internal Revenue Code.

(c) For purposes of this section:

(1) Any individual who owns the entire interest in an unincorporated trade or business shall be treated as his or her own employee.

(2) A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (3) of subdivision (b).

(3) (A) An educational assistance program shall not be considered to fail to meet any of the requirements of paragraph (2) of subdivision (b) on the sole basis of either of the following:

(i) Different utilization rates for the different types of educational assistance made available under the program.

(ii) Successful completion or attainment of a particular course grade is required for or considered in determining reimbursement under the program.

(B) This section shall not be construed to affect the deduction or inclusion in income of amounts that are paid or incurred or received as reimbursement for educational expenses under Section 117, 162, or 212 of the Internal Revenue Code.

(d) No deduction or credit shall be allowed to the employee with respect to any amount that the employee excludes from income pursuant to this section.

(e) Section 127 of the Internal Revenue Code shall not apply.

(f) This section shall apply with respect to expenses relating to courses beginning after June 30, 1996.

SEC. 17.1. Section 17201.5 is added to the Revenue and Taxation Code, to read:

17201.5. Any employer contribution to a medical savings account, as defined in Section 17267, if otherwise deductible under this part, shall be allowed only for the taxable year in which paid.

SEC. 17.2. Section 17210 is added to the Revenue and Taxation Code, to read:

17210. (a) (1) For taxable years beginning on or after January 1, 1997, Section 219(c) of the Internal Revenue Code, relating to special rules for certain married individuals, shall not apply, and in lieu

thereof, the limitation imposed under Section 219(b)(1) of the Internal Revenue Code to an individual described in paragraph (2) for any taxable year shall not exceed the lesser of:

(A) Two thousand dollars ($2,000), or

(B) The sum of the following:

(i) The compensation includable in that individual's gross income for the taxable year, plus

(ii) The compensation includable in the gross income of that individual's spouse for the taxable year reduced by the amount allowed as a deduction under Section 219(a) of the Internal Revenue Code to that spouse for that taxable year.

(2) Paragraph (1) shall only apply to an individual who meets the following requirements:

(A) The individual files a joint return for the taxable year.

(B) The amount of compensation, if any, includable in the individual's gross income for the taxable year is less than the compensation includable in the gross income of that individual's spouse for the taxable year.

(b) For taxable years beginning on or after January 1, 1997, Section 219(f)(2) of the Internal Revenue Code, relating to other definitions and special rules for married individuals, shall be modified by replacing "subsections (b) and (c)" with "subsection (b)."

(c) For taxable years beginning on or after January 1, 1997, Section 219(g)(1) of the Internal Revenue Code, relating to limitation on deduction for active participants in certain pension plans in general, shall be modified by replacing "(c)(2)" with "the dollar amount in effect under subdivision (a) of Section 17210."

SEC. 17.25. Section 17213 is added to the Revenue and Taxation Code, to read:

17213. Section 213(d) of the Internal Revenue Code, relating to definitions, is modified to provide all of the following:

(a) The term "medical care" includes amounts paid for qualified long-term care services (as defined in Section 7702B(c) of the Internal Revenue Code as added by the Health Insurance Portability and Accountability Act of 1996).

(b) The term "insurance covering medical care" is modified to include any qualified long-term care insurance contract (as defined in Section 7702B(b) of the Internal Revenue Code as added by the Health Insurance Portability and Accountability Act of 1996).

(c) In the case of a qualified long-term care insurance contract (as defined in Section 7702B(b) of the Internal Revenue Code as added by the Health Insurance Portability and Accountability Act of 1996), only eligible long-term care premiums (as defined in subdivision (d)) shall be taken into account in determining the amount paid for medical care.

(d) (1) For purposes of this section and Section 213 of the Internal Revenue Code, the term "eligible long-term care premiums" means the amount paid during a taxable year for any qualified long-term

care insurance contract services (as defined in Section 7702B(b) of the Internal Revenue Code as added by the Health Insurance Portability and Accountability Act of 1996) covering an individual, to the extent that amount does not exceed the limitation determined under the following table:

In the case of an individual with an attained age before the close of the taxable year of:	The limitation is:
40 or less	$ 200
More than 40 but not more than 50	375
More than 50 but not more than 60	750
More than 60 but not more than 70	2,000
More than 70	2,500

(2) (A) In the case of any taxable year beginning in a calendar year after 1997, each dollar amount contained in paragraph (1) shall be increased by the medical care cost adjustment of that amount for that calendar year. If any increase determined under the preceding sentence is not a multiple of ten dollars ($10), that increase shall be rounded to the nearest multiple of ten dollars ($10).

(B) (i) For purposes of subparagraph (A), the medical care cost adjustment for any calendar year is the percentage (if any) by which the medical care component of the Consumer Price Index for August of the preceding calendar year exceeds that component for August of 1996.

(ii) Notwithstanding clause (i), the Franchise Tax Board shall utilize the same medical care cost adjustment utilized by the Secretary of the Treasury under Section 213 of the Internal Revenue Code (as modified by Section 322 of the Health Insurance Portability and Accountability Act of 1996).

(e) (1) For purposes of this section and Section 213 of the Internal Revenue Code, an amount paid for a qualified long-term care service (as defined in Section 220 of the Internal Revenue Code as added by the Health Insurance Portability and Accountability Act of 1996) provided to an individual shall be treated as not paid for medical care if that service is provided by either of the following:

(A) The spouse of the individual or a relative (directly or through a partnership, corporation, or other entity) unless the service is provided by a licensed professional with respect to that service.

(B) A corporation or partnership which is related (within the meaning of Sections 267(b) or 707(b) of the Internal Revenue Code) to the individual.

(2) For purposes of paragraph (1), the term "relative" means an individual bearing a relationship to the individual that is described in any of paragraphs (1) to (8), inclusive, of Section 152(a) of the Internal Revenue Code. This paragraph shall not apply for purposes of Section 105(b) of the Internal Revenue Code with respect to reimbursements through insurance.

(f) This section shall apply to taxable years beginning on or after January 1, 1997.

SEC. 17.3. Section 17218 is added to the Revenue and Taxation Code, to read:

17218. The amendments to Section 217 of the Internal Revenue Code, relating to moving expenses, made by Section 13213 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to modifications to deduction for moving expenses, shall apply to taxable years beginning on or after January 1, 1996.

SEC. 17.35. Section 17250 of the Revenue and Taxation Code is amended to read:

17250. (a) (1) Section 168 of the Internal Revenue Code, relating to the accelerated cost recovery system, shall apply to assets placed in service on or after January 1, 1987, in taxable years beginning on or after January 1, 1987.

(2) In the case of assets placed in service on or after January 1, 1987, in taxable years beginning prior to January 1, 1987, a taxpayer may elect to have Sections 168 and 179 of the Internal Revenue Code apply by doing all of the following:

(A) Making an election on the return for the first taxable year beginning on or after January 1, 1987.

(B) Establishing a depreciation adjustment account for each asset (or group of assets) in an amount equal to the difference between the depreciation allowed on the federal return for each asset (or group of assets) and the depreciation allowed under this part.

(C) The depreciation adjustment account (or accounts) established under subparagraph (B) shall be amortized over 60 months beginning with the first taxable year beginning on or after January 1, 1987.

(3) In the case of assets placed in service prior to January 1, 1987, in taxable years beginning prior to January 1, 1987, Section 168 of the Internal Revenue Code shall apply only to residential rental property as provided by former Section 17250.5 (as amended by Chapter 1461 of the Statutes of 1985).

(b) For purposes of subdivision (a), any reference to "tax imposed by this chapter" in Section 168 of the Internal Revenue Code means "net tax," as defined in Section 17039.

(c) For purposes of paragraph (1) of subdivision (a), Section 168 of the Internal Revenue Code shall be modified as follows:

(1) Section 168(e)(3) shall be modified to provide that any grapevine, replaced in a vineyard in California in any taxable year beginning on or after January 1, 1992, as a direct result of a phylloxera

infestation in that vineyard, shall be "five-year property," rather than "10-year property."

(2) Section 168(g)(3) of the Internal Revenue Code shall be modified to provide that any grapevine, replaced in a vineyard in California in any taxable year beginning on or after January 1, 1992, as a direct result of a phylloxera infestation in that vineyard, shall have a class life of 10 years.

(d) Every taxpayer claiming a depreciation deduction with respect to grapevines as described in subdivision (c) shall obtain a written certification from an independent state-certified integrated pest management advisor, or a state agricultural commissioner or advisor, that specifies that the replanting was necessary to restore a vineyard infested with phylloxera. The taxpayer shall retain the certification for future audit purposes.

(e) (1) Section 169 of the Internal Revenue Code, relating to amortization of pollution control facilities, shall apply, except as otherwise provided.

(2) The deduction allowed by this section shall be available only with respect to facilities located in this state.

(3) The "state certifying authority," as defined in Section 169(d)(2) of the Internal Revenue Code, means the State Air Resources Board, in the case of air pollution, and the State Water Resources Control Board, in the case of water pollution.

(f) For property used in a trade or business, or held for production of income, there shall be allowed as a depreciation deduction a reasonable allowance for the cost of a solar energy system and allowable conservation measures over a 60-month period for taxable years beginning before January 1, 1987.

(g) Section 7622(c)[e] of Public Law 101-239, relating to the effective date of changes in treatment of transfers of franchises, trademarks, and trade names, shall apply.

(h) Section 7645(b) of Public Law 101-239, relating to the effective date of disallowance of depreciation for certain term interests, shall apply.

(i) The amendments to Section 168(c)(1) of the Internal Revenue Code made by Section 13151 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to increase in recovery period for nonresidential real property, shall apply to property placed in service on or after January 1, 1997, in taxable years beginning on or after January 1, 1997.

SEC. 17.4. Section 17255 is added to the Revenue and Taxation Code, to read:

17255. (a) For taxable years beginning on or after January 1, 1997, Section 179(b)(1) of the Internal Revenue Code, relating to dollar limitation, is modified by substituting, in lieu of the amounts specified therein, the applicable amounts specified in subdivision (b).

(b) (1) With respect to property placed in service on or after January 1, 1997, and before January 1, 1998, the applicable amount is twelve thousand five hundred dollars ($12,500).

(2) With respect to property placed in service on and after January 1, 1998, the applicable amount is fifteen thousand dollars ($15,000).

SEC. 17.5. Section 17267 is added to the Revenue and Taxation Code, to read:

17267. (a) For each taxable year beginning on or after January 1, 1997, there shall be allowed as a deduction an amount equal to the amount allowed to that individual as a deduction under Section 220 of the Internal Revenue Code, relating to medical savings accounts, as added by Section 301 of Public Law 104-191, on the federal income tax return filed for the same taxable year by that individual.

(b) For purposes of this section:

(1) "Medical savings account" means a trustee or custodial account that meets both of the following requirements:

(A) Is established by an individual, or established jointly by an individual and his or her spouse, and designated as a medical savings account by the trustee or custodian.

(B) Is established for the exclusive benefit of any individual establishing the account, his or her spouse, or his or her dependents, where the written governing instrument creating the account provides for the following:

(i) All contributions to the account are required to be in cash.

(ii) The account is established to pay, pursuant to the requirements and limitations of this section, for the qualified medical expenses of an individual establishing the account, his or her spouse, or their dependents.

(iii) The account authorizes contributions by the individual's employer.

(iv) No part of the account assets shall be invested in life insurance contracts.

(v) The assets in the account shall not be commingled with other property, except in a common trust fund or common investment fund.

(vi) The interest of an individual in the balance in his or her account is nonforfeitable.

(2) "Trustee or custodian" means a bank, as defined in Section 408(n) of the Internal Revenue Code, an insurance company, as defined in Section 816 of the Internal Revenue Code, or a person who demonstrates to the satisfaction of the Franchise Tax Board that the manner in which that person will administer the account will be consistent with the requirements of Section 220 of the Internal Revenue Code, relating to medical savings accounts, as added by Section 301 of Public Law 104-191.

(c) (1) Any amount withdrawn from a medical savings account shall, except as otherwise provided in this section, be included in the

gross income of the taxpayer who is allowed the deduction under subdivision (a) for the taxable year in which the payment or distribution is made, and that taxpayer's tax for the taxable year in which the payment or distribution is made shall be increased by an amount equal to 10 percent of the payment or distribution, unless the payment or distribution is made to pay for the qualified medical expenses of an individual that established the account or his or her spouse or dependents. For purposes of this section, "dependent" shall have the same meaning as that term is defined by Section 152 of the Internal Revenue Code, and "qualified medical expenses" shall have the same meaning as that term is defined by Section 220 of the Internal Revenue Code, as added by Section 301 of Public Law 104-191. This paragraph shall not apply if the payment or distribution is made after the account holder becomes disabled within the meaning of Section 72(m)(7) of the Internal Revenue Code or dies, or after the date on which the account holder attains the age specified in Section 1811 of the Social Security Act.

(2) For any taxable year in which withdrawals are made from a medical savings account, the taxpayer who is allowed the deduction under subdivision (a) shall, if he or she is required to file a return under Part 10.2 (commencing with Section 18401), submit to the Franchise Tax Board, upon request, written certification from the health care provider or providers of the type of services paid for by withdrawals or distributions from the account, and an itemized listing from the health care provider or providers of the charges for each of those services.

(d) Upon the death of an individual who established a medical savings account, the moneys in the account shall be included in gross income for purposes of the decedent's final return unless those moneys are deposited into a new medical savings account for the benefit of the decedent's surviving spouse and his or her dependents, or if there is no surviving spouse, into a new medical savings account for the benefit of the decedent's dependent children. If an individual who established a medical savings account dies leaving neither a surviving spouse nor any dependent children, moneys in the medical savings account shall be included in gross income for purposes of the decedent's final return unless the beneficiary of that account deposits those moneys into another medical savings account established by the beneficiary.

(e) Notwithstanding any other provision of this part, the transfer of an establishing individual's interest in a medical savings account to his or her former spouse under a dissolution decree or under a written instrument incident to a dissolution is not to be considered a taxable transfer made by that individual as long as the transferred moneys are deposited into another medical savings account established by the former spouse.

(f) Only those medical expenses that are paid or incurred in excess of the amount of moneys available in a medical savings account may

be claimed as an otherwise authorized deduction by the taxpayer who is allowed the deduction under subdivision (a).

(g) The trustee or custodian of a medical savings account shall make annual calendar year reports concerning the status of the account. The report shall contain the information required in paragraph (1) and be furnished or filed in the manner and time specified in paragraph (2).

(1) The annual calendar year report shall contain the following information for transactions occurring during the calendar year:

(A) The amount of contributions.

(B) The amount of distributions.

(C) The name and address of the trustee or custodian.

(D) Any other information as the Franchise Tax Board may require.

(2) The annual report shall be furnished to the individual on whose behalf the account is established. The report shall be furnished on or before the first day of February following the calendar year for which the report is required. The Franchise Tax Board may require the annual report to be filed with it at the time it specifies.

(h) The trustee or custodian of a medical savings account shall provide a disclosure statement to the individual for whom the account is established. The disclosure statement shall contain the information and shall be in a form, as may be required by the Franchise Tax Board. The disclosure statement shall be similar to the statement required pursuant to Section 1.408-6 of Title 26 of the Code of Federal Regulations.

SEC. 18. Section 17271 of the Revenue and Taxation Code is amended to read:

17271. (a) The amendments made to Section 274 of the Internal Revenue Code by Section 1001 of Public Law 100-647, relating to disallowance of certain entertainment, etc., expenses, shall apply to each taxable year beginning on or after January 1, 1987.

(b) The amendments made to Section 274 of the Internal Revenue Code by Section 6003 of Public Law 100-647, relating to only 80 percent of meal and entertainment expenses allowed as a deduction, shall apply to each taxable year beginning on or after January 1, 1988, except that clauses (i) and (ii) of Section 274(n)(2)(F) of the Internal Revenue Code shall apply only to each taxable year beginning on or after January 1, 1989.

(c) For each taxable year beginning on or after January 1, 1994, Section 274(n) of the Internal Revenue Code, relating to deduction of meal and entertainment expenses, shall be applied by substituting "50 percent" for the percentage specified in that section.

(d) For taxable years beginning on or after January 1, 1996, Section 274(m) of the Internal Revenue Code, relating to additional limitations on travel expenses, shall be modified to additionally provide that no deduction shall be allowed (other than the deduction allowed under Section 217 of the Internal Revenue Code, relating to

moving expenses) for travel expenses paid or incurred on or after January 1, 1996, with respect to a spouse, dependent, or other individual accompanying the taxpayer (or an officer or employee of the taxpayer) on business travel, unless all of the following apply:

(1) The spouse, dependent, or other individual is an employee of the taxpayer.

(2) The travel of the spouse, dependent, or other individual is for a bona fide business purpose.

(3) Those expenses would otherwise be deductible by the spouse, dependent, or other individual.

SEC. 19. Section 17276 of the Revenue and Taxation Code is amended to read:

17276. Except as provided in Sections 17276.1 and 17276.2, the deduction provided by Section 172 of the Internal Revenue Code, relating to a net operating loss deduction, shall be modified as follows:

(a) (1) Net operating losses attributable to taxable years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any taxable year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that 50 percent of the entire amount of the net operating loss for any taxable year shall not be eligible for carryover to any subsequent taxable year.

(2) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a new business during that taxable year, each of the following shall apply to each loss incurred during the first three taxable years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in paragraph (2) of subdivision (d).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in paragraph (2) of subdivision (d).

(ii) With respect to the portion of the net operating loss which exceeds the net loss from the new business, 50 percent of that amount shall be a net operating loss carryover to each of the five taxable years following the taxable year of the loss.

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates

an eligible small business during that taxable year, each of the following shall apply:

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating loss shall be carried forward to the taxable years specified in paragraph (1) of subdivision (d).

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward to each of the five taxable years following the taxable year of the loss.

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the eligible small business, 50 percent of that amount shall be a net operating loss carryover to each of the five taxable years following the taxable year of the loss.

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three taxable years of the new business.

(5) In the case of a taxpayer who has a net operating loss in a taxable year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of that paragraph, paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, the term "net loss" means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(c) Net operating loss carrybacks shall not be allowed.

(d) (1) Except as provided in paragraphs (2) and (3), for each taxable year beginning on or after January 1, 1987, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute "five taxable years" in lieu of "15 taxable years."

(2) In the case of a "new business," the "five taxable years" in paragraph (1) shall be modified to read as follows:

(A) "Eight taxable years" for a net operating loss attributable to the first taxable year of that new business.

(B) "Seven taxable years" for a net operating loss attributable to the second taxable year of that new business.

(C) "Six taxable years" for a net operating loss attributable to the third taxable year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 17276.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to taxable years beginning in 1991.

(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.

(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a taxpayer that is under the jurisdiction of the court in a Title 11 or similar case at any time during the income year. The loss carryover provided in the preceding sentence shall not apply to any loss incurred after the date the taxpayer is no longer under the jurisdiction of the court in a Title 11 or similar case.

(e) For purposes of this section:

(1) "Eligible small business" means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars ($1,000,000) during the taxable year.

(2) Except as provided in subdivision (f), "new business" means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) "Title 11 or similar case" shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

(4) In the case of any trade or business activity conducted by a partnership or S corporation, paragraphs (1) and (2) shall be applied to the partnership or S corporation.

(f) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply:

(1) In any case where a taxpayer or partnership purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by the taxpayer or partnership (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer or partnership (or any related person) in the conduct of its trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the taxpayer

or partnership (or any related person). For purposes of this paragraph only, the following rules shall apply:

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first taxable year in which the taxpayer or partnership (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer or partnership (or related person).

(2) In any case where a taxpayer or partnership (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months (''prior trade or business activity''), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the taxpayer's or partnership's (or any related person's) current or prior trade or business activities.

(3) In any case where a taxpayer or partnership, including all related persons, is engaged in trade or business activities wholly outside of this state and the taxpayer or partnership first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in paragraph (1)), the trade or business activity shall be treated as a new business under paragraph (2) of subdivision (e).

(4) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the taxpayer or partnership as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of paragraph (1) of this subdivision.

(5) ''Related person'' shall mean any person that is related to either the taxpayer or partnership under either Section 267 or 318 of the Internal Revenue Code.

(6) ''Acquire'' shall include any gift, inheritance, transfer incident to divorce, or any other transfer, whether or not for consideration.

(7) (A) For taxable years beginning on or after January 1, 1997, the term ''new business'' shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard

Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and as further amended, and that has not received regulatory approval for any product from the United States Food and Drug Administration.

(B) For purposes of this paragraph:

(i) "Biopharmaceutical activities" means those activities which use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities which make use of chemical compounds to produce commercial products.

(ii) "Other biotechnology activities" means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(g) In computing the modifications under Section 172(d)(2) of the Internal Revenue Code, relating to capital gains and losses of taxpayers other than corporations, the exclusion provided by Section 18152.5 shall not be allowed.

(h) Notwithstanding any provisions of this section, a deduction shall be allowed to a "qualified taxpayer" as provided in Sections 17276.1 and 17276.2.

(i) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(j) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(k) The amendments made by the act adding this subdivision shall be operative for taxable years beginning on or after January 1, 1997.

SEC. 20. Section 17279.5 is added to the Revenue and Taxation Code, to read:

17279.5. Section 264 of the Internal Revenue Code, relating to certain amounts paid in connection with insurance contracts, is modified to read as follows:

(a) No deduction shall be allowed for—

(1) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under that policy.

(2) Any amount paid or accrued on indebtedness incurred to purchase or carry a single premium life insurance, endowment, or annuity contract. This paragraph shall apply with respect to annuity contracts only as to contracts purchased after December 31, 1954.

(3) Except as provided in subdivision (c), any amount paid or accrued on indebtedness incurred or continued to purchase or carry a life insurance, endowment, or annuity contract (other than a single premium contract or a contract treated as a single premium contract) pursuant to a plan of purchase which contemplates the systematic direct or indirect borrowing of part or all of the increases in the cash value of that contract (either from the insurer or otherwise). This paragraph shall apply only with respect to contracts purchased after August 6, 1963.

(4) Except as provided in subdivision (d), any interest paid or accrued on any indebtedness with respect to one or more insurance policies owned by the taxpayer covering the life of any individual, or any endowment or annuity contracts owned by the taxpayer covering the life of any individual, or any endowment or annuity contracts owned by the taxpayer covering any individual, who is an officer or employee of, or is financially interested in, any trade or business carried on by the taxpayer.

This paragraph shall apply with respect to contracts purchased after June 20, 1986.

(b) For purposes of paragraph (2) of subdivision (a), a contract shall be treated as a single premium contract if either of the following conditions exist:

(1) Substantially all the premiums on the contract are paid within a period of four years from the date on which the contract is purchased.

(2) An amount is deposited after December 31, 1954, with the insurer for payment of a substantial number of future premiums on the contract.

(c) Paragraph (3) of subdivision (a) shall not apply to any amount paid or accrued by a person during a taxable year on indebtedness incurred or continued as part of a plan referred to in paragraph (3) of subdivision (a) if any of the following are applicable:

(1) No part of four of the annual premiums due during the seven-year period (beginning with the date the first premium on the contract to which that plan relates was paid) is paid under that plan by means of indebtedness.

(2) The total of the amounts paid or accrued by the person during that income year for which (without regard to this paragraph) no deduction would be allowable by reason of paragraph (3) of subdivision (a) does not exceed one hundred dollars ($100).

(3) That amount was paid or accrued on indebtedness incurred because of an unforeseen substantial loss of income or unforeseen substantial increase in its financial obligations.

(4) That indebtedness was incurred in connection with its trade or business.

For purposes of applying paragraph (1), if there is a substantial increase in the premiums on a contract, a new seven-year period described in that paragraph with respect to that contract shall commence on the date the first that increased premium is paid.

(d) (1) Paragraph (4) of subdivision (a) shall not apply to any interest paid or accrued on any indebtedness with respect to policies or contracts covering an individual who is a key person to the extent that the aggregate amount of that indebtedness with respect to policies and contracts covering that individual does not exceed fifty thousand dollars ($50,000).

(2) (A) No deduction shall be allowed by reason of paragraph (1) or the last sentence of subdivision (a) with respect to interest paid or accrued for any month beginning after December 31, 1995, to the extent the amount of that interest exceeds the amount which would have been determined if the applicable rate of interest were used for that month.

(B) For purposes of subparagraph (A):

(i) The applicable rate of interest for any month is the rate of interest described as Moody's Corporate Bond Yield Average-Monthly Average Corporates, as published by Moody's Investors Service, Inc., or any successor thereto, for that month.

(ii) In the case of indebtedness on a contract purchased on or before June 20, 1986, all of the following shall apply:

(I) If the contract provides a fixed rate of interest, the applicable rate of interest for any month shall be the Moody's rate described in clause (i) for the month in which the contract was purchased.

(II) If the contract provides a variable rate of interest, the applicable rate of interest for any month in an applicable period shall be the Moody's rate described in clause (i) for the third month preceding the first month in that period.

(III) For purposes of subclause (II), the taxpayer shall elect an applicable period for the contract on its return of tax imposed by this part for its first taxable year ending on or after December 31, 1995. That applicable period shall be for any number of months (not greater than 12) specified in the election and may not be changed by the taxpayer without the consent of the Franchise Tax Board.

(3) For purposes of paragraph (1), "key person" means an officer or 20-percent owner, except that the number of individuals who may be treated as key persons with respect to any taxpayer shall not exceed the greater of:

(A) Five individuals.

(B) The lesser of 5 percent of the total officers and employees of the taxpayer or 20 individuals.

(4) For purposes of this subdivision, "20-percent owner" means both of the following:

(A) If the taxpayer is a corporation, any person who owns directly 20 percent or more of the outstanding stock of the corporation or stock possessing 20 percent or more of the total combined voting power of all stock of the corporation.

(B) If the taxpayer is not a corporation, any person who owns 20 percent or more of the capital or profits interest in the employer.

(5) (A) For purposes of subparagraph (A) of paragraph (4) and for purposes of applying the fifty thousand dollars ($50,000) limitation in paragraph (1) both of the following shall apply:

(i) All members of a controlled group shall be treated as one taxpayer.

(ii) The limitation shall be allocated among the members of the controlled group in the manner the Franchise Tax Board may prescribe.

(B) For purposes of this paragraph, all persons treated as a single employer under Section 52(a) or 52(b) of the Internal Revenue Code, relating to special rules, or Section 414(m) or 414(o) of the Internal Revenue Code, relating to definitions and special rules, shall be treated as members of a controlled group.

(e) (1) The amendments made to this section by the act adding this subdivision shall apply to interest paid or accrued after December 31, 1995.

(2) (A) The amendments made to this section by the act adding this subdivision shall not apply to qualified interest paid or accrued on that indebtedness after December 31, 1995, and before January 1, 1999, in the case of either of the following:

(i) Indebtedness incurred before January 1, 1996.

(ii) Indebtedness incurred before January 1, 1997, with respect to any contract or policy entered into in 1994 or 1995.

(B) For purposes of subparagraph (A), the qualified interest with respect to any indebtedness for any month is the amount of interest (otherwise deductible) which would be paid or accrued for that month on that indebtedness if—

(i) In the case of any interest paid or accrued after December 31, 1995, indebtedness with respect to no more than 20,000 insured individuals were taken into account, and

(ii) The lesser of the following rates of interest were used for that month:

(I) The rate of interest specified under the terms of the indebtedness as in effect on December 31, 1995 (and without regard to modification of the terms after that date).

(II) The applicable percentage of the rate of interest described as Moody's Corporate Bond Yield Average-Monthly Average Corporates, as published by Moody's Investors Service, Inc., or any successor thereto, for that month. For purposes of clause (i), all persons treated as a single employer under Section 52(a) or 52(b) of the Internal Revenue Code, relating to special rules, or Section 414(m) or 414(o) of the Internal Revenue Code, relating to

definitions and special rules, shall be treated as one person. Subclause (II) of clause (ii) shall not apply to any month before January 1, 1996.

(C) For purposes of subparagraph (B), the applicable percentage is as follows:

For calendar year:	The percentage is:
1996	100 percent
1997	90 percent
1998	80 percent

(3) This subdivision shall not apply to any contract purchased on or before June 20, 1986, except that paragraph (2) of subdivision (d) shall apply to interest paid or accrued after December 31, 1995.

(f) (1) Any amount received under any life insurance policy or endowment or annuity contract described in paragraph (4) of subdivision (a) shall be includable in gross income (in lieu of any other inclusion in gross income) ratably over the four taxable year period beginning with the taxable year that amount would (but for this paragraph) be includable, upon the occurrence of either of the following:

(A) The complete surrender, redemption, or maturity of that policy or contract during the calendar year 1996, 1997, or 1998.

(B) The full discharge during calendar year 1996, 1997, or 1998, of the obligation under the policy or contract which is in the nature of a refund of the consideration paid for the policy or contract.

(2) Paragraph (1) shall only apply to the extent the amount is includable in gross income for the taxable year in which the event described in subparagraph (A) or (B) of paragraph (1) occurs.

(3) Solely by reason of an occurrence described in subparagraph (A) or (B) of paragraph (1) or solely by reason of no additional premiums being received under the contract by reason of a lapse occurring after December 31, 1995, a contract shall not be treated as either of the following:

(A) Failing to meet the requirement of paragraph (1) of subdivision (c).

(B) A single premium contract under paragraph (1) of subdivision (b).

SEC. 21. Section 17330 is added to the Revenue and Taxation Code, to read:

17330. The amendments to Section 382 of the Internal Revenue Code made by Section 13226 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to modifications of discharge of indebtedness provisions, shall apply to discharges occurring on or after January 1, 1996, in taxable years beginning on or after January 1, 1996.

SEC. 21.1. Section 17507 of the Revenue and Taxation Code is amended to read:

17507. The provisions of Section 408 of the Internal Revenue Code, relating to individual retirement accounts, shall be modified as follows:

(a) The following provisions shall be incorporated into Section 408(e) of the Internal Revenue Code:

(1) In the case of a plan in existence in taxable year 1975 where contributions were made pursuant to, and in conformance with, Section 408 or 409 of the Internal Revenue Code of 1954, as amended by the Employee Retirement Income Security Act of 1974 (Public Law 93-406), any net income attributable to the 1975 contribution shall not be includable in the gross income, for taxable year 1977 or succeeding taxable years, of the individual for whose benefit the plan was established until distributed pursuant to the provisions of the plan or by operation of law.

(2) In the case of a simplified employee pension, where contributions are also made pursuant to, and in conformance with, the provisions of Section 408(k) of the Internal Revenue Code of 1954, the net income attributable to the nondeductible portion of such contributions shall not be includable in the gross income of the individual for whose benefit the plan was established for the taxable year or for succeeding taxable years until distributed pursuant to the provisions of the plan or by operation of law.

(3) Notwithstanding the limitations provided in former Section 17272 (as amended by Chapter 1461 of the Statutes of 1985) with respect to the amount of deductible contributions and individuals eligible for the deduction, any income attributable to contributions made to a plan in existence in taxable years beginning on or after January 1, 1982, in conformance with Sections 219, 220, 408, and 409 of the Internal Revenue Code of 1954, shall not be includable in the gross income of the individual for whose benefit the plan was established until distributed pursuant to the provisions of the plan or by operation of law.

(b) The provisions of Section 408(d) of the Internal Revenue Code, relating to the tax treatment of distributions, are modified as follows:

(1) For taxable years beginning on or after January 1, 1982, and before January 1, 1987, the basis of any person in the account or annuity is the amount of contributions not allowed as a deduction under former subdivision (a), (e), or (g) of Section 17272 (as amended by Chapter 1461 of the Statutes of 1985) on account of the purchase of the account or annuity.

(2) For purposes of paragraph (1), the rules for recovery of basis shall be governed by Section 17085.

(3) For taxable years beginning on or after January 1, 1997, two thousand two hundred fifty dollars ($2,250) in paragraph (5) shall be replaced with "the applicable dollar amount in effect under subdivision (a) of Section 17210."

(c) A copy of the report, which is required to be filed with the Secretary of the Treasury under Section 408(i) or 408(*l*) of the Internal Revenue Code, shall be filed with the Franchise Tax Board at the same time and in the same manner as specified in those sections.

SEC. 22. Section 17570 is added to the Revenue and Taxation Code, to read:

17570. (a) For each taxable year beginning on or after January 1, 1997, Section 475 of the Internal Revenue Code, relating to mark to market accounting method for securities dealers, as added by Section 13223 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), shall apply, except as otherwise provided.

(b) Section 13233(c)(2)(C) of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to the effective date for changes in the mark to market accounting method for securities dealers, is modified to provide that the amount taken into account under Section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the five-taxable-year period beginning with the first taxable year beginning on or after January 1, 1998.

SEC. 23. Section 17859 is added to the Revenue and Taxation Code, to read:

17859. The amendments to Section 703 of the Internal Revenue Code made by Section 13150 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to discharge of indebtedness, shall apply to discharges occurring on or after January 1, 1996, in taxable years beginning on or after January 1, 1996.

SEC. 24. Section 17860 is added to the Revenue and Taxation Code, to read:

17860. The amendments to Sections 736 and 751 of the Internal Revenue Code made by Section 13262 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to treatment of certain payments to retired or deceased partners, shall apply to taxable years beginning on or after January 1, 1996, for payments to partners who died or retired after January 4, 1993.

SEC. 25. Section 18042 of the Revenue and Taxation Code is amended to read:

18042. (a) The provisions of Section 1042 of the Internal Revenue Code shall apply to taxable years beginning on or after January 1, 1990, and before January 1, 1995, but shall not apply to both of the following:

(1) Taxable years beginning on or after January 1, 1988, but before January 1, 1990.

(2) Taxable years beginning on or after January 1, 1995.

(b) This section shall apply to taxable years beginning before January 1, 1996. This section shall remain in effect until December 1, 1996, and as of that date is repealed.

SEC. 26. Section 18042 is added to the Revenue and Taxation Code, to read:

18042. Section 1042 of the Internal Revenue Code, relating to sales of stock to employee stock ownership plans or certain cooperatives, shall apply to taxable years beginning on or after January 1, 1996.

SEC. 27. Section 18044 is added to the Revenue and Taxation Code, to read:

18044. The amendments to Section 1017 of the Internal Revenue Code made by Section 13150 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to exclusion from gross income for income from discharge of qualified real property business indebtedness, shall apply to discharges occurring on or after January 1, 1996, in taxable years beginning on or after January 1, 1996.

SEC. 28. Section 19144 of the Revenue and Taxation Code is amended to read:

19144. For the purposes of Section 19142 the amount of the underpayment shall be the excess of—

(a) (1) The amount of the installment which would be required to be paid if the estimated tax were equal to the applicable percentage of the tax shown on the return for the income year, or (2) in the case of the tax imposed by Article 3 (commencing with Section 23181) of Chapter 2 of Part 11 an amount equal to the applicable percentage of the lesser of the tax computed at the rate provided by Section 19024 (but otherwise on the basis of the facts shown on the return and the law applicable to the income year), or the tax shown on the return for the income year as prescribed by Section 19021, or (3) if no return was filed, the applicable percentage of the tax for that year, over

(b) The amount, if any, of the installment paid on or before the last date prescribed for payment.

(c) For purposes of this section, the "applicable percentage" shall be as follows:

(1) For income years beginning before January 1, 1998, 95 percent.

(2) For income years beginning on or after January 1, 1998, and before January 1, 1999, 98 percent.

(3) For income years beginning on or after January 1, 1999, 100 percent.

SEC. 29. Section 19147 of the Revenue and Taxation Code is amended to read:

19147. (a) Notwithstanding Sections 19142 to 19145, inclusive, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax paid on or before the last date prescribed for the payment of the installment equals or exceeds the amount which would have been required to be paid on or before that date if the estimated tax were whichever of the following is the lesser:

(1) (A) The tax shown on the return of the taxpayer for the preceding income year if a return showing a liability for tax was filed

by the taxpayer for the preceding year and that preceding year was a year of 12 months. The tax shown on the return, in the case of the tax imposed by Article 3 (commencing with Section 23181) of Chapter 2 of Part 11, means the amount of tax shown on the return for the income year as prescribed in Section 19021.

(B) In the case of a large corporation, subparagraph (A) shall not apply, except as provided in clauses (i) and (ii).

(i) Subparagraph (A) shall apply for purposes of determining the amount of the first required installment for any income year.

(ii) Any reduction in the first required installment by reason of clause (i) shall be recaptured by increasing the amount of the next required installment by the amount of that reduction.

(2) (A) An amount equal to the applicable percentage specified in Section 19144 of the tax for the income year computed by placing on an annualized basis the taxable income:

(i) For the first three months of the income year, in the case of the installment required to be paid in the fourth month.

(ii) For the first three months of the income year, in the case of the installment required to be paid in the sixth month.

(iii) For the first six months of the income year in the case of the installment required to be paid in the ninth month.

(iv) For the first nine months of the income year, in the case of the installment required to be paid in the 12th month of the taxable year.

(B) (i) If the taxpayer makes an election under this clause, each of the following shall apply:

(I) Clause (i) of subparagraph (A) shall be applied by substituting "two months" for "three months."

(II) Clause (ii) of subparagraph (A) shall be applied by substituting "four months" for "three months."

(III) Clause (iii) of subparagraph (A) shall be applied by substituting "seven months" for "six months."

(IV) Clause (iv) of subparagraph (A) shall be applied by substituting "ten months" for "nine months."

(ii) If the taxpayer makes an election under this clause, each of the following shall apply:

(I) Clause (ii) of subparagraph (A) shall be applied by substituting "five months" for "three months."

(II) Clause (iii) of subparagraph (A) shall be applied by substituting "eight months" for "six months."

(III) Clause (iv) of subparagraph (A) shall be applied by substituting "eleven months" for the "nine months."

(iii) An election under clause (i) or (ii) shall apply to the income year for which the election is made and shall be effective only if the election is made on or before the date required for the payment of the first required installment for that income year.

(iv) This subparagraph shall apply to income years beginning on or after January 1, 1997.

(C) For purposes of this paragraph, the taxable income shall be placed on an annualized basis in the following manner:

(i) Multiply by 12 the taxable income referred to in subparagraph (A).

(ii) Divide the resulting amount by the number of months in the income year referred to in subparagraph (A).

"Taxable income" as used in this paragraph means "net income" includable in the measure of tax or "alternative minimum taxable income" (as defined by Section 23455).

(D) In the case of any corporation which is subject to the tax imposed under Section 23731, any reference to taxable income shall be treated as including a reference to unrelated business taxable income and, except in the case of an election under subparagraph (B), each of the following shall apply:

(i) Clause (i) of subparagraph (A) shall be applied by substituting "two months" for "three months."

(ii) Clause (ii) of subparagraph (A) shall be applied by substituting "four months" for "three months."

(iii) Clause (iii) of subparagraph (A) shall be applied by substituting "seven months" for "six months."

(iv) Clause (iv) of subparagraph (A) shall be applied by substituting "ten months" for "nine months."

(3) The applicable percentage specified in Section 19144 or more of the tax for the income year was paid by withholding of tax pursuant to Section 18662.

(4) The applicable percentage specified in Section 19144 or more of the net income for the income year consists of items from which an amount was withheld pursuant to Section 18662 and the amount of the first installment, including payments applied pursuant to subdivision (c) of Section 19025, equals at least the minimum franchise tax specified in Section 23153.

(b) (1) For purposes of this section, "large corporation" means any corporation or bank if that corporation or bank (or any predecessor corporation or bank) had taxable income (computed without regard to net operating loss deductions) of one million dollars ($1,000,000) or more for any income year during the testing period.

(2) For purposes of this subdivision, "testing period" means the three income years immediately preceding the income year involved.

SEC. 30. Section 19148 of the Revenue and Taxation Code is amended to read:

19148. (a) Notwithstanding Sections 19142 to 19147, inclusive, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of that installment equals or exceeds the applicable

percentage specified in Section 19144 of the amount determined under subdivision (b).

(b) The amount determined under this subdivision for any installment shall be determined in the following manner:

(1) Take the net income for all months during the income year preceding the filing month.

(2) Divide that amount by the base period percentage for all months during the income year preceding the filing month.

(3) Determine the tax on the amount determined under paragraph (2).

(4) Multiply the tax computed under paragraph (3) by the base period percentage for the filing months and all months during the income year preceding the filing month.

(c) For purposes of this subdivision:

(1) The base period percentage for any period of months shall be the average percent which the net income for the corresponding months in each of the three preceding income years bears to the net income for the three preceding income years.

(2) "Filing month" means the month in which the installment is required to be paid.

(3) This subdivision shall only apply if the base period percentage for any six consecutive months of the income year equals or exceeds 70 percent.

(4) The Franchise Tax Board may by regulations provide for the determination of the base period percentage in the case of reorganizations, new corporations, and other similar circumstances.

SEC. 31. Section 19191 of the Revenue and Taxation Code is amended to read:

19191. (a) The Franchise Tax Board may enter into a voluntary disclosure agreement with any qualified business entity or qualified shareholder, as defined in Section 19192, that is binding on both the Franchise Tax Board and the qualified business entity or qualified shareholder.

(b) The Franchise Tax Board shall do all of the following:

(1) Provide guidelines and establish procedures for business entities to apply for voluntary disclosure agreements.

(2) Accept applications on an anonymous basis from business entities for voluntary disclosure agreements.

(3) Implement procedures for accepting applications for voluntary disclosure agreements through the National Nexus Program administered by the Multistate Tax Commission.

(4) For purposes of considering offers from business entities to enter into voluntary disclosure agreements, take into account the following criteria:

(A) The nature and magnitude of the business entity's previous presence and activity in this state and the facts and circumstances by which the nexus of the business entity was established.

(B) The extent to which the weight of the factual circumstances demonstrates that a prudent business person exercising reasonable care would conclude that the previous activities and presence in this state were or were not immune from taxation by this state by reason of Public Law 86-272 or otherwise.

(C) Reliance on the advice of a person in a fiduciary position or other competent advice that the business entity's activities were immune from taxation by this state.

(D) Lack of evidence of willful disregard or neglect of the tax laws of this state on the part of the business entity.

(E) Demonstrations of good faith on the part of the business entity.

(F) Benefits that will accrue to the state by entering into a voluntary disclosure agreement.

(5) Act on any application of a voluntary disclosure agreement within 120 days of receipt.

(6) Enter into voluntary disclosure agreements with qualified business entities or qualified shareholders, as authorized in subdivision (a) and based on the criteria set forth in paragraph (4).

(c) Before any voluntary disclosure agreement becomes binding, the Franchise Tax Board, itself, shall approve the agreement in the following manner:

(1) The Executive Officer and Chief Counsel of the Franchise Tax Board shall recommend and submit the voluntary disclosure agreement to the Franchise Tax Board for approval.

(2) Each voluntary disclosure agreement recommendation shall be submitted in a manner as to maintain the anonymity of the taxpayer applying for the voluntary disclosure agreement.

(3) Any recommendation for approval of a voluntary disclosure agreement shall be approved or disapproved by the Franchise Tax Board, itself, within 45 days of the submission of that recommendation to the board.

(4) Any recommendation of a voluntary disclosure agreement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved.

(5) Disapproval of a recommendation of a voluntary disclosure agreement shall be made only by a majority vote of the Franchise Tax Board.

(6) The members of the Franchise Tax Board shall not participate in any voluntary disclosure agreement except as provided in this subdivision.

(d) The voluntary disclosure agreement entered into by the Franchise Tax Board and the qualified business entity or qualified shareholder as provided for in subdivision (a) shall to the extent applicable specify that:

(1) The Franchise Tax Board shall with respect to a qualified business entity or qualified shareholder, except as provided in paragraph (4) of subdivision (a) of Section 19192:

(A) Waive its authority under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001) to assess or propose to assess taxes, additions to tax, fees, or penalties with respect to each taxable or income year ending prior to six years from the signing date of the voluntary disclosure agreement.

(B) With respect to each of the six taxable or income years ending immediately preceding the signing date of the voluntary disclosure agreement, based on its discretion, agree to waive any or all of the following:

(i) Any penalty related to a failure to make and file a return, as provided in Section 19131.

(ii) Any penalty related to a failure to pay any amount due by the date prescribed for payment, as provided in Section 19132.

(iii) Any addition to tax related to an underpayment of estimated tax, as provided in Section 19136.

(iv) Any penalty related to Section 6810 or subdivision (a) of Section 8810 of the Corporations Code, as provided in Section 19141.

(v) Any penalty related to a failure to furnish information or maintain records, as provided in Section 19141.5.

(vi) Any addition to tax related to an underpayment of tax imposed under Part 11 (commencing with Section 23001), as provided in Section 19142.

(vii) Any penalty related to a partnership required to file a return under Section 18633, as provided in Section 19172.

(viii) Any penalty related to a failure to file information returns, as provided in Section 19183.

(ix) Any penalty related to relief from contract voidability, as provided in Section 23305.1.

(2) The qualified business entity or qualified shareholder shall:

(A) With respect to each of the six taxable or income years ending immediately preceding the signing date of the written agreement:

(i) Voluntarily and fully disclose on the business entity's application all material facts pertinent to the business entity's and shareholder's liability for any taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(ii) Except as provided in paragraph (3), within 30 days from the signing date of the voluntary disclosure agreement:

(I) File all returns required under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).

(II) Pay in full any tax, interest, and penalties (other than those penalties specifically waived by the Franchise Tax Board under the terms of the voluntary disclosure agreement) imposed under this part, Part 10 (commencing with Section 17001), or Part 11

(commencing with Section 23001) in a manner as may be prescribed by the Franchise Tax Board.

(B) Agree to comply with all franchise and income tax laws of this state in subsequent income or taxable years by filing all returns required and paying all amounts due under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).

(3) The Franchise Tax Board may extend the time for filing returns and paying amounts due to 120 days from the signing date of the voluntary disclosure agreement.

(e) The amendments to this section made by the act adding this subdivision shall apply to taxable or income years beginning on or after January 1, 1997.

SEC. 32. Section 19192 of the Revenue and Taxation Code is amended to read:

19192. For purposes of this article:

(a) (1) "Qualified business entity" means an entity that is all of the following:

(A) An entity that is any of the following:

(i) A corporation, as defined in Section 23038.

(ii) A bank, as defined in Section 23039.

(B) A business entity, including any predecessors to the business entity, that previously has never filed a return with the Franchise Tax Board pursuant to this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23011).

(C) A business entity, including any predecessors to the business entity, that previously has not been the subject of an inquiry by the Franchise Tax Board with respect to liability for any of the taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(D) A business entity that voluntarily comes forward prior to any unilateral contact from the Franchise Tax Board, makes application for a voluntary disclosure agreement in a form and manner prescribed by the Franchise Tax Board, and makes a full and accurate statement of its activities in this state for the six immediately preceding taxable or income years.

(2) (A) Notwithstanding paragraph (1), a qualified business entity does not include any of the following:

(i) A business entity that is organized and existing under the laws of this state.

(ii) A business entity that is qualified or registered with the office of the Secretary of State.

(iii) A business entity that maintains and staffs a permanent facility in this state.

(B) For purposes of this paragraph, the storing of materials, goods, or products in a public warehouse pursuant to a public warehouse contract does not constitute maintaining a permanent facility in this state.

(3) "Qualified shareholder" means an individual that is all of the following:

(A) A nonresident on the signing date of the voluntary disclosure agreement.

(B) A shareholder of an S corporation (defined in Section 23800) that has applied for a voluntary disclosure agreement under this article under which all material facts pertinent to the shareholder's liability would be disclosed on that S corporation's voluntary disclosure agreement as required under clause (i) of subparagraph (A) of paragraph (2) of subdivision (d) of Section 19191.

(4) Notwithstanding paragraph (3), subparagraph (B) of paragraph (1) of subdivision (d) of Section 19191 shall not apply to any of the six taxable years immediately preceding the signing date that the qualified shareholder was a California resident required to file a California tax return, nor to any penalties or additions to tax attributable to income other than the California source income from the S corporation that filed an application under this article.

(b) "Signing date" of the voluntary disclosure agreement means the date on which a person duly authorized by the Franchise Tax Board signs the agreement.

(c) The amendments to this section made by the act adding this subdivision shall apply to taxable or income years beginning on or after January 1, 1997.

SEC. 32.1. Section 23221 of the Revenue and Taxation Code is amended to read:

23221. (a) Except as provided under subdivision (b), a corporation which incorporates under the laws of this state or qualifies to transact intrastate business in this state shall thereupon prepay the minimum tax provided in Section 23153, except that any credit union shall thereupon prepay a tax of twenty-five dollars ($25). The prepayment shall be made to the Secretary of State with the filing of the articles of incorporation or the statement and designation by foreign corporation. The Secretary of State shall transmit the amount of the prepayment to the Franchise Tax Board. The Franchise Tax Board shall certify to the Secretary of State on an individual or class basis those domestic or foreign corporations which are exempt from prepayment or for which prepayment to the Secretary of State is waived.

(b) For income years commencing on or after January 1, 1997, the amount payable by a qualified new corporation under subdivision (a) shall be six hundred dollars ($600).

(c) For purposes of this section, "qualified new corporation" means a corporation that reasonably estimates that, for the income year, it will have both gross receipts, less returns and allowances reportable to this state, of less than one million dollars ($1,000,000) and a tax liability under Section 23151 that does not exceed eight hundred dollars ($800).

(1) The determination of gross receipts of a corporation, for purposes of this section, shall be made by including the gross receipts of each member of the commonly controlled group, as defined in Section 25105, of which the bank or corporation is a member.

(2) "Gross receipts, less returns and allowances reportable to this state" means the sum of the gross receipts from the production of business income, as defined in subdivision (a) of Section 25120, and the gross receipts from the production of nonbusiness income, as defined in subdivision (d) of Section 25120.

(d) Subdivision (b) shall not apply to any corporation if 50 percent or more of its stock is owned by another corporation.

(e) For income years commencing on or after January 1, 1997, if a corporation paid six hundred dollars ($600) under subdivision (b), but for its first income year the corporation's tax liability under Section 23151 exceeds eight hundred dollars ($800), or the corporation's gross receipts, as determined under paragraph (2) of subdivision (c), exceed one million dollars ($1,000,000), an additional tax in the amount equal to two hundred dollars ($200) shall be due and payable by the corporation on the due date of its return, without regard to extension, for its first income year.

SEC. 33.1. Section 23604 is added to the Revenue and Taxation Code, to read:

23604. For each income year beginning on or after January 1, 1996, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount determined as follows:

(a) (1) (A) The amount of the credit shall be equal to one-third of the federal credit computed in accordance with Section 43 of the Internal Revenue Code.

(B) If a taxpayer elects, under Section 43(e) of the Internal Revenue Code, not to apply Section 43 for federal tax purposes, this election is binding and irrevocable for state purposes, and for purposes of subparagraph (A), the federal credit shall be zero.

(2) "Qualified enhanced oil recovery project" shall include only projects located within California.

(3) The credit allowed under this subdivision shall not be allowed to any taxpayer for whom a depletion allowance is not permitted to be computed under Section 613 of the Internal Revenue Code by reason of paragraphs (2), (3), or (4) of subsection (d) of Section 613A of the Internal Revenue Code.

(b) Section 43(d) of the Internal Revenue Code shall apply.

(c) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" for the succeeding 15 years.

(d) In the case where property which qualifies as part of the taxpayer's "qualified enhanced oil recovery costs" also qualifies for a credit under any other section in this part, the taxpayer shall make an election on its original return as to which section applies to all costs allocable to that item of qualified property. Any election made under

this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(e) No deduction shall be allowed as otherwise provided in this part for that portion of any costs paid or incurred for the income year which is equal to the amount of the credit allowed under this section attributable to those costs.

(f) The basis of any property for which a credit is allowed under this section shall be reduced by the amount of the credit attributable to the property. The basis adjustment shall be made for the income year for which the credit is allowed.

(g) No credit may be claimed under this section with respect to any amount for which any other credit has been claimed under this part.

SEC. 34. Section 23608 is added to the Revenue and Taxation Code, to read:

23608. (a) In the case of a taxpayer who transports any agricultural product donated in accordance with Chapter 5 (commencing with Section 58501) of Part 1 of Division 21 of the Food and Agricultural Code, for income years beginning on or after January 1, 1996, there shall be allowed as a credit against the "tax" (as defined by Section 23036), an amount equal to 50 percent of the transportation costs paid or incurred by the taxpayer in connection with the transportation of that donated agricultural product.

(b) If two or more taxpayers share in the expenses eligible for the credit provided by this section, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the expenses paid or incurred.

(c) If any credit allowed by this section is claimed by the taxpayer, any deduction otherwise allowed under this part for that amount of the cost paid or incurred by the taxpayer which is eligible for the credit that is claimed shall be reduced by the amount of the credit allowed.

(d) Upon delivery of the donated agricultural product by a taxpayer authorized to claim a credit pursuant to subdivision (a), the nonprofit charitable organization shall provide a certificate to the taxpayer who transported the agricultural product. The certificate shall contain a statement signed and dated by a person authorized by that organization that the product is donated under Chapter 5 (commencing with Section 58501) of Part 1 of Division 21 of the Food and Agricultural Code. The certificate shall also contain the following information: the type and quantity of product donated, the distance transported, the name of the transporter, the name of the taxpayer donor, and the name and address of the donee. Upon the request of the Franchise Tax Board, the taxpayer shall provide a copy of the certification to the Franchise Tax Board.

(e) In the case where any credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the

following year, and succeeding years if necessary, until the credit is exhausted.

SEC. 35. Section 23608.2 is added to the Revenue and Taxation Code, to read:

23608.2. (a) (1) For income years beginning on or after January 1, 1997, there shall be allowed as a credit against the "tax," as defined by Section 23036, an amount equal to the lesser of 50 percent of the qualified amount, as determined under subdivision (b), or the amount allocated under paragraph (2) of subdivision (e).

(2) Notwithstanding paragraph (1), no credit shall be allowed until the qualified year, as defined in paragraph (3).

(3) For purposes of this section, the "qualified year" is the first income year during which the construction or rehabilitation of the qualified farmworker housing is completed and there is occupancy of the qualified farmworker housing by eligible farmworkers.

(b) (1) For purposes of this section, the "qualified amount" shall be equal to the sum of all costs paid or incurred to construct, in the case of new construction, or rehabilitate, farmworker housing to meet the requirements of the Employee Housing Act (Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code), and any general improvement costs directly related thereto, including, but not limited to, improvements to ensure compliance with laws governing access for persons with disabilities and costs related to reducing utility expenses.

(2) For purposes of paragraph (1), construction or rehabilitation of the farmworker housing shall have commenced on or after January 1, 1997.

(3) Notwithstanding any provision of this part, the qualified amount shall not include any costs paid or incurred prior to January 1, 1997.

(c) Notwithstanding any other provision of this part, no credit shall be allowed under this section unless the taxpayer first obtains a certification from the committee that the amounts described in subdivision (b) qualify for the credit under this section and the total amount of the credit allocated to the taxpayer pursuant to the Farmworker Housing Assistance Program.

(d) The taxpayer shall do all of the following:

(1) Apply to the committee for credit certification prior to the payment or incurrence of costs described in paragraph (1) of subdivision (b).

(2) Retain a copy of the certification.

(3) Make the certification available to the Franchise Tax Board upon request.

(e) The committee shall do all of the following:

(1) Provide forms and instructions for applications for credit certification, as specified pursuant to the Farmworker Housing Assistance Program.

(2) Accept applications and issue a certificate to the taxpayer that includes a certification as to the qualified expenditures described in subdivision (b) that qualify for the credit and the total amount of the credit to which the taxpayer is entitled for the income year. Credits shall be allocated through a minimum of one competitive funding round per year.

(3) Obtain the taxpayer's taxpayer identification number, or each shareholder's taxpayer identification number in the case of an S corporation, for tax administration purposes.

(4) Provide an annual listing to the Franchise Tax Board, in the form and manner agreed upon by the Franchise Tax Board and the committee, containing the names, taxpayer identification numbers pursuant to paragraph (3), qualified expenditures, and total amount of credit certified to each taxpayer.

(f) For purposes of this section:

(1) "Compliance period" means, with respect to any farmworker housing, the period of 30 consecutive income years, beginning with the income year in which the credit is allowable.

(2) "Construct or rehabilitate" includes reconstruction, but does not include any costs related to acquisition or refinancing of property or structures thereon.

(3) "Employee Housing Act" means Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code.

(4) "Farmworker Housing Assistance Program" means Chapter 3.7 (commencing with Section 50199.50) of Part 1 of Division 31 of the Health and Safety Code.

(5) "Qualified farmworker housing" means housing located within this state which satisfies the requirements of the Farmworker Housing Assistance Program. The housing may be vacant or occupied, and it need not be licensed pursuant to the Employee Housing Act at the time of the initiation of construction or rehabilitation.

(6) "Committee" means the California Tax Credit Allocation Committee as defined in Section 50199.7 of the Health and Safety Code.

(7) "Qualified accountant" means an accountant licensed or certified in this state who is neither an employee of the taxpayer, nor related to the taxpayer within the meaning of Section 267 of the Internal Revenue Code.

(g) No deduction or other credit shall be allowed under this part or Part 10 (commencing with Section 17001) to the extent of any qualified amounts, as defined in subdivision (b), that are taken into account in computing the credit allowed under this section.

(h) The farmworker housing tax credit shall not be allowed unless the taxpayer:

(1) Constructs or rehabilitates the property subject to the covenants, conditions, and restrictions imposed by this section and pursuant to the Farmworker Housing Assistance Program, which

shall include, but not necessarily be limited to, a requirement that the taxpayer obtain, for approval by the committee, a construction cost audit and certification of qualified expenditures from a qualified accountant.

(2) Subsequent to construction or rehabilitation of the farmworker housing, owns or operates the farmworker housing pursuant to the requirements of this section, or ensures the ownership and operation of the farmworker housing pursuant to the requirements of this section.

(i) The requirements of this section shall be set forth in a written agreement between the committee and the taxpayer. The agreement shall include, but not necessarily be limited to, the requirements set forth in the Farmworker Housing Assistance Program.

(j) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(k) (1) In the case of any disqualifying event, as defined in paragraph (2), there shall be added to the "tax," as defined in Section 23036, for the income year in which the disqualifying event occurs, the recapture amount computed under paragraph (3) and the interest amount computed under paragraph (4).

(2) For purposes of this subdivision, "disqualifying event" shall mean:

(A) The committee determines that the certification provided under subdivision (e) was obtained by fraud or misrepresentation.

(B) The taxpayer fails to comply with the requirements of the Employee Housing Act, if applicable, the Farmworker Housing Assistance Program, or any other requirement imposed under this section.

(3) For purposes of this subdivision, "recapture amount" means:

(A) In the case of any disqualifying event described in subparagraph (A) of paragraph (2), the entire amount of any credit previously allowed under this section.

(B) In the case of any disqualifying event described in subparagraph (B) of paragraph (2), an amount determined by multiplying the entire amount of the credit previously allowed under this section by a fraction, the numerator of which is the number of years remaining in the compliance period and the denominator of which is 30.

(4) For purposes of this subdivision, "interest amount" means:

(A) In the case of any disqualifying event described in subparagraph (A) of paragraph (2), the amount of interest computed using the adjusted annual rate established in Section 19521 from the due date of the return for each income year in which the credit was claimed to the date of payment of the additional tax resulting from the application of this subdivision.

(B) In the case of any disqualifying event described in subparagraph (B) of paragraph (2), zero.

(*l*) The annual amount of credit granted pursuant to this section and Sections 17053.14 and 23608.3 shall not exceed five hundred thousand dollars ($500,000), provided that the aggregate amount of the credit granted pursuant to this section and Sections 17053.14 and 23608.3 for the calendar year 1998 and thereafter may exceed five hundred thousand dollars ($500,000) per calendar year by an amount equal to any unallocated credits under this section and Sections 17053.14 and 23608.3 for the preceding calendar year or years.

SEC. 36. Section 23608.3 is added to the Revenue and Taxation Code, to read:

23608.3. (a) For income years beginning on or after January 1, 1997, there shall be allowed as a credit against the "tax," as defined in Section 23036, for a bank or financial corporation an amount equal to the qualified amount as determined in subdivision (b).

(b) (1) For purposes of this section, the "qualified amount" shall be equal to 50 percent of the difference between the amount of interest income which could have been collected by the bank or financial corporation had the loan rate been one point above prime, or any other index used by the lender, and the lesser amount of interest income actually due for the term of the loan by the bank or financial corporation on those portions of loans used to finance only qualified expenditures actually paid or incurred to rehabilitate or construct qualified farmworker housing.

(2) The credit allowed under this section shall be taken in equal installments over a period equal to the lesser of 10 years or the term of the loan beginning in the taxpayer's income year during which the qualified farmworker housing is completed and there is initial occupancy by eligible farmworkers. In the case where the credit allowed by this section exceeds the "tax" for any income year, the excess may not be carried over to reduce the "tax" in any succeeding year.

(3) The credit shall not apply to loans with a term of less than three years or to loans funded prior to January 1, 1997. The credit shall apply only to interest income from the loan and shall not apply to any other loan fees or other charges collected by the bank or financial corporation with respect to the loan.

(c) The taxpayer shall qualify for the credit by application to and certification by the committee that the expenses qualify for the credit under this section.

(d) The taxpayer shall do all of the following:

(1) Apply to the committee for credit certification prior to the funding of the loan.

(2) Retain a copy of the certification.

(3) Make the certification available to the Franchise Tax Board upon request.

(e) The committee shall do all of the following:

(1) Provide forms and instructions for applications for credit certification, as specified pursuant to the Farmworker Housing Assistance Program.

(2) Accept applications and issue a certificate to the taxpayer that includes the credit amount to which the taxpayer is entitled.

(3) Obtain the taxpayer's taxpayer identification number, and each shareholder's taxpayer identification number in the case of an S corporation, for tax administration purposes.

(4) Provide an annual listing to the Franchise Tax Board, and in a form and manner agreed upon by the Franchise Tax Board and the committee, containing the names, taxpayer identification numbers pursuant to paragraph (3), qualified amounts, and total amount of credit certified to each taxpayer.

(f) For the purposes of this section:

(1) "Construct or rehabilitate" includes reconstruction, but does not include any costs related to acquisition or refinancing of property or structures thereon.

(2) "Farmworker Housing Assistance Program" means Chapter 3.7 (commencing with Section 50199.50) of Part 1 of Division 31 of the Health and Safety Code.

(3) "Qualified expenditures" means those expenditures certified by the committee to meet the requirements of Sections 17053.14 and 23608.2.

(4) "Qualified farmworker housing" means housing within the state that meets the requirements of the Farmworker Housing Assistance Program.

(g) (1) In the event that the committee determines that the certification provided under subdivision (e) was obtained by the fraud or misrepresentation of the taxpayer, there shall be added to the "tax," as defined in Section 23036 for the income year in which the disqualifying event occurs, the recapture amount computed under paragraph (2) and the interest amount computed under paragraph (3).

(2) For purposes of this subdivision, "recapture amount" means the entire amount of any credit previously allowed under this section.

(3) For purposes of this subdivision, "interest amount" means the amount of interest computed using the adjusted annual rate established in Section 19521 from the due date of the return for the taxable year in which the credit was claimed to the date of payment of the additional tax resulting from the application of this subdivision.

(h) (1) Except as provided in paragraph (2), if the bank or financial corporation sells the loan to another bank or financial corporation, the balance of the credit, if any, shall be transferred to the assignee or transferee of the loan, subject to the same conditions and limitations as set forth in this section.

(2) A bank or financial corporation may assign, sell, or otherwise transfer the loan to another person or entity and retain the right to

claim the credit granted under this section if the bank or financial corporation also retains responsibility for servicing the loan.

(i) The annual amount of credit granted pursuant to this section and Sections 17053.14 and 23608.2 shall not exceed five hundred thousand dollars ($500,000), provided that the aggregate amount of the credit granted pursuant to this section and Sections 17053.14 and 23608.2 for the 1998 calendar year and thereafter may exceed five hundred thousand dollars ($500,000) per calendar year by an amount equal to any unallocated credits from this section and Sections 17053.14 and 23608.2 for the preceding calendar year or years.

SEC. 37. Section 23609 of the Revenue and Taxation Code is amended to read:

23609. For each income year beginning on or after January 1, 1987, there shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount determined in accordance with Section 41 of the Internal Revenue Code, except as follows:

(a) For each income year beginning before January 1, 1997, both of the following modifications shall apply:

(1) The reference to "20 percent" in Section 41(a)(1) of the Internal Revenue Code is modified to read "8 percent."

(2) The reference to "20 percent" in Section 41(a)(2) of the Internal Revenue Code is modified to read "12 percent."

(b) For each income year beginning on or after January 1, 1997, both of the following modifications shall apply:

(1) The reference to "20 percent" in Section 41(a)(1) of the Internal Revenue Code is modified to read "11 percent."

(2) The reference to "20 percent" in Section 41(a)(2) of the Internal Revenue Code is modified to read "24 percent."

(c) "Qualified research" and "basic research" shall include only research conducted in California.

(d) The provisions of Section 41(e)(7)(A) of the Internal Revenue Code, shall be modified so that "basic research," for purposes of this section, includes any basic or applied research including scientific inquiry or original investigation for the advancement of scientific or engineering knowledge or the improved effectiveness of commercial products, except that the term does not include any of the following:

(1) Basic research conducted outside California.

(2) Basic research in the social sciences, arts, or humanities.

(3) Basic research for the purpose of improving a commercial product if the improvements relate to style, taste, cosmetic, or seasonal design factors.

(4) Any expenditure paid or incurred for the purpose of ascertaining the existence, location, extent, or quality of any deposit of ore or other mineral (including oil and gas).

(e) (1) In the case of a taxpayer engaged in any biopharmaceutical research activities that are described in Codes 2833 to 2836, inclusive, or any research activities that are described

in Codes 3826, 3829, or 3841 to 3845, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, or any other biotechnology research and development activities, the provisions of Section 41(e)(6) of the Internal Revenue Code shall be modified to include both of the following:

(A) A qualified organization as described in Section 170(b)(1)(A)(iii) of the Internal Revenue Code and owned by an institution of higher education as described in Section 3304(f) of the Internal Revenue Code.

(B) A charitable research hospital owned by an organization that is described in Section 501(c)(3) of the Internal Revenue Code, is exempt from taxation under Section 501(a) of the Internal Revenue Code, is not a private foundation, is designated a "specialized laboratory cancer center," and has received Clinical Cancer Research Center status from the National Cancer Institute.

(2) For purposes of this subdivision:

(A) "Biopharmaceutical research activities" means those activities that use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities that make use of chemical compounds to produce commercial products.

(B) "Other biotechnology research and development activities" means research and development activities consisting of the application of recombinant DNA technology to produce commercial products, as well as research and development activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(f) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit has been exhausted.

(g) Section 41(c)(5) of the Internal Revenue Code, relating to gross receipts, is modified to take into account only those gross receipts from the sale of property held primarily for sales to customers in the ordinary course of the taxpayer's trade or business that is delivered or shipped to a purchaser within this state, regardless of f.o.b. point or other conditions of sale.

(h) Section 41(h) of the Internal Revenue Code, relating to termination, shall not apply.

(i) Except as provided in subdivision (j), the amendments to this section made by the act adding this subdivision shall apply only to income years beginning on or after January 1, 1993.

(j) The amendments made by Section 13112 of the Revenue Reconciliation Act of 1993 (P.L. 103-66) to Section 41 of the Internal

Revenue Code, relating to the credit for increased research activities, shall apply to income years beginning on or after January 1, 1994.

(k) Section 41(g) of the Internal Revenue Code, relating to special rule for passthrough of credit, is modified by each of the following:

(1) The last sentence shall not apply.

(2) If the amount determined under Section 41(a) of the Internal Revenue Code for any income year exceeds the limitation of Section 41(g) of the Internal Revenue Code, that amount may be carried over to other income years under the rules of subdivision (f); except that the limitation of Section 41(g) of the Internal Revenue Code shall be taken into account in each subsequent income year.

SEC. 37.1. Section 23610 is added to the Revenue and Taxation Code, to read:

23610. (a) For each income year beginning on or after January 1, 1997, and before January 1, 2008, there shall be allowed as a credit against the amount of "tax," as defined in Section 23036, an amount equal to fifteen dollars ($15) for each ton of rice straw, as defined in Section 18944.33 of the Health and Safety Code, that is grown within California and purchased during the income year by the taxpayer.

(b) The aggregate amount of tax credits granted to all taxpayers pursuant to this section and Section 17052.10 shall not exceed four hundred thousand dollars ($400,000) for each calendar year.

(c) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" for the next 10 income years, or until the credit has been exhausted, whichever occurs first.

(d) No deduction shall be claimed for the purchase of rice straw for which a tax credit has been claimed pursuant to this section.

(e) No credit shall be claimed for the purchase of rice straw for which a tax credit has otherwise already been claimed pursuant to this part.

(f) The Department of Food and Agriculture shall do all of the following:

(1) Certify that the taxpayer has purchased the rice straw as specified in subdivision (a).

(2) Issue certificates in an aggregate amount that shall not exceed the limit specified in subdivision (b). The certificates shall be issued on a "first come, first served" basis to reflect the chronological order that the taxpayer submitted a valid request to the Department of Food and Agriculture.

(3) Provide an annual listing to the Franchise Tax Board (preferably on computer readable form, and in a form or manner agreed upon by the Franchise Tax Board and the Department of Food and Agriculture) of the qualified taxpayers who were issued certificates and the amount of rice straw purchased by each taxpayer.

(4) As part of its allocation request for tax credits, provide the taxpayer with a copy of the certification to retain for the taxpayer's records.

(5) Obtain the taxpayer's identification number, or in the case of a subchapter S corporation, the taxpayer identification numbers of all shareholders.

(6) On or before each June 1 immediately following each year for which the credit under this section is available, provide to the Legislature an informational report with respect to that year that includes all of the following:

(A) The number of tax credit certificates requested and issued.

(B) The type of businesses receiving the tax credit certificates.

(C) A general list of the methods used to process the rice straw.

(D) Recommendations on how the credits can be issued in a manner that will maximize the long term use of the California grown rice straw.

(g) To be eligible for the credit under this section the taxpayer shall do all of the following:

(1) As part of its allocation request for tax credits, provide the Department of Food and Agriculture with documents, as deemed necessary by the department, verifying the purchase of rice straw and that it meets the requirements specified in this section.

(2) Retain for the taxpayer's records a copy of the certificate issued by the Department of Food and Agriculture as specified in subdivision (f).

(3) Provide a copy of the certification specified in subdivision (f) to the Franchise Tax Board upon request. If the taxpayer fails to comply with the requirements of this subdivision, no credit shall be allowed to that taxpayer under this section for any income year unless the taxpayer subsequently complies.

(4) Provide the Department of Food and Agriculture with the taxpayer's identification number, or in the case of a subchapter S corporation, the taxpayer identification numbers of all shareholders.

(h) (1) For purposes of this section, a credit shall be allowed only if the taxpayer is the "end user" of the rice straw. For purposes of this section, "end user" shall mean anyone who uses the rice straw for processing, generation of energy, manufacturing, export, prevention of erosion, or for any other purpose, exclusive of open burning, that consumes the rice straw.

(2) The credit shall not be allowed if the taxpayer is related, within the meaning of Section 267 or 318 of the Internal Revenue Code, to any person who grew the rice straw within California.

(i) This section shall remain in effect only until December 1, 2008, and as of that date is repealed.

SEC. 38. Section 23622 of the Revenue and Taxation Code is amended to read:

23622. (a) There shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) (i) Except as provided in clause (ii), that portion of wages paid or incurred by the employer during the income year to qualified disadvantaged individuals that does not exceed 150 percent of the minimum wage.

(ii) For up to 1,350 qualified employees who are employed by the taxpayer in the Long Beach Enterprise Zone in aircraft manufacturing activities described in Codes 3721 to 3728, inclusive, and Code 3812 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "qualified wages" means that portion of hourly wages that does not exceed 202 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the individual commences employment with the taxpayer.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(c) For purposes of this section:

(1) "Qualified disadvantaged individual" means an individual—

(A) Who is a qualified employee within the meaning of subdivision (d).

(B) Who is hired by the employer after the designation of the area in which services were performed as an enterprise zone (under Section 7073 of the Government Code).

(C) Who is any of the following immediately preceding the individual's commencement of employment with the taxpayer:

(i) An individual who is eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.) and who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act.

(ii) Any individual who is eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with

Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who is eligible as determined by the Employment Development Department under the federal Targeted Jobs Tax Credit Program as long as that program is in effect.

(2) Priority shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible under the federal Targeted Jobs Tax Credit Program.

(d) For purposes of this section, "qualified employee" means an individual—

(1) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone, and

(2) Who performs at least 50 percent of his or her services for the taxpayer during the income year in an enterprise zone.

(e) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification which provides that a qualified individual meets the eligibility requirements specified in subparagraph (C) of paragraph (1) of subdivision (c).

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(f) (1) For purposes of this section, all employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single employer. In that case, the credit (if any) allowable by this section to each member shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit. For purposes of this subdivision, "controlled group of corporations" has the meaning given to that term by Section 1563(a) of the Internal Revenue Code, except that—

(A) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(B) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue Code.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (g)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(g) (1) If the employment of any employee with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable unemployment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated—

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the employee continues to be employed by the acquiring corporation, or

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(h) In the case of—

(1) An organization to which Section 593 of the Internal Revenue Code applies, and

(2) A regulated investment company or a real estate investment trust subject to taxation under this part rules similar to the rules

provided in subsections (e) and (h) of Section 46 of the Internal Revenue Code shall apply.

(i) For purposes of this section, "enterprise zone" means an area for which designation as an enterprise zone is in effect under Section 7073 of the Government Code.

(j) The credit shall be reduced by the credit allowed under Section 23621. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (k) or (*l*).

(k) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit which exceeds the "tax" may be carried over and added to the credit, if any, in the following year, and succeeding years if necessary, for the number of years in which the designation of an enterprise zone is binding, or 15 income years, if longer, until the credit has been exhausted. The credit shall be applied first to the earliest income years possible.

(*l*) (1) The amount of the credit otherwise allowed under this section and Section 23612, including any credit carryover from prior years, that may reduce the "tax" for the income year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributed to the enterprise zone determined as if that attributed income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with Chapter 17 (commencing with Section 25101), modified for purposes of this section as follows:

(A) For income years beginning on or after January 1, 1991, and ending on or before December 31, 1996, income shall be apportioned to the enterprise zone by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The enterprise zone" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (k).

SEC. 39. Section 23622.5 is added to the Revenue and Taxation Code, to read:

23622.5. (a) There shall be allowed a credit against the "tax" (as defined by Section 23036) to a taxpayer who employs a qualified employee in an enterprise zone during the income year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) (i) Except as provided in clause (ii), that portion of wages paid or incurred by the taxpayer during the income year to qualified employees that does not exceed 150 percent of the minimum wage.

(ii) For up to 1,350 qualified employees who are employed by the taxpayer in the Long Beach Enterprise Zone in aircraft manufacturing activities described in Codes 3721 to 3728, inclusive, and Code 3812 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "qualified wages" means that portion of hourly wages that does not exceed 202 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the employee commences employment with the taxpayer.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(4) (A) "Qualified employee" means an individual who meets all of the following requirements:

(i) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in an enterprise and employment zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the income year in an enterprise and employment zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise and employment zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.) and is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act.

(II) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(III) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was eligible, as determined by the Employment Development Department, under the federal Targeted Jobs Tax Credit Program as long as that program is in effect.

(IV) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a resident of a targeted employment area (as defined in Section 7072 of the Government Code).

(V) An employee who qualified the taxpayer for the enterprise zone hiring credit under former Section 23622 or the program area hiring credit under former Section 23623.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible under the federal Targeted Jobs Tax Credit Program.

(5) "Taxpayer" means a bank or corporation engaged in a trade or business within an enterprise and employment zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(c) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification that provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b).

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(d) (1) For purposes of this section:

(A) All employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section to each member shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit, and shall be allocated in that manner.

(C) For purposes of this subdivision, "controlled group of corporations" means "controlled group of corporations" as defined in Section 1563(a) of the Internal Revenue Code, except that:

(i) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(ii) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue Code.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (e)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(e) (1) If the employment of any qualified employee with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment, whether or not consecutive, or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that employee.

(iii) A termination of employment of a qualified employee, if it is determined under the applicable unemployment compensation provisions that the termination was due to the misconduct of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified employee shall not be treated as terminated by either of the following:

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the qualified employee continues to be employed by the acquiring corporation.

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the qualified employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(f) Rules similar to the rules provided in Section 46(e) and (h) of the Internal Revenue Code shall apply to both of the following:

(1) An organization to which Section 593 of the Internal Revenue Code applies:

(2) A regulated investment company or a real estate investment trust subject to taxation under this part.

(g) For purposes of this section, "enterprise and employment zone" means an area designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(h) The credit allowable under this section shall be reduced by the credit allowed under Sections 23623.5, 23625, and 23646 claimed for the same employee. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (i) or (j).

(i) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit that exceeds the "tax" may be carried over and added to the credit, if any, in succeeding income years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 23612.2, including any credit carryover from prior years, that may reduce the "tax" for the income year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting "the enterprise zone" for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years,

as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (i).

SEC. 40. Section 23642 is added to the Revenue and Taxation Code, to read:

23642. (a) For each income year beginning on or after January 1, 1996, there shall be allowed as a credit against the "tax," as defined in Section 23036, the amount paid or incurred for eligible access expenditures. The credit shall be allowed in accordance with Section 44 of the Internal Revenue Code, relating to expenditures to provide access to disabled individuals, except that the credit amount specified in subdivision (b) shall be substituted for the credit amount specified in Section 44(a) of the Internal Revenue Code.

(b) The credit amount allowed under this section shall be 50 percent of so much of the eligible access expenditures for the income year as do not exceed two hundred fifty dollars ($250).

(c) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years if necessary, until the credit is exhausted.

SEC. 41. Section 23649 of the Revenue and Taxation Code is amended to read:

23649. (a) (1) A qualified taxpayer shall be allowed a credit against the "tax," as defined in Section 23036, equal to 6 percent of the qualified cost of qualified property that is placed in service in this state.

(2) In the case of any qualified costs paid or incurred on or after January 1, 1994, and prior to the first income year of the qualified taxpayer beginning on or after January 1, 1995, the credit provided under paragraph (1) shall be claimed by the qualified taxpayer on the qualified taxpayer's return for the first income year beginning on or after January 1, 1995. No credit shall be claimed under this section on a return filed for any income year commencing prior to the qualified taxpayer's first income year beginning on or after January 1, 1995.

(b) (1) For purposes of this section, "qualified cost" means any cost that satisfies each of the following conditions:

(A) Except as otherwise provided in this subparagraph, is a cost paid or incurred by the qualified taxpayer for the construction, reconstruction, or acquisition of qualified property on or after January 1, 1994, and prior to the date this section ceases to be operative under paragraph (2) of subdivision (i). In the case of any qualified property constructed, reconstructed, or acquired by the qualified taxpayer (or any person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) pursuant to a binding contract in existence on or prior to January 1, 1994, costs paid pursuant to that contract shall be subject to allocation as follows: contract costs shall be allocated to qualified property based on a ratio of costs actually paid prior to January 1, 1994, and total contract costs actually paid. "Cost paid" shall include,

without limitation, contractual deposits and option payments. To the extent of cost allocated, whether or not currently deductible or depreciable for tax purposes, to a period prior to January 1, 1994, the cost shall be deemed allocated to property acquired before January 1, 1994, and is thus not a "qualified cost."

(B) Except as provided in paragraph (2) of subdivision (d) and subparagraph (B) of paragraph (3) of subdivision (d), is an amount upon which the qualified taxpayer has paid, directly or indirectly as a separately stated contract amount or as determined from the records of the qualified taxpayer, sales or use tax under Part 1 (commencing with Section 6001).

(C) Is an amount properly chargeable to the capital account of the qualified taxpayer.

(2) (A) For purposes of this subdivision, any contract entered into on or after January 1, 1994, that is a successor or replacement contract to a contract that was binding prior to January 1, 1994, shall be treated as a binding contract in existence prior to January 1, 1994.

(B) If a successor or replacement contract is entered into on or after January 1, 1994, and the subject of the successor or replacement contract relates both to amounts for the construction, reconstruction, or acquisition of qualified property described in the original binding contract and to costs for the construction, reconstruction, or acquisition of qualified property not described in the original binding contract, then the portion of those amounts described in the successor or replacement contract that were not described in the original binding contract shall not be treated as costs paid or incurred pursuant to a binding contract in existence on or prior to January 1, 1994, under subparagraph (A) of paragraph (1).

(3) (A) For purposes of this section, an option contract in existence prior to January 1, 1994, under which a qualified taxpayer (or any other person related to the qualified taxpayer within the meaning of Section 267 or 707 of the Internal Revenue Code) had an option to acquire qualified property, shall be treated as a binding contract under the rules in paragraph (2). For purposes of this subparagraph, an option contract shall not include an option under which the option holder will forfeit an amount less than 10 percent of the fixed option price in the event the option is not exercised.

(B) For purposes of this section, a contract shall be treated as binding even if the contract is subject to a condition.

(c) (1) For purposes of this section, "qualified taxpayer" means any taxpayer engaged in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) In the case of any pass-through entity, the determination of whether a taxpayer is a qualified taxpayer shall be made at the entity level and any credit under this section or Section 17053.49 shall be allowed to the pass-through entity and passed through to the partners

or shareholders in accordance with applicable provisions of Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001). For purposes of this paragraph, the term "pass-through entity" means any partnership or S corporation.

(3) The Franchise Tax Board may prescribe regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the effect of this section through splitups, shell corporations, partnerships, tiered ownership structures, sale-leaseback transactions, or otherwise.

(d) For purposes of this section, "qualified property" means property that is described as either of the following:

(1) Tangible personal property that is defined in Section 1245(a) of the Internal Revenue Code for use by a qualified taxpayer in those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, that is primarily used for any of the following:

(A) For the manufacturing, processing, refining, fabricating, or recycling of property, beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the process and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling has altered tangible personal property to its completed form, including packaging, if required.

(B) In research and development.

(C) To maintain, repair, measure, or test any property described in this paragraph.

(D) For pollution control that meets or exceeds standards established by the state or by any local or regional governmental agency within the state.

(E) For recycling.

(2) The value of any capitalized labor costs that are directly allocable to the construction or modification of property described in paragraph (1).

(3) In the case of any qualified taxpayer engaged in manufacturing activities described in SIC Code 357 or 367, those activities related to biotechnology described in SIC Code 8731, those activities related to biopharmaceutical establishments only that are described in SIC Codes 2833 to 2836, inclusive, those activities related to space vehicles and parts described in SIC Codes 3761 to 3769, inclusive, those activities related to space satellites and communications satellites and equipment described in SIC Codes 3663 and 3812 (but only with respect to "qualified property" that is placed in service on or after January 1, 1996), or those activities related to semiconductor equipment manufacturing described in SIC Code 3559 (but only with respect to "qualified property" that is placed in service on or after January 1, 1997), "qualified property" also includes the following:

(A) Special purpose buildings and foundations that are constructed or modified for use by the qualified taxpayer primarily in a manufacturing, processing, refining, or fabricating process, or as a research or storage facility primarily used in connection with a manufacturing process.

(B) The value of any capitalized labor costs that are directly allocable to the construction or modification of special purpose buildings and foundations that are used primarily in the manufacturing, processing, refining, or fabricating process, or as a research or storage facility primarily used in connection with a manufacturing process.

(C) (i) For purposes of this paragraph, "special purpose building and foundation" means only a building and the foundation immediately underlying the building that is specifically designed and constructed or reconstructed for the installation, operation, and use of specific machinery and equipment with a special purpose, which machinery and equipment, after installation, will become affixed to or a fixture of the real property, and the construction or reconstruction of which is specifically designed and used exclusively for the specified purposes as set forth in subparagraph (A) ("qualified purpose").

(ii) A building is specifically designed and constructed or modified for a qualified purpose if it is not economic to design and construct the building for the intended purpose and then use the structure for a different purpose.

(iii) For purposes of clause (i) and clause (vi), a building is used exclusively for a qualified purpose only if its use does not include a use for which it was not specifically designed and constructed or modified. Incidental use of a building for nonqualified purposes does not preclude the building from being a special purpose building. "Incidental use" means a use which is both related and subordinate to the qualified purpose. It will be conclusively presumed that a use is not subordinate if more than one-third of the total usable volume of the building is devoted to a use which is not a qualified purpose.

(iv) In the event an entire building does not qualify as a special purpose building, a taxpayer may establish that a portion of a building, and the foundation immediately underlying the portion, qualifies for treatment as a special purpose building and foundation if the portion satisfies all of the definitional provisions in this subparagraph.

(v) To the extent that a building is not a special purpose building as defined above, but a portion of the building qualifies for treatment as a special purpose building, then all equipment which exclusively supports the qualified purpose occurring within that portion and which would qualify as Internal Revenue Code Section 1245 property if it were not a fixture or affixed to the building shall be treated as a cost of the portion of the building which qualifies for treatment as a special purpose building.

(vi) Buildings and foundations which do not meet the definition of a special purpose building and foundation set forth above include, but are not limited to: buildings designed and constructed or reconstructed principally to function as a general purpose manufacturing, industrial, or commercial building; research facilities that are used primarily prior to or after, or prior to and after, the manufacturing process; or storage facilities that are used primarily prior to or after, or prior to and after, completion of the manufacturing process. A research facility shall not be considered to be used primarily prior to or after, or prior to and after, the manufacturing process if its purpose and use relate exclusively to the development and regulatory approval of the manufacturing process for specific biopharmaceutical products. A research facility which is used primarily in connection with the discovery of an organism from which a biopharmaceutical product or process is developed does not meet the requirements of the preceding sentence.

(4) Subject to the provisions in subparagraph (B) of paragraph (1) of subdivision (b), qualified property also includes computer software that is primarily used for those purposes set forth in paragraph (1) of this subdivision.

(5) Qualified property does not include any of the following:

(A) Furniture.

(B) Facilities used for warehousing purposes after completion of the manufacturing process.

(C) Inventory.

(D) Equipment used in the extraction process.

(E) Equipment used to store finished products that have completed the manufacturing process.

(F) Any tangible personal property that is used in administration, general management, or marketing.

(G) Any vehicle for which a credit is claimed pursuant to Section 17052.11 or 23603.

(e) For purposes of this section:

(1) "Biopharmaceutical activities" means those activities which use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical organisms to make commercial products, as opposed to pharmaceutical activities which make use of chemical compounds to produce commercial products.

(2) "Fabricating" means to make, build, create, produce, or assemble components or property to work in a new or different manner.

(3) "Manufacturing" means the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale at retail or use in the

manufacturing of a product to be ultimately sold at retail. Manufacturing includes any improvements to tangible personal property that result in a greater service life or greater functionality than that of the original property.

(4) "Other biotechnology activities" means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical deliver systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(5) "Primarily" means tangible personal property used 50 percent or more of the time in an activity described in subdivision (d).

(6) "Process" means the period beginning at the point at which any raw materials are received by the qualified taxpayer and introduced into the manufacturing, processing, refining, fabricating, or recycling activity of the qualified person and ending at the point at which the manufacturing, processing, refining, fabricating, or recycling activity of the qualified taxpayer has altered tangible personal property to its completed form, including packaging, if required. Raw materials shall be considered to have been introduced into the process when the raw materials are stored on the same premises where the qualified taxpayer's manufacturing, processing, refining, fabricating, or recycling activity is conducted. Raw materials that are stored on premises other than where the qualified taxpayer's manufacturing, processing, refining, fabricating, or recycling activity is conducted, shall not be considered to have been introduced into the manufacturing, processing, refining, fabricating, or recycling process.

(7) "Processing" means the physical application of the materials and labor necessary to modify or change the characteristics of property.

(8) "Refining" means the process of converting a natural resource to an intermediate or finished product.

(9) "Research and development" means those activities that are described in Section 174 of the Internal Revenue Code or in any regulations thereunder.

(10) "Small business" means a qualified taxpayer that meets any of the following requirements during the income year for which the credit is allowed:

(A) Has gross receipts of less than fifty million dollars ($50,000,000).

(B) Has net assets of less than fifty million dollars ($50,000,000).

(C) Has a total credit of less than one million dollars ($1,000,000).

(D) For income years beginning on or after January 1, 1997, is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, and

as further amended, and has not received regulatory approval for any product from the United States Food and Drug Administration.

(f) The credit allowed under subdivision (a) shall apply to qualified property that is acquired by or subject to lease by a qualified taxpayer, subject to the following special rules:

(1) A lessor of qualified property, irrespective of whether the lessor is a qualified taxpayer, shall not be allowed the credit provided under subdivision (a) with respect to any qualified property leased to another qualified taxpayer.

(2) For purposes of paragraphs (2) and (3) of subdivision (b), "binding contract" shall include any lease agreement with respect to the qualified property.

(3) (A) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is not treated as a sale under Part 1 (commencing with Section 6001), the following rules shall apply:

(i) Except as provided by subparagraph (C) of this paragraph, subparagraphs (A) and (C) of paragraph (1) of subdivision (b) shall not apply.

(ii) Except as provided in subparagraph (B) and clause (iii), the "qualified cost" upon which the lessee shall compute the credit provided under this section shall be equal to the original cost to the lessor (within the meaning of Section 24912) of the qualified property that is the subject of the lease.

(iii) Except as provided in clause (iv), the requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied only if the lessor has made a timely election under either Section 6094.1 or subdivision (d) of Section 6244 and has paid sales tax reimbursement or use tax measured by the purchase price of the qualified property (within the meaning of paragraph (5) of subdivision (g) of Section 6006). For purposes of this subdivision and clause (iv), the amount of original cost to the lessor which may be taken into account under clause (ii) shall not exceed the purchase price upon which sales tax reimbursement or use tax has been paid under the preceding sentence or under clause (iv).

(iv) With respect to leases entered into between January 1, 1994, and the effective date of this clause, the lessor may elect to pay use tax measured by the purchase price of the property by reporting and paying the tax with the return of the lessor for the fourth calendar quarter of 1994. In computing the use tax under the preceding sentence, a credit shall be allowed under Part 1 (commencing with Section 6001) for all sales or use tax previously paid on the lease.

(B) For purposes of applying subparagraph (A) only, the following special rules shall apply:

(i) The original cost to the lessor of the qualified property shall be reduced by the amount of any original cost of that property that was taken into account by any predecessor lessee in computing the credit allowable under this section.

(ii) Clause (i) shall not apply in any case where the predecessor lessee was required to recapture the credit provided under this section pursuant to the provisions of subdivision (g).

(iii) For purposes of this section only, in any case where a successor lessor has acquired qualified property from a predecessor lessor in a transaction not treated as a sale under Part 1 (commencing with Section 6001), the original cost to the successor lessor of the qualified property shall be reduced by the amount of the original cost of the qualified property that was taken into account by any lessee of the predecessor lessor in computing the credit allowable under this section.

(C) In determining the original cost of any qualified property under this paragraph, only amounts paid or incurred by the lessor on or after January 1, 1994, and prior to the date this section ceases to be operative under paragraph (2) of subdivision (i), shall be taken into account. In the case of any qualified property constructed, reconstructed, or acquired by a lessor pursuant to a binding contract in existence on or prior to January 1, 1994, the allocation rule specified in subparagraph (A) of paragraph (1) of subdivision (b) shall apply in determining the original cost to the lessor of qualified property.

(D) Notwithstanding subparagraph (A), in the case of any leasing transaction for which the lessee is allowed the credit under this section and thereafter the lessee (or any party related to the lessee within the meaning of Section 267 or 318 of the Internal Revenue Code) acquires the qualified property from the lessor (or any successor lessor) within one year from the date the qualified property is first used by the lessee under the terms of the lease, the lessee's (or related party's) acquisition of the qualified property from the lessor (or successor lessor) shall be treated as a disposition by the lessee of the qualified property that was subject to the lease under subdivision (g).

(4) For purposes of determining the qualified cost paid or incurred by a lessee in any leasing transaction that is treated as a sale under Part 1 (commencing with Section 6001), the following rules shall apply:

(A) Subparagraph (A) of paragraph (1) of subdivision (b) shall be applied by substituting the term "purchase" for the term "construction, reconstruction, or acquisition."

(B) Subparagraph (C) of paragraph (1) of subdivision (b) shall apply.

(C) The requirement of subparagraph (B) of paragraph (1) of subdivision (b) shall be treated as satisfied at the time that either the lessor or the qualified taxpayer pays sales or use tax under Part 1 (commencing with Section 6001).

(5) (A) In the case of any leasing transaction described in paragraph (3), the lessor shall provide a statement to the lessee specifying the amount of the lessor's original cost of the qualified property and the amount of that cost upon which a sales or use tax

was paid within 45 days after the close of the lessee's taxable year in which the credit is allowable to the lessee under this section.

(B) The statement required under subparagraph (A) shall be made available to the Franchise Tax Board upon request.

(g) No credit shall be allowed if the qualified property is removed from the state, is disposed of to an unrelated party, or is used for any purpose not qualifying for the credit provided in this section in the same taxable year in which the qualified property is first placed in service in this state. If any qualified property for which a credit is allowed pursuant to this section is thereafter removed from this state, disposed of to an unrelated party, or used for any purpose not qualifying for the credit provided in this section within one year from the date the qualified property is first placed in service in this state, the amount of the credit allowed by this section for that qualified property shall be recaptured by adding that credit amount to the net tax of the qualified taxpayer for the taxable year in which the qualified property is disposed of, removed, or put to an ineligible use.

(h) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and succeeding years as follows:

(1) Except as provided in paragraph (2), for the seven succeeding years if necessary, until the credit is exhausted.

(2) In the case of a small business, for the nine succeeding years, if necessary, until the credit is exhausted.

(i) (1) This section shall remain in effect until the date specified in paragraph (2) on which date this section shall cease to be operative, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (h), until the credit is exhausted.

(2) (A) This section shall cease to be operative on January 1, 2001, or on January 1 of the earliest year thereafter, if the total employment in this state, as determined by the Employment Development Department on the preceding January 1, does not exceed by 100,000 jobs the total employment in this state on January 1, 1994. The department shall report to the Legislature annually with respect to the determination required by the preceding sentence.

(B) For purposes of this paragraph, "total employment" means the total employment in the manufacturing sector, excluding employment in the aerospace sector.

(j) The amendments made by the act adding this subdivision shall be operative for income years beginning on or after January 1, 1997, except as provided in paragraph (3) of subdivision (d).

SEC. 41.1. Section 23701z is added to the Revenue and Taxation Code, to read:

23701z. An organization established pursuant to Section 5005.1 of the Corporations Code by three or more corporations as an arrangement for the pooling of self-insured claims or losses of those corporations.

SEC. 42. Section 24307 of the Revenue and Taxation Code is amended to read:

24307. (a) Section 108 of the Internal Revenue Code, relating to income from discharge of indebtedness, shall apply, except as otherwise provided.

(b) Section 108(b)(2)(B) of the Internal Revenue Code, relating to general business credit, is modified by substituting "this part" in lieu of "Section 38 (relating to general business credit)."

(c) Section 108(b)(2)(G) of the Internal Revenue Code, relating to foreign tax credit carryovers, shall not apply.

(d) Section 108(b)(3)(B) of the Internal Revenue Code, relating to credit carryover reduction, is modified by substituting "11.1 cents" in lieu of "33 $^1/_3$ cents" in each place in which it appears. In the case where more than one credit is allowable under this part, the credits shall be reduced on a pro rata basis.

(e) Section 108(g)(3)(B) of the Internal Revenue Code, relating to adjusted tax attributes, is modified by substituting "$9" in lieu of "$3."

(f) (1) The amendments to Section 108 of the Internal Revenue Code made by Section 13150 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to exclusion from gross income for income from discharge of qualified real property business indebtedness, shall apply to discharges occurring on or after January 1, 1996, in income years beginning on or after January 1, 1996.

(2) If a taxpayer makes an election for federal income tax purposes under Section 108(c) of the Internal Revenue Code, relating to treatment of discharge of qualified real property business indebtedness, a separate election shall not be allowed under paragraph (3) of subdivision (e) of Section 23051.5 and the federal election shall be binding for purposes of this part.

(3) If a taxpayer has not made an election for federal income tax purposes under Section 108(c) of the Internal Revenue Code, relating to treatment of discharge of qualified real property business indebtedness, then the taxpayer shall not be allowed to make that election for purposes of this part.

(g) The amendments to Section 108 of the Internal Revenue Code made by Section 13226 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to modifications of discharge of indebtedness provisions, shall apply to discharges occurring on or after January 1, 1996, in income years beginning on or after January 1, 1996.

SEC. 42.1. Section 24343.3 is added to the Revenue and Taxation Code, to read:

24343.3. Any employer contribution to a medical savings account, as defined in Section 17267, if otherwise deductible under this part, shall be allowed only for the income year in which paid.

SEC. 42.2. Section 24344 of the Revenue and Taxation Code is amended to read:

24344. (a) Section 163 of the Internal Revenue Code, relating to interest, shall apply, except as otherwise provided.

(b) If income of the taxpayer which is derived from or attributable to sources within this state is determined pursuant to Section 25101 or 25110, the interest deductible shall be an amount equal to interest income subject to apportionment by formula, plus the amount, if any, by which the balance of interest expense exceeds interest and dividend income (except dividends deductible under Section 24402 and dividends subject to the deductions provided for in Section 24411 to the extent of those deductions) not subject to apportionment by formula. Interest expense not included in the preceding sentence shall be directly offset against interest and dividend income (except dividends deductible under Section 24402 and dividends subject to the deductions provided for in Section 24411 to the extent of those deductions) not subject to apportionment by formula.

(c) (1) Notwithstanding subdivision (b) and subject to paragraph (2), interest expense allowable under Section 163 of the Internal Revenue Code that is incurred for purposes of foreign investments may be offset against dividends deductible under Section 24411.

(2) For income years beginning on or after January 1, 1997, the amount of interest computed pursuant to paragraph (1) shall be multiplied by the same percentage used to determine the dividend deduction under Section 24411 to determine that amount of interest that may be offset as provided in paragraph (1).

(d) Section 7210(b) of Public Law 101-239, relating to the effective date for limitation on deduction for certain interest paid to a related person, shall apply.

(e) Section 163(j)(6)(C) of the Internal Revenue Code, relating to treatment of an affiliated group, is modified to apply to all members of a combined report filed under Section 25101.

SEC. 43. Section 24344.7 is added to the Revenue and Taxation Code, to read:

24344.7. The amendments to Section 163 of the Internal Revenue Code made by Section 13228 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to modification to limitation on deduction for certain interest, shall apply to income years beginning on or after January 1, 1996.

SEC. 44. Section 24358 of the Revenue and Taxation Code is amended to read:

24358. (a) In the case of a bank or corporation, the total deductions under Section 24357 for any income year shall not exceed 10 percent of the taxpayer's net income computed without regard to any of the following:

(1) Subdivision (e) of Section 23802, relating to a deduction for built-in gains and passive investment income.

(2) Sections 24357 to 24359, inclusive, relating to the deduction for contributions.

(3) Article 2 (commencing with Section 24401) of Chapter 7 (except Sections 24407 to 24409, inclusive, relating to organizational expenses).

(b) Section 170(d)(2) of the Internal Revenue Code, relating to carryovers of excess contributions, shall apply with respect to excess contributions made during income years beginning on or after January 1, 1996.

SEC. 45. Section 24411 of the Revenue and Taxation Code is amended to read:

24411. (a) For purposes of those taxpayers electing to compute income under Section 25110, 100 percent of the qualifying dividends described in subdivision (c) and 75 percent of other qualifying dividends to the extent not otherwise allowed as a deduction or eliminated from income. "Qualifying dividends" means those received by the water's-edge group from corporations if both of the following conditions are satisfied:

(1) The average of the property, payroll, and sales factors within the United States for the corporation is less than 20 percent.

(2) More than 50 percent of the total combined voting power of all classes of stock entitled to vote is owned directly or indirectly by the water's-edge group.

(b) The water's-edge group consists of banks or corporations whose income and apportionment factors are taken into account pursuant to Section 25110.

(c) Dividends derived from a construction project, the location of which is not subject to the taxpayer's control.

For purposes of this subdivision:

(1) "Construction project" means any activity which meets the following requirements:

(A) Is undertaken for any entity, including a governmental entity, which is not affiliated with the taxpayer.

(B) The majority of its cost of performance is attributable to an addition to real property or an alteration of land or any improvement thereto as those terms are utilized for purposes of this code.

"Construction project" does not include the operation, rental, leasing, or depletion of real property, land, or any improvement thereto.

(2) "Location of which is not subject to the taxpayer's control" means that the place at which the majority of the construction takes place results from the nature or character of the construction project and not as a result of the terms of the contract or agreement governing the construction project.

SEC. 46. Section 24416 of the Revenue and Taxation Code is amended to read:

24416. Except as provided in Sections 24416.1 and 24416.2, a net operating loss deduction shall be allowed in computing net income under Section 24341 and shall be determined in accordance with

Section 172 of the Internal Revenue Code, except as otherwise provided.

(a) (1) Net operating losses attributable to income years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any income year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that 50 percent of the entire amount of the net operating loss for any income year shall not be eligible for carryover to any subsequent income year.

(2) In the case of a taxpayer who has a net operating loss in an income year beginning on or after January 1, 1994, and who operates a new business during that income year, each of the following shall apply to each loss incurred during the first three income years of operating the new business:

(A) If the net operating loss is equal to or less than the net loss from the new business, 100 percent of the net operating loss shall be carried forward as provided in paragraph (2) of subdivision (e).

(B) If the net operating loss is greater than the net loss from the new business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the new business, 100 percent of that amount shall be carried forward as provided in paragraph (2) of subdivision (e).

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the new business, 50 percent of that amount shall be a net operating loss carryover to each of the five taxable years following the taxable year of the loss.

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(3) In the case of a taxpayer who has a net operating loss in an income year beginning on or after January 1, 1994, and who operates an eligible small business during that income year, each of the following shall apply:

(A) If the net operating loss is equal to or less than the net loss from the eligible small business, 100 percent of the net operating loss shall be carried forward to the income years specified in paragraph (1) of subdivision (e).

(B) If the net operating loss is greater than the net loss from the eligible small business, the net operating loss shall be carried over as follows:

(i) With respect to an amount equal to the net loss from the eligible small business, 100 percent of that amount shall be carried forward to each of the five income years following the income year of the loss.

(ii) With respect to the portion of the net operating loss that exceeds the net loss from the eligible small business, 50 percent of that amount shall be a net operating loss carryover to each of the five income years following the income year of the loss.

(C) For purposes of Section 172(b)(2) of the Internal Revenue Code, the amount described in clause (ii) of subparagraph (B) shall be absorbed before the amount described in clause (i) of subparagraph (B).

(4) In the case of a taxpayer who has a net operating loss in an income year beginning on or after January 1, 1994, and who operates a business that qualifies as both a new business and an eligible small business under this section, that business shall be treated as a new business for the first three income years of the new business.

(5) In the case of a taxpayer who has a net operating loss in an income year beginning on or after January 1, 1994, and who operates more than one business, and more than one of those businesses qualifies as either a new business or an eligible small business under this section, paragraph (2) shall be applied first, except that if there is any remaining portion of the net operating loss after application of clause (i) of subparagraph (B) of paragraph (2), paragraph (3) shall be applied to the remaining portion of the net operating loss as though that remaining portion of the net operating loss constituted the entire net operating loss.

(6) For purposes of this section, "net loss" means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(c) For any income year in which the taxpayer has in effect a water's-edge election under Section 25110, the deduction of a net operating loss carryover shall be denied to the extent that the net operating loss carryover was determined by taking into account the income and factors of an affiliated bank or corporation in a combined report whose income and apportionment factors would not have been taken into account if a water's-edge election under Section 25110 had been in effect for the income year in which the loss was incurred.

(d) Net operating loss carrybacks shall not be allowed.

(e) (1) Except as provided in paragraphs (2), (3), and (4), for each income year beginning on or after January 1, 1987, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute "five income years" in lieu of "15 taxable years."

(2) In the case of a "new business," the "five income years" referred to in paragraph (1) shall be modified to read as follows:

(A) "Eight income years" for a net operating loss attributable to the first income year of that new business.

(B) "Seven income years" for a net operating loss attributable to the second income year of that new business.

(C) "Six income years" for a net operating loss attributable to the third income year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 24416.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to income years beginning in 1991.

(B) By two years for a net operating loss attributable to income years beginning prior to January 1, 1991.

(4) The net operating loss attributable to income years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 income years following the year of the loss if it is incurred by a bank or corporation that was either of the following:

(A) Under the jurisdiction of the court in a Title 11 or similar case at any time prior to January 1, 1994. The loss carryover provided in the preceding sentence shall not apply to any loss incurred in an income year after the income year during which the bank or corporation is no longer under the jurisdiction of the court in a Title 11 or similar case.

(B) In receipt of assets acquired in a transaction that qualifies as a tax-free reorganization under Section 368(a)(1)(G) of the Internal Revenue Code.

(f) For purposes of this section:

(1) "Eligible small business" means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars ($1,000,000) during the income year.

(2) Except as provided in subdivision (g), "new business" means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) "Title 11 or similar case" shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

(4) In the case of any trade or business activity conducted by a partnership or an S corporation, paragraphs (1) and (2) shall be applied to the partnership or S corporation.

(g) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply:

(1) In any case where a taxpayer purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by the taxpayer (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the trade or business

being conducted by the taxpayer (or any related person). For purposes of this paragraph only, the following rules shall apply:

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first income year in which the taxpayer (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person).

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months (''prior trade or business activity''), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are any of the taxpayer's (or any related person's) current or prior trade or business activities.

(3) In any case where a taxpayer, including all related persons, is engaged in trade or business activities wholly outside of this state and the taxpayer first commences doing business in this state (within the meaning of Section 23101) after December 31, 1993 (other than by purchase or other acquisition described in paragraph (1)), the trade or business activity shall be treated as a new business under paragraph (2) of subdivision (e).

(4) In any case where the legal form under which a trade or business activity is being conducted is changed, the change in form shall be disregarded and the determination of whether the trade or business activity is a new business shall be made by treating the taxpayer as having purchased or otherwise acquired all or any portion of the assets of an existing trade or business under the rules of paragraph (1) of this subdivision.

(5) ''Related person'' shall mean any person that is related to the taxpayer under either Section 267 or 318 of the Internal Revenue Code.

(6) ''Acquire'' shall include any transfer, whether or not for consideration.

(7) (A) For income years beginning on or after January 1, 1997, the term ''new business'' shall include any taxpayer that is engaged in biopharmaceutical activities or other biotechnology activities that are described in Codes 2833 to 2836, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States

Office of Management and Budget, 1987 edition, and as further amended, and that has not received regulatory approval for any product from the United States Food and Drug Administration.

(B) For purposes of this paragraph:

(i) "Biopharmaceutical activities" means those activities which use organisms or materials derived from organisms, and their cellular, subcellular, or molecular components, in order to provide pharmaceutical products for human or animal therapeutics and diagnostics. Biopharmaceutical activities make use of living organisms to make commercial products, as opposed to pharmaceutical activities which make use of chemical compounds to produce commercial products.

(ii) "Other biotechnology activities" means activities consisting of the application of recombinant DNA technology to produce commercial products, as well as activities regarding pharmaceutical delivery systems designed to provide a measure of control over the rate, duration, and site of pharmaceutical delivery.

(h) For purposes of corporations whose net income is determined under Chapter 17 (commencing with Section 25101), Section 25108 shall apply to each of the following:

(1) The amount of net operating loss incurred in any income year which may be carried forward to another income year.

(2) The amount of any loss carry forward which may be deducted in any income year.

(i) The provisions of Section 172(b)(1)(K) of the Internal Revenue Code, relating to bad debt losses of commercial banks, shall not be applicable.

(j) The Franchise Tax Board may prescribe appropriate regulations to carry out the purposes of this section, including any regulations necessary to prevent the avoidance of the purposes of this section through splitups, shell corporations, partnerships, tiered ownership structures, or otherwise.

(k) The Franchise Tax Board may reclassify any net operating loss carryover determined under either paragraph (2) or (3) of subdivision (b) as a net operating loss carryover under paragraph (1) of subdivision (b) upon a showing that the reclassification is necessary to prevent evasion of the purposes of this section.

(*l*) The amendments made by the act adding this subdivision shall be operative for income years beginning on or after January 1, 1997.

SEC. 47. Section 24424 of the Revenue and Taxation Code is amended to read:

24424. (a) No deduction shall be allowed for—

(1) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under that policy.

(2) Any amount paid or accrued on indebtedness incurred to purchase or carry a single premium life insurance, endowment, or

annuity contract. This paragraph shall apply with respect to annuity contracts only as to contracts purchased after December 31, 1954.

(3) Except as provided in subdivision (c), any amount paid or accrued on indebtedness incurred or continued to purchase or carry a life insurance, endowment, or annuity contract (other than a single premium contract or a contract treated as a single premium contract) pursuant to a plan of purchase which contemplates the systematic direct or indirect borrowing of part or all of the increases in the cash value of that contract (either from the insurer or otherwise). This paragraph shall apply only with respect to contracts purchased after August 6, 1963.

(4) Except as provided in subdivision (d), any interest paid or accrued on any indebtedness with respect to one or more insurance policies owned by the taxpayer covering the life of any individual, or any endowment or annuity contracts owned by the taxpayer covering any individual, who is an officer or employee of, or is financially interested in, any trade or business carried on by the taxpayer.

This paragraph shall apply with respect to contracts purchased after June 20, 1986.

(b) For purposes of paragraph (2) of subdivision (a), a contract shall be treated as a single premium contract if either of the following conditions exist:

(1) Substantially all the premiums on the contract are paid within a period of four years from the date on which the contract is purchased.

(2) An amount is deposited after December 31, 1954, with the insurer for payment of a substantial number of future premiums on the contract.

(c) Paragraph (3) of subdivision (a) shall not apply to any amount paid or accrued by a person during an income year on indebtedness incurred or continued as part of a plan referred to in paragraph (3) of subdivision (a) if any of the following is applicable:

(1) No part of four of the annual premiums due during the seven-year period (beginning with the date the first premium on the contract to which that plan relates was paid) is paid under that plan by means of indebtedness.

(2) The total of the amounts paid or accrued by that person during that income year for which (without regard to this paragraph) no deduction would be allowable by reason of paragraph (3) of subdivision (a) does not exceed one hundred dollars ($100).

(3) That amount was paid or accrued on indebtedness incurred because of an unforeseen substantial loss of income or unforeseen substantial increase in its financial obligations.

(4) That indebtedness was incurred in connection with its trade or business.

For purposes of applying paragraph (1), if there is a substantial increase in the premiums on a contract, a new seven-year period

described in that paragraph with respect to that contract shall commence on the date the first increased premium is paid.

(d) (1) Paragraph (4) of subdivision (a) shall not apply to any interest paid or accrued on any indebtedness with respect to policies or contracts covering an individual who is a key person to the extent that the aggregate amount of that indebtedness with respect to policies and contracts covering that individual does not exceed fifty thousand dollars ($50,000).

(2) (A) No deduction shall be allowed by reason of paragraph (1) or the last sentence of subdivision (a) with respect to interest paid or accrued for any month beginning after December 31, 1995, to the extent the amount of that interest exceeds the amount which would have been determined if the applicable rate of interest were used for that month.

(B) For purposes of subparagraph (A):

(i) The applicable rate of interest for any month is the rate of interest described as Moody's Corporate Bond Yield Average-Monthly Average Corporates, as published by Moody's Investors Service, Inc., or any successor thereto, for that month.

(ii) In the case of indebtedness on a contract purchased on or before June 20, 1986, all of the following shall apply:

(I) If the contract provides a fixed rate of interest, the applicable rate of interest for any month shall be the Moody's rate described in clause (i) for the month in which the contract was purchased.

(II) If the contract provides a variable rate of interest, the applicable rate of interest for any month in an applicable period shall be the Moody's rate described in clause (i) for the third month preceding the first month in that period.

(III) For purposes of subclause (II), the taxpayer shall elect an applicable period for the contract on its return of tax imposed by this part for its first income year ending on or after December 31, 1995. That applicable period shall be for any number of months (not greater than 12) specified in the election and may not be changed by the taxpayer without the consent of the Franchise Tax Board.

(3) For purposes of paragraph (1), "key person" means an officer or 20-percent owner, except that the number of individuals who may be treated as key persons with respect to any taxpayer shall not exceed the greater of:

(A) Five individuals.

(B) The lesser of 5 percent of the total officers and employees of the taxpayer or 20 individuals.

(4) For purposes of this subdivision, "20-percent owner" means both of the following:

(A) If the taxpayer is a corporation, any person who owns directly 20 percent or more of the outstanding stock of the corporation or stock possessing 20 percent or more of the total combined voting power of all stock of the corporation.

(B) If the taxpayer is not a corporation, any person who owns 20 percent or more of the capital or profits interest in the employer.

(5) (A) For purposes of subparagraph (A) of paragraph (4) and for purposes of applying the fifty thousand dollars ($50,000) limitation in paragraph (1) both of the following shall apply:

(i) All members of a controlled group shall be treated as one taxpayer.

(ii) The limitation shall be allocated among the members of the controlled group in the manner the Franchise Tax Board may prescribe.

(B) For purposes of this paragraph, all persons treated as a single employer under Section 52(a) or 52(b) of the Internal Revenue Code, relating to special rules, or Section 414(m) or 414(o) of the Internal Revenue Code, relating to definitions and special rules, shall be treated as members of a controlled group.

(e) (1) The amendments made to this section by the act adding this subdivision shall apply to interest paid or accrued after December 31, 1995.

(2) (A) The amendments made to this section by the act adding this subdivision shall not apply to qualified interest paid or accrued on that indebtedness after December 31, 1995, and before January 1, 1999, in the case of either of the following:

(i) Indebtedness incurred before January 1, 1996.

(ii) Indebtedness incurred before January 1, 1997, with respect to any contract or policy entered into in 1994 or 1995.

(B) For purposes of subparagraph (A), the qualified interest with respect to any indebtedness for any month is the amount of interest (otherwise deductible) which would be paid or accrued for that month on that indebtedness if—

(i) In the case of any interest paid or accrued after December 31, 1995, indebtedness with respect to no more than 20,000 insured individuals were taken into account, and

(ii) The lesser of the following rates of interest were used for that month:

(I) The rate of interest specified under the terms of the indebtedness as in effect on December 31, 1995 (and without regard to modification of the terms after that date).

(II) The applicable percentage of the rate of interest described as Moody's Corporate Bond Yield Average-Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto, for that month. For purposes of clause (i), all persons treated as a single employer under Section 52(a) or 52(b) of the Internal Revenue Code, relating to special rules, or Section 414(m) or 414(o) of the Internal Revenue Code, relating to definitions and special rules, shall be treated as one person. Subclause (II) of clause (ii) shall not apply to any month before January 1, 1996.

(C) For purposes of subparagraph (B), the applicable percentage is as follows:

For calendar year:	The percentage is:
1996	100 percent
1997	90 percent
1998	80 percent

(3) This subdivision shall not apply to any contract purchased on or before June 20, 1986, except that paragraph (2) of subdivision (d) shall apply to interest paid or accrued after December 31, 1995.

(f) (1) Any amount received under any life insurance policy or endowment or annuity contract described in paragraph (4) of subdivision (a) shall be includable in gross income (in lieu of any other inclusion in gross income) ratably over the four-income-year period beginning with the income year that amount would (but for this paragraph) be includable, upon the occurrence of either of the following:

(A) The complete surrender, redemption, or maturity of that policy or contract during calendar year 1996, 1997, or 1998.

(B) The full discharge during calendar year 1996, 1997, or 1998 of the obligation under the policy or contract which is in the nature of a refund of the consideration paid for the policy or contract.

(2) Paragraph (1) shall only apply to the extent the amount is includable in gross income for the income year in which the event described in subparagraph (A) or (B) of paragraph (1) occurs.

(3) Solely by reason of an occurrence described in subparagraph (A) or (B) of paragraph (1) or solely by reason of no additional premiums being received under the contract by reason of a lapse occurring after December 31, 1995, a contract shall not be treated as either of the following:

(A) Failing to meet the requirement of paragraph (1) of subdivision (c).

(B) A single premium contract under paragraph (1) of subdivision (b).

SEC. 48. Section 24443 of the Revenue and Taxation Code is amended to read:

24443. (a) Section 274 of the Internal Revenue Code, relating to the disallowance of certain entertainment, gift, travel, etc., expenses, shall apply, except as otherwise provided.

(b) For each income year beginning in 1987 or 1988, Section 274(n) of the Internal Revenue Code shall not apply to any expense if the expense is for food or beverage provided under either of the following conditions:

(1) It is required by federal law to be provided to crew members of a vessel at sea.

(2) It is provided on an oil or gas platform or drilling rig located offshore in Alaska.

(c) For each income year beginning on or after January 1, 1989, the amendments made to Section 274 of the Internal Revenue Code

by Section 6003 of Public Law 100-647, relating to only 80 percent of meal and entertainment expenses allowed as a deduction, shall apply.

(d) For each income year beginning on or after January 1, 1994, Section 274(n) of the Internal Revenue Code, relating to deduction of meal and entertainment expenses, shall be applied by substituting "50 percent" for the percentage specified in that section.

(e) For income years beginning on or after January 1, 1996, Section 274(m) of the Internal Revenue Code, relating to additional limitations on travel expenses, shall be modified to additionally provided that no deduction shall be allowed (other than the deduction allowed under Section 217 of the Internal Revenue Code, relating to moving expenses) for travel expenses paid or incurred on or after January 1, 1996, with respect to a spouse, dependent, or other individual accompanying the taxpayer (or an officer or employee of the taxpayer) on business travel, unless all of the following apply:

(1) The spouse, dependent, or other individual is an employee of the taxpayer.

(2) The travel of the spouse, dependent, or other individual is for a bona fide business purpose.

(3) Those expenses would otherwise be deductible by the spouse, dependent, or other individual.

SEC. 49. Section 24472 is added to the Revenue and Taxation Code, to read:

24472. The amendments to Section 382 of the Internal Revenue Code made by Section 13226 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to modifications of discharge of indebtedness provisions, shall apply to discharges occurring on or after January 1, 1996, in income years beginning on or after January 1, 1996.

SEC. 50. Section 24611 of the Revenue and Taxation Code is amended to read:

24611. (a) Section 404(k) of the Internal Revenue Code, relating to dividends paid deduction, shall not apply to income years beginning before January 1, 1990, nor to income years beginning on or after January 1, 1995.

(b) This section shall apply to income years beginning before January 1, 1996. This section shall remain in effect only until December 1, 1996, and as of that date is repealed.

SEC. 50.5. Section 24611 is added to the Revenue and Taxation Code, to read:

24611. Section 404(k) of the Internal Revenue Code, relating to dividends paid deduction, shall apply to income years beginning on or after January 1, 1996.

SEC. 51. Section 24710 is added to the Revenue and Taxation Code, to read:

24710. (a) For each income year beginning on or after January 1, 1997, Section 475 of the Internal Revenue Code, relating to mark to market accounting method for securities dealers, as added by

Section 13223 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), shall apply, except as otherwise provided.

(b) Section 13233(c)(2)(C) of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to the effective date for changes in the mark to market accounting method for securities dealers, is modified to provide that the amount taken into account under Section 481 of the Internal Revenue Code of 1986 shall be taken into account ratably over the five-income-year period beginning with the first income year beginning on or after January 1, 1998.

SEC. 52. Section 24903 is added to the Revenue and Taxation Code, to read:

24903. The amendments to Section 1017 of the Internal Revenue Code made by Section 13226 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to modifications of discharge of indebtedness provisions, shall apply to discharges occurring on or after January 1, 1996, in income years beginning on or after January 1, 1996.

SEC. 53. Section 24905.5 is added to the Revenue and Taxation Code, to read:

24905.5. For each income year beginning on or after January 1, 1997, the amendments made to Section 988 of the Internal Revenue Code by Section 13223 of the Revenue Reconciliation Act of 1993 (P.L. 103-66), relating to mark to market accounting method for securities dealers, shall apply.

SEC. 54. Section 1088.5 of the Unemployment Insurance Code is amended to read:

1088.5. (a) In addition to information reported in accordance with Section 1088, each employer shall file with the department the information provided in subdivision (b) on new employees.

(b) Each employer shall report all of the following information to the department:

(1) The hiring of any person who resides or works in this state to whom the employer anticipates paying earnings.

(2) The rehiring or return to work of any person who has been laid off, furloughed, separated, granted a leave without pay, or terminated from employment, and to whom the employer anticipates paying wages.

(c) Employers shall not be required to report on any of the following persons:

(1) Any person whom the employer pays wages of less than three hundred dollars ($300) each month.

(2) Any person who is under 18 years of age.

(d) (1) The department and the State Department of Social Services, jointly, shall adopt rules and regulations to establish exemptions in addition to those provided in subdivision (c), if the department and the State Department of Social Services determine the exemptions are needed to reduce unnecessary or burdensome

reporting or are needed to facilitate cost-effective operation of this section.

(2) The department and the State Department of Social Services shall adopt regulations required pursuant to paragraph (1) by April 1, 1993.

(e) (1) Employers shall submit a report within 30 days of the hiring, rehiring, or return to work of any person on whom the employer is required to report pursuant to this section.

(2) The report shall contain all of the following:

(A) The first initial and last name and social security number of the person.

(B) The employer's name, address, and state employer identification number.

(3) The report required by Section 1088 shall not be accepted in lieu of the report required by this section.

(f) Employers may report pursuant to this section, by submitting a copy of the employee's W-4 form, a form provided by the department, or any other hiring document, by mail or telefaxing or by any other means that is authorized by the department and that will result in timely reporting.

(g) The department shall retain information collected pursuant to this section for no more than 180 days after the end of the calendar quarter, except for purposes of enforcement of subdivision (i).

(h) The department may use the information collected pursuant to this section only for the following purposes:

(1) The administration and enforcement of this section.

(2) The identification, prevention, and collection of benefit overpayments pursuant to any of the following provisions:

(A) Article 4 (commencing with Section 1375) of Chapter 5.

(B) Article 5 (commencing with Section 2735) of Chapter 2 of Part 2.

(C) Section 3751.

(D) Section 4751.

(3) The location of noncustodial parents or the income of noncustodial parents.

(4) The identification of errors in employer reports of wages filed pursuant to Section 1088.

(5) The verification of employment of applicants for, and recipients of, services under the Aid to Families with Dependent Children program or the Food Stamp Program, provided for pursuant to Chapter 2 (commencing with Section 11200) of Part 3 and Chapter 10 (commencing with Section 18900) of Part 6, respectively, of Division 9 of the Welfare and Institutions Code.

(6) Providing employer or employee information to the Franchise Tax Board, upon the request of that board, for the purpose of tax enforcement.

(7) The identification and collection of delinquent liabilities under this code.

(8) To assist the department in determining the effectiveness of its job placement services.

(i) Information obtained by the department pursuant to subdivision (b) may be released to the Franchise Tax Board for tax enforcement purposes.

(j) The department shall provide a written notice to any employer for the employer's first failure to report any new hire, rehire, or return to work of an employee. For each subsequent failure to report as required by this section that occurs after the date the employer receives notice from the department of his or her first failure to report, unless the failure is due to good cause, the employer shall be subject to a penalty of two hundred fifty dollars ($250).

(k) The department shall not enforce the employer reporting requirements of this section until April 1, 1993, or when regulations are adopted pursuant to subdivision (d), whichever is sooner.

(*l*) For purposes of this section, "wages" means the same as defined in Section 926.

SEC. 55. On or before July 1, 1997, the Franchise Tax Board and the California Tax Credit Allocation Committee shall enter into an agreement to work cooperatively with one another to administer the provisions of Sections 17053.14, 23608.2, and 23608.3 of the Revenue and Taxation Code. On or before January 1, 1999, the board and the committee shall report jointly to the Legislature regarding the operation of the program, its costs, and proposed changes.

SEC. 56. Upon a determination by the Treasurer of the United States or upon a judicial finding made by a court of competent jurisdiction that the preferential treatment of farmworker housing loans pursuant to Section 23608.3 of the Revenue and Taxation Code constitutes a discriminatory tax in violation of subsection (a) of Section 312 of Title 31 of the United States Code, the committee shall cease to allocate new farmworker housing credits pursuant to Section 23608.3 of the Revenue and Taxation Code. Any allocations made prior to the date of the Treasury Department's determination or the finding of a court shall continue in full force and effect.

SEC. 57. The Legislature finds and declares that the amendments to paragraph (2) of subdivision (c) of Sections 17053.49 and 23649 of the Revenue and Taxation Code made by this act do not constitute a change in, but are declaratory of, existing law.

SEC. 58. The Franchise Tax Board shall administer the provisions of Section 17151 in substantially the same manner as the Secretary of the Treasury and the Internal Revenue Service administer Section 127 of the Internal Revenue Code with regard to the refund of any overpayment of taxes imposed by the Revenue and Taxation Code which is attributable to amounts excluded from gross income during 1995 under Section 17151 of that code.

SEC. 59. Sections 13 and 39 of this bill incorporate changes to the enterprise zone hiring credit proposed by both this bill and SB 2023. Sections 13 and 39 of this bill shall only become operative if (1) this

bill and SB 2023 are both enacted and become effective on or before January 1, 1997, (2) this bill amends Sections 17053.8 and 23622 of the Revenue and Taxation Code and SB 2023 repeals Sections 17053.8 and 23622 of the Revenue and Taxation Code and adds Sections 17053.73 and 23622.5 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 2023, in which case Sections 8 and 38 of this bill shall remain operative only until the operative date of SB 2023, at which time Sections 13 and 39 of this bill shall become operative, and Sections 8 and 38 of this bill shall cease to be operative.

SEC. 60. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 61. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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

SEC. 62. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, unless otherwise specifically provided, the provisions amending Part 1 (commencing with Section 6001) of Division 1 of the Revenue and Taxation Code and any amendments to the Health and Safety Code or the Unemployment Insurance Code shall become operative on January 1, 1997.

CHAPTER 955

An act to repeal and add Chapter 12.8 (commencing with Section 7070) of, and to repeal Chapter 12.9 (commencing with Section 7080) of, Division 7 of Title 1 of the Government Code, and to amend Sections 17039, 17276.1, 17276.2, 23036, 24416.1, and 24416.2 of, to add Sections 17053.70, 17053.74, 17053.75, 17235, 17267.2, 23612.2, 23622.7, 24356.7, and 24384.5 to, to repeal Sections 17052.13, 17053.9, 17053.11, 17231, 17252.5, 17265, 23612, 23623, 24356.2, 24356.3, and 24384 of, and to repeal and add Sections 17053.8 and 23622 of, the Revenue and Taxation Code, relating to economic development.

[Approved by Governor September 26, 1996. Filed with Secretary of State September 26, 1996.]

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

SECTION 1. Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code is repealed.

SEC. 2. Chapter 12.8 (commencing with Section 7070) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 12.8. ENTERPRISE ZONE ACT

7070. This chapter shall be known and may be cited as the Enterprise Zone Act.

7071. The Legislature finds and declares as follows:

(a) The health, safety, and welfare of the people of California depend upon the development, stability, and expansion of private business, industry, and commerce, and there are certain areas within the state that are economically depressed due to a lack of investment in the private sector. Therefore, it is declared to be the purpose of this chapter to stimulate business and industrial growth in the depressed areas of the state by relaxing regulatory controls that impede private investment.

(b) It is in the economic interest of the state to have one strong, combined, and business-friendly incentive program to help attract business and industry to the state, to help retain and expand existing state business and industry, and to create increased job opportunities for all Californians.

(c) No enterprise zone shall be designated in which any boundary thereof is drawn in a manner so as to include larger stable businesses or heavily residential areas to the detriment of areas that are truly economically depressed.

(d) Nothing in this chapter shall be construed to infringe upon regulations relating to the civil rights, equal employment rights, equal opportunity rights, or fair housing rights of any person.

7072. For purposes of this chapter, the following definitions shall apply:

(a) "Agency" means the Trade and Commerce Agency.

(b) "Date of original designation" means the earlier of the following:

(1) The date the eligible area receives designation as an enterprise zone by the agency pursuant to this chapter.

(2) In the case of an enterprise zone deemed designated pursuant to subdivision (e) of Section 7073, the date the enterprise zone or program area received original designation by the agency pursuant to Chapter 12.8 (commencing with Section 7070) or Chapter 12.9 (commencing with Section 7080), as those chapters read prior to January 1, 1997.

(c) "Eligible area" means either of the following:

(1) An area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070), as it read prior to January 1,

1997, or as a targeted economic development area, neighborhood development area, or program area pursuant to Chapter 12.9 (commencing with Section 7080), as it read prior to January 1, 1997.

(2) A geographic area that, based upon the determination of the agency, fulfills at least one of the following:

(A) The proposed geographic area meets the Urban Development Action Grant criteria of the United States Department of Housing and Urban Development.

(B) The area within the proposed zone has experienced plant closures within the past two years affecting more than 100 workers.

(C) The city or county has submitted material to the agency for a finding that the proposed geographic area meets criteria of economic distress related to those used in determining eligibility under the Urban Development Action Grant Program and is therefore an eligible area.

(D) The area within the proposed zone has a history of gang-related activity, whether or not crimes of violence have been committed.

(d) "Enterprise zone" means any area within a city, county, or city and county that is designated as such by the agency in accordance with the provisions of Section 7073.

(e) "Governing body" means a county board of supervisors or a city council, as appropriate.

(f) "High technology industries" include, but are not limited to, the computer, biological engineering, electronics, and telecommunications industries.

(g) "Resident," unless otherwise defined, means a person whose principal place of residence is within a targeted employment area.

(h) "Targeted employment area" means an area within a city, county, or city and county that is composed solely of those census tracts designated by the United States Department of Housing and Urban Development as having at least 51 percent of its residents of low- or moderate-income levels, using the most recent United States Department of Census data available at the time of application to determine that eligibility. The purpose of a "targeted employment area" is to encourage businesses in an enterprise zone to hire eligible residents of certain geographic areas within a city, county, or city and county. A targeted employment area may be, but is not required to be, the same as all or part of an enterprise zone. A targeted employment area's boundaries need not be contiguous. A targeted employment area does not need to encompass each eligible census tract within a city, county, or city and county. The governing body of each city, county or city and county that has jurisdiction of the enterprise zone shall identify those census tracts whose residents are in the most need of this employment targeting. Only those census tracts within the jurisdiction of the city, county, or city and county that has jurisdiction of the enterprise zone may be included in a targeted employment area.

At least a part of each eligible census tract within a targeted employment area shall be within the territorial jurisdiction of the city, county, or city and county that has jurisdiction for an enterprise zone. If an eligible census tract encompasses the territorial jurisdiction of two or more local governmental entities, all of those entities shall be a party to the designation of a targeted employment area. However, any one or more of those entities, by resolution or ordinance, may specify that it shall not participate in the application as an applicant, but shall agree to complete all actions stated within the application that apply to its jurisdiction, if the area is designated.

Each local governmental entity of each city, county, or city and county that has jurisdiction of an enterprise zone shall approve, by resolution or ordinance, the boundaries of its targeted employment area, regardless of whether a census tract within the proposed targeted employment area is outside the jurisdiction of the local governmental entity.

7073. (a) Except as provided in subdivision (e), any city, county, or city and county with an eligible area within its jurisdiction may complete a preliminary application for designation as an enterprise zone. The applying entity shall establish definitive boundaries for the proposed enterprise zone and the targeted employment area.

(b) (1) In designating enterprise zones, the agency shall select from the applications submitted those proposed enterprise zones that, upon a comparison of all of the applications submitted, indicate that they propose the most effective, innovative, and comprehensive regulatory, tax, program, and other incentives in attracting private sector investment in the zone proposed.

(2) For purposes of this subdivision, regulatory incentives include, but are not limited to, all of the following:

(A) The suspension or relaxation of locally originated or modified building codes, zoning laws, general development plans, or rent controls.

(B) The elimination or reduction of fees for applications, permits, and local government services.

(C) The establishment of a streamlined permit process.

(3) For purposes of this subdivision, tax incentives include, but are not limited to, the elimination or reduction of construction taxes or business license taxes.

(4) For the purposes of this subdivision, program and other incentives may include, but are not limited to, all of the following:

(A) The provision or expansion of infrastructure.

(B) The targeting of federal block grant moneys, including small cities, education, and health and welfare block grants.

(C) The targeting of economic development grants and loan moneys, including grant and loan moneys provided by the federal Urban Development Action Grant program and the federal Economic Development Administration.

(D) The targeting of state and federal job disadvantaged and vocational education grant moneys, including moneys provided by the federal Job Training Partnership Act of 1982 (P.L. 97-300).

(E) The targeting of federal or state transportation grant moneys.

(F) The targeting of federal or state low-income housing and rental assistance moneys.

(G) The use of tax allocation bonds, special assessment bonds, bonds under the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2), industrial development bonds, revenue bonds, private activity bonds, housing bonds, bonds issued pursuant to the Marks-Ross Local Bond Pooling Act of 1985 Article 4 (commencing with Section 6584) of Chapter 5), certificates of participation, hospital bonds, redevelopment bonds, and school bonds, and including all special provisions provided for under federal tax law for enterprise community or empowerment zone bonds.

(5) In the process of designating new enterprise zones, the agency shall take into consideration the location of existing zones and make every effort to locate new zones in a manner that will not adversely affect any existing zones.

(6) In designating new enterprise zones, the agency shall include in its criteria the fact that jurisdictions have been declared disaster areas by the President of the United States within the last seven years.

(c) In evaluating applications for designation, the agency shall ensure that applications are not disqualified solely because of technical deficiencies, and shall provide applicants with an opportunity to correct the deficiencies. Applications shall be disqualified if the deficiencies are not corrected within two weeks.

(d) A designation made by the agency shall be binding for a period of 15 years from the date of the original designation.

(e) (1) Notwithstanding any other provision of law, any area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or as a targeted economic development area, neighborhood economic development area, or program area pursuant to Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997, or any program area or part of a program area deemed designated as an enterprise zone pursuant to Section 7085.5 as it read prior to January 1, 1997, shall be deemed to be designated as an enterprise zone pursuant to this chapter. The effective date of designation of the enterprise zone shall be that of the original designation of the enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or of the program area pursuant to Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997, and in no event shall the total designation period exceed 15 years.

(2) Notwithstanding any other provision of law, any enterprise zone authorized, but not designated, pursuant to Chapter 12.8

(commencing with Section 7070) as it read prior to January 1, 1997, shall be allowed to complete the application process started pursuant to that chapter, and to receive final designation as an enterprise zone pursuant to this chapter.

(3) Notwithstanding any other provision of law, any expansion of a designated enterprise zone or program area authorized pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997, shall be deemed to be authorized as an expansion for a designated enterprise zone pursuant to this chapter.

(4) No part of this chapter shall be construed to require a new application for designation by an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or a targeted economic development area, neighborhood economic development area, or program area designated pursuant to Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997.

(f) No more than 39 enterprise zones shall be designated pursuant to this chapter, including those deemed designated pursuant to subdivision (e).

7073.3. An existing enterprise zone that is located in a city or the unincorporated area of a county may propose to use eligible expansion allotment to expand into an adjacent city or cities pursuant to Section 7073 and this section if, in addition to approving the expansion based on the criterion described in subdivision (b) of Section 7074, the agency finds that all of the following conditions exist:

(a) Each of the adjacent cities' governing bodies approves the expansion by adoption of an ordinance or resolution.

(b) Land included within the proposed expansion is zoned for industrial or commercial use.

(c) Basic infrastructure, including, but not limited to, gas, water, electrical service, and sewer systems, is available to the area that would be included in the expansion.

7074. (a) In the case of any enterprise zone, including an enterprise zone formerly designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or as a program area pursuant to Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997, a city or county, or city and county may propose that the enterprise zone be expanded by 15 percent to include definitive boundaries that are contiguous to the enterprise zone. The agency may approve that expansion based upon the criterion specified in subdivision (b) of Section 7073.

(b) An enterprise zone that is located in the unincorporated area of a county may propose to use eligible expansion allotment to expand into an adjacent city or cities pursuant to this section if, in

addition to approving the expansion based on the criterion described in subdivision (b) of Section 7073, the agency finds that all of the following conditions exist:

(1) Each of the cities' governing bodies approves the expansion by adoption of an ordinance or resolution.

(2) Land included within the proposed expansion is zoned for industrial or commercial use.

(3) Basic infrastructure, including, but not limited to, gas, water, electrical service, and sewer systems, is available to the area that would be included in the expansion.

(c) In no event shall an enterprise zone be permitted to expand more than 15 percent in size from its size on the date of original designation, including any expansion authorized pursuant to Chapter 12.8 (commencing with Section 7070), or Chapter 12.9 (commencing with Section 7080), as those chapters read prior to January 1, 1997.

7075. (a) Upon filing a preliminary application, the applicant, as lead agency, shall submit an initial study and a notice of preparation to the agency, the state clearinghouse, and all responsible agencies.

(b) Only a city, county, or city and county chosen by the agency as a final applicant shall prepare, or cause to be prepared, a draft environmental impact report, which shall set forth the potential environmental impacts of any and all development planned within the enterprise zone. The draft environmental impact report shall be submitted to the agency with the final application.

(c) Prior to final designation by the agency, the applicant shall complete and certify the final environmental impact report.

(d) The environmental impact report shall comply with the information disclosure provisions and the substantive requirements of Division 13 (commencing with Section 21000) of the Public Resources Code.

(e) No further environmental impact report shall be required if the effects of the project were any of the following:

(1) Mitigated or avoided as a result of the environmental impact report prepared for the area.

(2) Examined at a sufficient level of detail in the environmental impact report for the area to enable those effects to be mitigated or avoided by specific site revisions, the imposition of conditions, or other means in connection with the designation of the area.

(3) Identified in the final environmental impact report and the lead agency made written findings that specific economic, social, or other considerations made the mitigation measures or project alternatives identified in the final environmental impact report unfeasible.

7076. (a) (1) The agency shall provide technical assistance to the enterprise zones designated pursuant to this chapter with respect to all of the following activities:

(A) Furnish limited onsite assistance to the enterprise zones when appropriate.

(B) Ensure that the locality has developed a method to make residents, businesses, and neighborhood organizations aware of the opportunities to participate in the program.

(C) Help the locality develop a marketing program for the enterprise zone.

(D) Coordinate activities of other state agencies regarding the enterprise zones.

(E) Monitor the progress of the program.

(F) Help businesses to participate in the program.

(2) Notwithstanding existing law, the provision of services in subparagraphs (A) to (F), inclusive, shall be a high priority of the agency.

(3) The agency may, at its discretion, undertake other activities in providing management and technical assistance for successful implementation of this chapter.

(b) The applicant shall be required to begin implementation of the enterprise zone plan contained in the final application within six months after notification of final designation or the enterprise zone shall lose its designation.

7077. Notwithstanding any other provision of law, state and local agencies may lease land to businesses in a designated enterprise zone at a price below fair market value, provided that it serves a public purpose to lease at below fair market value.

7078. (a) The limitations in Section 91503 on the allowable uses of proceeds of bonds issued pursuant to Title 10 (commencing with Section 91500) shall not apply to bonds issued on behalf of any enterprise zone or any portion of that zone.

(b) (1) Notwithstanding the bonding limitation specified in Section 91573, the California Industrial Development Financing Advisory Commission shall authorize an annual maximum amount of qualifying bonds of seventy-five million dollars ($75,000,000). This annual maximum bonding authority is exclusive of, and in addition to, the maximum bonding authority specified in Section 91573.

(2) Notwithstanding Section 91503, the bonding authorization contained in paragraph (1) shall be used for providing funds to businesses within designated enterprise zones. However, any portion of the annual maximum amount specified in paragraph (1) that in any year is not used for the purpose specified in this paragraph may be used in the next succeeding year for the purpose of any program administered by the California Industrial Development Financing Advisory Commission.

7079. Notwithstanding any other provision of law, the Office of Small Business shall establish regulations for loans and loan guarantees administered by the office that give high priority to businesses in a designated enterprise zone.

7080. Notwithstanding Sections 32646 and 32647 of the Financial Code, a high priority in ranking loan applications by the State Assistance Fund for Energy, California Business and Development Corporation, shall be given to businesses in a designated enterprise zone, that are purchasing or providing alternative energy systems.

7081. Notwithstanding any other provision of state law, and to the extent permitted by federal law, the Employment Development Department and the State Department of Education shall give high priority to the training of unemployed individuals who reside in a targeted employment area or a designated enterprise zone. The agency may assist localities in designating local business, labor, and education consortia to broker activities between the employment community and educational and training institutions. Any available discretionary funds may be used to assist the creation of those consortia.

7082. Notwithstanding any other provision of law, the Office of Criminal Justice Planning shall give high priority to designated enterprise zones in the allocation of its program resources.

7083. Any designation of an enterprise zone in accordance with the provisions of this chapter shall be deemed appropriate state designation of an enterprise zone for purposes of qualifying that zone as an enterprise community or empowerment zone under federal law.

7084. (a) Whenever the state prepares an invitation for bid for a contract for goods in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference to California-based companies who certify under penalty of perjury that no less than 50 percent of the labor required to perform the contract shall be accomplished at a worksite or worksites located in an enterprise zone.

(b) In evaluating proposals for contracts for services in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference on the price submitted by California-based companies who certify under penalty of perjury that they shall perform the contract at a worksite or worksites located in an enterprise zone.

(c) Where a bidder complies with subdivision (a) or (b), the state shall award a 1-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 5 to 9 percent of its work force during the period of contract performance; a 2-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 10 to 14 percent of its work force during the period of contract performance; a 3-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are

enterprise zone eligible employees equal to 15 to 19 percent of its work force during the period of contract performance; and a 4-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 20 or more percent of its work force during the period of contract performance.

(d) The maximum preference a bidder may be awarded pursuant to this chapter and any other provision of law shall be 15 percent. However, in no case shall the maximum preference cost under this section exceed fifty thousand dollars ($50,000) for any bid, nor shall the combined cost of preferences granted pursuant to this section and any other provision of law exceed one hundred thousand dollars ($100,000). In those cases where the 15-percent cumulated preference cost would exceed the one hundred thousand dollar ($100,000) maximum preference cost limit, the one hundred thousand dollar ($100,000) maximum preference cost limit shall apply.

(e) Notwithstanding any other provision of this section, small business bidders qualified in accordance with Section 14838 shall have precedence over nonsmall business bidders in that the application of any bidder preference for which nonsmall business bidders may be eligible, including the preference contained in this section, shall not result in the denial of the award to a small business bidder. This subdivision shall apply to those cases where the small business bidder is the lowest responsible bidder, as well as to those cases where the small business bidder is eligible for award as the result of application of the 5-percent small business bidder preference.

(f) All state contracts issued to bidders who are awarded preferences under this section shall contain conditions to ensure that the contractor performs the contract at the location specified and meets any commitment to employ persons with high risk of unemployment.

(g) (1) A business that requests and is given the preference provided for in subdivision (a) or (b) by reason of having furnished a false certification, and that by reason of this certification has been awarded a contract to which it would not otherwise have been entitled, shall be subject to all of the following:

(A) Pay to the state any difference between the contract amount and what the state's cost would have been if the contract had been properly awarded.

(B) In addition to the amount specified in subparagraph (A), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.

(C) Be ineligible to transact any business with the state for a period of not less than three months and not more than 24 months.

(2) Prior to the imposition of any sanction under this subdivision, the business shall be entitled to a public hearing and to five days'

notice of the time and place thereof. The notice shall state the reasons for the hearing.

(h) In each instance in this section an enterprise zone shall also mean any enterprise zone or program area previously authorized under any other provision of state law.

(i) As used in this section, "enterprise zone eligible employees" means employees who meet any of the requirements of clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b) of Section 17053.74, or clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b) of Section 23622.5 of the Revenue and Taxation Code.

7085. The agency shall submit a report to the Legislature every five years beginning January 1, 1998, that evaluates the effect of the program on employment, investment, and incomes, and on state and local tax revenues in designated enterprise zones. The report shall include an agency review of the progress and effectiveness of each enterprise zone. The Franchise Tax Board shall make available to the agency and the Legislature aggregate information on the dollar value of enterprise zone tax credits that are claimed each year by businesses.

7086. (a) The agency shall design, develop, and make available the applications and the criteria for selection of enterprise zones pursuant to Section 7073, and shall adopt all regulations necessary to carry out this chapter.

(b) The agency shall adopt regulations concerning the designation procedures and application process as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2. The adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare, notwithstanding subdivision (e) of Section 11346.1. Notwithstanding subdivision (e) of Section 11346.1, the regulations shall not remain in effect more than 180 days unless the agency complies with all provisions of Chapter 3.5 as required by subdivision (e) of Section 11346.1.

(c) The Department of General Services, with the cooperation of the Employment Development Department, the Department of Industrial Relations, and the Office of Planning and Research, and under the direction of the State and Consumer Services Agency, shall adopt appropriate rules, regulations, and guidelines to implement Section 7084.

SEC. 3. Chapter 12.9 (commencing with Section 7080) of Division 7 of Title 1 of the Government Code is repealed.

SEC. 4. Section 17039 of the Revenue and Taxation Code is amended to read:

17039. (a) Notwithstanding any provision in this part to the contrary, for the purposes of computing tax credits, the term "net tax" means the tax imposed under either Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to lump-sum

distributions) less the credits allowed by Section 17054 (relating to personal exemption credits) and any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560. Notwithstanding the preceding sentence, the "net tax" shall not be less than the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions), if any. Credits shall be allowed against "net tax" in the following order:

(1) Credits that do not contain carryover or refundable provisions, except those described in paragraphs (4) and (5).

(2) Credits that contain carryover provisions but do not contain refundable provisions.

(3) Credits that contain both carryover and refundable provisions.

(4) The minimum tax credit allowed by Section 17063 (relating to the alternative minimum tax).

(5) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(6) Credits that contain refundable provisions but do not contain carryover provisions.

The order within each paragraph shall be determined by the Franchise Tax Board.

(b) Notwithstanding the provisions of Sections 17053.5 (relating to the renter's credit), 17061 (relating to refunds pursuant to the Unemployment Insurance Code), and 19002 (relating to tax withholding), the credits provided in those sections shall be allowed in the order provided in paragraph (6) of subdivision (a).

(c) (1) Notwithstanding any other provision of this part, no tax credit shall reduce the tax imposed under Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions) below the tentative minimum tax, as defined by Section 17062, except the following credits, but only after allowance of the credit allowed by Section 17063—

(A) The credit allowed by former Section 17052.4 (relating to solar energy).

(B) The credit allowed by former Section 17052.5 (relating to solar energy).

(C) The credit allowed by Section 17052.5 (relating to solar energy).

(D) The credit allowed by Section 17052.12 (relating to research expenses).

(E) The credit allowed by former Section 17052.13 (relating to sales and use tax credit).

(F) The credit allowed by Section 17052.15 (relating to Los Angeles Revitalization Zone sales tax credit).

(G) The credit allowed by Section 17053.5 (relating to the renter's credit).

(H) The credit allowed by former Section 17053.8 (relating to enterprise zone hiring credit).

(I) The credit allowed by Section 17053.10 (relating to Los Angeles Revitalization Zone hiring credit).

(J) The credit allowed by former Section 17053.11 (relating to program area hiring credit).

(K) For each taxable year beginning on or after January 1, 1994, the credit allowed by Section 17053.17 (relating to Los Angeles Revitalization Zone hiring credit).

(L) The credit allowed by Section 17053.49 (relating to qualified property).

(M) The credit allowed by Section 17053.70 (relating to enterprise zone sales or use tax credit).

(N) The credit allowed by Section 17053.74 (relating to enterprise zone hiring credit).

(O) The credit allowed by Section 17057 (relating to clinical testing expenses).

(P) The credit allowed by Section 17058 (relating to low-income housing).

(Q) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(R) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(S) The credit allowed by Section 19002 (relating to tax withholding).

(2) Any credit that is partially or totally denied under paragraph (1) shall be allowed to be carried over and applied to the net tax in succeeding taxable years, if the provisions relating to that credit include a provision to allow a carryover when that credit exceeds the net tax.

(d) Unless otherwise provided, any remaining carryover of a credit allowed by a section that has been repealed or made inoperative shall continue to be allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(e) (1) Unless otherwise provided, if two or more taxpayers (other than husband and wife) share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred.

(2) In the case of a partnership, the credit may be divided among the partners pursuant to a written partnership agreement in accordance with Section 704 of the Internal Revenue Code, relating to partner's distributive share.

(3) In the case of a husband and wife who file separate returns, the credit may be taken by either or equally divided between them.

SEC. 4.5. Section 17039 of the Revenue and Taxation Code is amended to read:

17039. (a) Notwithstanding any provision in this part to the contrary, for the purposes of computing tax credits, the term "net

tax" means the tax imposed under either Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to lump-sum distributions) less the credits allowed by Section 17054 (relating to personal exemption credits) and any amount imposed under paragraph (1) of subdivision (d) and paragraph (1) of subdivision (e) of Section 17560. Notwithstanding the preceding sentence, the "net tax" shall not be less than the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions), if any. Credits shall be allowed against "net tax" in the following order:

(1) Credits that do not contain carryover or refundable provisions, except those described in paragraphs (4) and (5).

(2) Credits that contain carryover provisions but do not contain refundable provisions.

(3) Credits that contain both carryover and refundable provisions.

(4) The minimum tax credit allowed by Section 17063 (relating to the alternative minimum tax).

(5) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(6) Credits that contain refundable provisions but do not contain carryover provisions.

The order within each paragraph shall be determined by the Franchise Tax Board.

(b) Notwithstanding the provisions of Sections 17053.5 (relating to the renter's credit), 17061 (relating to refunds pursuant to the Unemployment Insurance Code), and 19002 (relating to tax withholding), the credits provided in those sections shall be allowed in the order provided in paragraph (6) of subdivision (a).

(c) (1) Notwithstanding any other provision of this part, no tax credit shall reduce the tax imposed under Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions) below the tentative minimum tax, as defined by Section 17062, except the following credits, but only after allowance of the credit allowed by Section 17063:

(A) The credit allowed by former Section 17052.4 (relating to solar energy).

(B) The credit allowed by former Section 17052.5 (relating to solar energy).

(C) The credit allowed by Section 17052.5 (relating to solar energy).

(D) The credit allowed by Section 17052.12 (relating to research expenses).

(E) The credit allowed by former Section 17052.13 (relating to sales and use tax credit).

(F) The credit allowed by Section 17052.15 (relating to Los Angeles Revitalization Zone sales tax credit).

(G) The credit allowed by Section 17053.5 (relating to the renter's credit).

(H) The credit allowed by former Section 17053.8 (relating to enterprise zone hiring credit).

(I) The credit allowed by Section 17053.10 (relating to Los Angeles Revitalization Zone hiring credit).

(J) The credit allowed by former Section 17053.11 (relating to program area hiring credit).

(K) For each taxable year beginning on or after January 1, 1994, the credit allowed by Section 17053.17 (relating to Los Angeles Revitalization Zone hiring credit).

(L) The credit allowed by Section 17053.49 (relating to qualified property).

(M) The credit allowed by Section 17053.70 (relating to enterprise zone sales or use tax credit).

(N) The credit allowed by Section 17053.74 (relating to enterprise zone hiring credit).

(O) The credit allowed by Section 17057 (relating to clinical testing expenses).

(P) The credit allowed by Section 17058 (relating to low-income housing).

(Q) The credit allowed by Section 17061 (relating to refunds pursuant to the Unemployment Insurance Code).

(R) Credits for taxes paid to other states allowed by Chapter 12 (commencing with Section 18001).

(S) The credit allowed by Section 19002 (relating to tax withholding).

(2) Any credit that is partially or totally denied under paragraph (1) shall be allowed to be carried over and applied to the net tax in succeeding taxable years, if the provisions relating to that credit include a provision to allow a carryover when that credit exceeds the net tax.

(d) Unless otherwise provided, any remaining carryover of a credit allowed by a section that has been repealed or made inoperative shall continue to be allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(e) (1) Unless otherwise provided, if two or more taxpayers (other than husband and wife) share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to his or her respective share of the costs paid or incurred.

(2) In the case of a partnership, the credit shall be allocated among the partners pursuant to a written partnership agreement in accordance with Section 704 of the Internal Revenue Code, relating to partner's distributive share.

(3) In the case of a husband and wife who file separate returns, the credit may be taken by either or equally divided between them.

(f) Unless otherwise provided, in the case of a partnership, any credit allowed by this part shall be computed at the partnership level,

and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit shall be applied to the partnership and to each partner.

SEC. 5. Section 17052.13 of the Revenue and Taxation Code is repealed.

SEC. 6. Section 17053.8 of the Revenue and Taxation Code is repealed.

SEC. 6.5. Section 17053.8 is added to the Revenue and Taxation Code, to read:

17053.8. (a) There shall be allowed as a credit against the "net tax" (as defined in Section 17039) for the taxable year an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) For up to 1,350 qualified employees who are employed by the taxpayer in the Long Beach Enterprise Zone in aircraft manufacturing activities described in Codes 3721 to 3728, inclusive, and Code 3812 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "qualified wages" means that portion of hourly wages that does not exceed 202 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the individual commences employment with the taxpayer.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(c) For purposes of this section:

(1) "Qualified disadvantaged individual" means an individual:

(A) Who is a qualified employee within the meaning of subdivision (d).

(B) Who is hired by the employer after the designation of the area in which services were performed as an enterprise zone under Section 7073 of the Government Code.

(C) Who is any of the following immediately preceding the individual's commencement of employment with the taxpayer:

(i) An individual who is eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.) and who is

receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act.

(ii) Any individual who is eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who is eligible as determined by the Employment Development Department under the federal Targeted Jobs Tax Credit Program as long as that program is in effect.

(2) Priority shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible under the federal Targeted Jobs Tax Credit Program.

(d) For purposes of this section: "qualified employee" means an individual:

(1) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone, and

(2) Who performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone.

(e) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification which provides that a qualified individual meets the eligibility requirements specified in subparagraph (C) of paragraph (1) of subdivision (c).

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(f) (1) For purposes of this section:

(A) All employees of trades or businesses (which are not incorporated) which are under common control shall be treated as employed by a single employer, and

(B) The credit (if any) allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit.

The regulations prescribed under this paragraph shall be based on principles similar to the principles which apply in the case of controlled groups of corporations as specified in subdivision (f) of Section 23622.

(2) If an employer acquires the major portion of a trade or business of another employer (hereafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (g)) for any calendar year ending after that acquisition, the employment relationship between an

employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(g) (1) If the employment of any employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount (determined under those regulations) equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(h) In the case of an estate or trust:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each, and

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated (for purposes of this part) as the employer with respect to those wages.

(i) For purposes of this section, "enterprise zone" means an area for which designation as an enterprise zone is in effect under Section 7073 of the Government Code.

(j) The credit shall be reduced by the credit allowed under Section 17053.7. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (k) or (*l*).

(k) In the case where the credit allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit which exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding taxable years for the number of taxable years in which the designation of an enterprise zone is binding, or 15 taxable years, if longer, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(*l*) (1) The amount of the credit otherwise allowed under this section and Section 17052.13, including any credit carryover from prior years, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributed to the enterprise zone determined as if that attributed income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section as follows:

(A) For taxable years beginning on or after January 1, 1991, and ending on or before December 31, 1996, income shall be apportioned to the enterprise zone by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The enterprise zone" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (k).

SEC. 7. Section 17053.9 of the Revenue and Taxation Code is repealed.

SEC. 8. Section 17053.11 of the Revenue and Taxation Code is repealed.

SEC. 9. Section 17053.70 is added to the Revenue and Taxation Code, to read:

17053.70. (a) There shall be allowed as a credit against the "net tax" (as defined in Section 17039) for the taxable year an amount equal to the sales or use tax paid or incurred during the taxable year

by the taxpayer in connection with the taxpayer's purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means a person or entity engaged in a trade or business within an enterprise zone.

(2) "Qualified property" means:

(A) Any of the following:

(i) Machinery and machinery parts used for fabricating, processing, assembling, and manufacturing.

(ii) Machinery and machinery parts used for the production of renewable energy resources.

(iii) Machinery and machinery parts used for either of the following:

(I) Air pollution control mechanisms.

(II) Water pollution control mechanisms.

(B) The total cost of qualified property purchased and placed in service in any taxable year that may be taken into account by any taxpayer for purposes of claiming this credit shall not exceed one million dollars ($1,000,000).

(C) The qualified property is used by the taxpayer exclusively in an enterprise zone.

(D) The qualified property is purchased and placed in service before the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(3) "Enterprise zone" means the area designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(c) If the taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided by this section shall be allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(d) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the credit that exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding taxable years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the qualified property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the taxpayer's purchase of qualified property.

(f) (1) The amount of the credit otherwise allowed under this section and Section 17053.74, including any credit carryover from prior years, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax that would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if

that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section by substituting "the enterprise zone" for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (d).

SEC. 10. Section 17053.74 is added to the Revenue and Taxation Code, to read:

17053.74. (a) There shall be allowed a credit against the "net tax" (as defined in Section 17039) to a taxpayer who employs a qualified employee in an enterprise zone during the taxable year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the taxpayer during the taxable year to qualified employees that does not exceed 150 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the employee commences employment with the taxpayer.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the taxpayer within the enterprise zone within the 60-month period prior to the zone expiration date shall continue to qualify for the credit under this section after the zone expiration date, in accordance with all provisions of this section applied as if the enterprise zone designation were still in existence and binding.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(4) (A) "Qualified employee" means an individual who meets all of the following requirements:

(i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, or its successor.

(III) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an economically disadvantaged individual 14 years of age or older.

(IV) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a dislocated worker who meets any of the following:

Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff.

Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilty.

(VII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for or a recipient of any of the following:

Federal Supplemental Security Income benefits.

Aid to Families with Dependent Children.

Food stamps.

State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(IX) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a resident of a targeted employment area, as defined in Section 7072 of the Government Code.

(X) An employee who qualified the taxpayer for the enterprise zone hiring credit under former Section 17053.8 or the program area hiring credit under former Section 17053.11.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible under the federal Targeted Jobs Tax Credit Program.

(5) "Taxpayer" means a person or entity engaged in a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of the Government Code.

(c) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification which provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Employment Development Department shall develop a form for this purpose.

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(d) (1) For purposes of this section:

(A) All employees of trades or businesses, which are not incorporated, that are under common control shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit, and shall be allocated in such manner.

(C) Principles that apply in the case of controlled groups of corporations, as specified in subdivision (d) of Section 23622.7, shall apply with respect to determining employment.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (e)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(e) (1) If the employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that employee.

(iii) A termination of employment of a qualified employee, if it is determined under the applicable employment compensation provisions that the termination was due to the misconduct of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the qualified employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(f) In the case of an estate or trust, both of the following apply:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated, for purposes of this part, as the employer with respect to those wages.

(g) For purposes of this section, "enterprise zone" means an area designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(h) The credit allowable under this section shall be reduced by the credit allowed under Sections 17053.10, 17053.17 and 17053.46 claimed for the same employee. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (i) or (j).

(i) In the case where the credit otherwise allowed under this section exceeds the "net tax" for the taxable year, that portion of the

credit that exceeds the "net tax" may be carried over and added to the credit, if any, in succeeding taxable years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 17053.70, including any credit carryover from prior years, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section by substituting "the enterprise zone" for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the "net tax" for the taxable year, as provided in subdivision (i).

SEC. 11. Section 17053.75 is added to the Revenue and Taxation Code, to read:

17053.75. (a) There shall be allowed as a credit against the "net tax" (as defined by Section 17039) for the taxable year an amount equal to five percent of the qualified wages received by the taxpayer during the taxable year.

(b) For purposes of this section:

(1) "Qualified employee" means a taxpayer who meets both of the following:

(A) Is described in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b) of Section 17053.74.

(B) Is not an employee of the federal government or of this state or of any political subdivision of this state.

(2) (A) "Qualified wages" means "wages," as defined in subsection (b) of Section 3306 of the Internal Revenue Code, attributable to services performed for an employer with respect to whom the taxpayer is a qualified employee in an amount that does not exceed one and one-half times the dollar limitation specified in that subsection.

(B) "Qualified wages" does not include any compensation received from the federal government or this state or any political subdivision of this state.

(C) "Qualified wages" does not include any wages received on or after the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(3) "Enterprise zone" means any area designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(c) For each dollar of income received by the taxpayer in excess of qualified wages, as defined in this section, the credit shall be reduced by nine cents ($0.09).

(d) The amount of the credit allowed by this section in any taxable year shall not exceed the amount of tax that would be imposed on the taxpayer's income attributable to employment within the enterprise zone as if that income represented all of the income of the taxpayer subject to tax under this part.

SEC. 12. Section 17231 of the Revenue and Taxation Code is repealed.

SEC. 13. Section 17235 is added to the Revenue and Taxation Code, to read:

17235. (a) There shall be allowed as a deduction the amount of net interest received by the taxpayer in payment on indebtedness of a person or entity engaged in the conduct of a trade or business located in an enterprise zone.

(b) No deduction shall be allowed under this section unless at the time the indebtedness is incurred each of the following requirements are met:

(1) The trade or business is located solely within an enterprise zone.

(2) The indebtedness is incurred solely in connection with activity within the enterprise zone.

(3) The taxpayer has no equity or other ownership interest in the debtor.

(c) "Enterprise zone" means an area designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

SEC. 14. Section 17252.5 of the Revenue and Taxation Code is repealed.

SEC. 15. Section 17265 of the Revenue and Taxation Code is repealed.

SEC. 16. Section 17267.2 is added to the Revenue and Taxation Code, to read:

17267.2. (a) A taxpayer may elect to treat 40 percent of the cost of any Section 17267.2 property as an expense which is not chargeable to a capital account. Any cost so treated shall be allowed as a deduction for the taxable year in which the taxpayer places the Section 17267.2 property in service.

(b) In the case of a husband and wife filing separate returns for a taxable year, the applicable amount under subdivision (a) shall be equal to 50 percent of the percentage specified in subdivision (a).

(c) (1) An election under this section for any taxable year shall do both of the following:

(A) Specify the items of Section 17267.2 property to which the election applies and the percentage of the cost of each of those items that are to be taken into account under subdivision (a).

(B) Be made on the taxpayer's original return of the tax imposed by this part for the taxable year.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(d) (1) For purposes of this section, "Section 17267.2 property" means any recovery property that is:

(A) Section 1245 property (as defined in Section 1245(a) (3) of the Internal Revenue Code).

(B) Purchased and placed in service by the taxpayer for exclusive use in a trade or business conducted within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(C) Purchased and placed in service before the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(2) For purposes of paragraph (1), "purchase" means any acquisition of property, but only if both of the following apply:

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under Section 267 or Section 707 (b) of the Internal Revenue Code. However, in applying Section 267(b) and 267(c) for purposes of this section, Section 267(c) (4) shall be treated as providing that the family of an individual shall include only the individual's spouse, ancestors, and lineal descendants.

(B) The basis of the property in the hands of the person acquiring it is not determined in whole or in part by reference to the adjusted basis of that property in the hands of the person from whom it is acquired.

(3) For purposes of this section, the cost of property does not include that portion of the basis of the property that is determined by reference to the basis of other property held at any time by the person acquiring the property.

(4) This section shall not apply to estates and trusts.

(5) This section shall not apply to any property for which the taxpayer may not make an election for the taxable year under Section 179 of the Internal Revenue Code because of the application of the provisions of Section 179(d) of the Internal Revenue Code.

(6) In the case of a partnership, the percentage limitation specified in subdivision (a) shall apply at the partnership level and at the partner level.

(e) For purposes of this section, "taxpayer" means a person or entity who conducts a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(f) Any taxpayer who elects to be subject to this section shall not be entitled to claim for the same property, the deduction under Section 179 of the Internal Revenue Code, relating to an election to

expense certain depreciable business assets. However, the taxpayer may claim depreciation by any method permitted by Section 168 of the Internal Revenue Code, commencing with the taxable year following the taxable year in which the Section 17267.2 property is placed in service.

(g) The aggregate cost of all Section 17267.2 property that may be taken into account under subdivision (a) for any taxable year shall not exceed the following applicable amount for the taxable year of the designation of the relevant enterprise zone and taxable years thereafter:

	The applicable amount is:
Taxable year of designation	$100,000
1st taxable year thereafter	100,000
2nd taxable year thereafter	75,000
3rd taxable year thereafter	75,000
Each taxable year thereafter	50,000

(h) Any amounts deducted under subdivision (a) with respect to property subject to this section that ceases to be used in the taxpayer's trade or business within an enterprise zone at any time before the close of the second taxable year after the property is placed in service shall be included in income in the taxable year in which the property ceases to be so used.

SEC. 17. Section 17276.1 of the Revenue and Taxation Code is amended to read:

17276.1. (a) A qualified taxpayer, as defined in Section 17276.2, may elect to take the deduction provided by Section 172 of the Internal Revenue Code, relating to the net operating loss deduction, as modified by Section 17276, with the following exceptions:

(1) Subdivision (a) of Section 17276, relating to years in which allowable losses are sustained, shall not be applicable.

(2) Subdivision (b) of Section 17276, relating to the 50-percent reduction of losses, shall not be applicable.

(b) The election to compute the net operating loss under this section shall be made in a statement attached to the original return, timely filed for the year in which the net operating loss is incurred and shall be irrevocable. In addition to the exceptions specified in subdivision (a), the provisions of Section 17276.2 shall be applicable.

(c) Any carryover of a net operating loss sustained by a qualified taxpayer, as defined in subdivision (a) or (b) of Section 17276.2 as that section read immediately prior to January 1, 1997, shall, if previously elected, continue to be a deduction, as provided in subdivision (a), applied as if the provisions of subdivision (a) or (b) of Section 17276.2, as that section read prior to January 1, 1997, still applied.

SEC. 17.5. Section 17276.2 of the Revenue and Taxation Code is amended to read:

17276.2. The term "qualified taxpayer" as used in Section 17276.1 means any of the following:

(a) A person or entity engaged in the conduct of a trade or business within an enterprise zone designated pursuant to chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(1) A net operating loss shall not be a net operating loss carryback to any taxable year and a net operating loss for any taxable year beginning on or after the date that the area in which the taxpayer conducts a trade or business is designated as an enterprise zone shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of loss.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the taxpayer's business activities within the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) prior to the enterprise zone expiration date. That attributable loss shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section by substituting "enterprise zone" for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section by substituting "enterprise zone" for "this state."

(C) "Enterprise zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(b) A person or entity engaged in the conduct of a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(1) A net operating loss shall not be a net operating loss carryback for any taxable year, and a net operating loss for any taxable year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated the Los Angeles Revitalization Zone shall be a net operating loss carryover to each following taxable year that ends before the Los Angeles Revitalization Zone expiration date or to each of the 15 taxable years following the taxable year of loss, if longer.

(2) For the purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1,

attributable to the taxpayer's business activities within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) prior to the Los Angeles Revitalization Zone expiration date. The attributable loss shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified as follows:

(i) Loss shall be apportioned to the Los Angeles Revitalization Zone by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The Los Angeles Revitalization Zone" shall be substituted for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) determined in accordance with the provisions of paragraph (3).

(3) Attributable income shall be that portion of the taxpayer's California source business income which is apportioned to the Los Angeles Revitalization Zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11. That business income shall be further apportioned to the Los Angeles Revitalization Zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the taxable year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.

(4) "Los Angeles Revitalization Zone expiration date" means the date the Los Angeles Revitalization Zone designation expires, is repealed, or becomes inoperative pursuant to Section 7102, 7103, or 7104 of the Government Code.

(5) This subdivision shall be inoperative on the first day of the taxable year beginning on or after the determination date, and each taxable year thereafter, with respect to the taxpayer's business

activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area determined pursuant to Section 7104 of the Government Code. The determination date is the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused loss amount as of the date this section becomes inoperative, that unused loss amount may continue to be carried forward as provided in this subdivision.

(6) This subdivision shall cease to be operative on January 1, 1998. However, any unused net operating loss may continue to be carried over to following years as provided in this subdivision.

(c) For each taxable year beginning on or after January 1, 1995, and before January 1, 2003, a taxpayer engaged in the conduct of a trade or business within a LAMBRA.

(1) A net operating loss shall not be a net operating loss carryback for any taxable year, and a net operating loss for any taxable year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated a LAMBRA shall be a net operating loss carryover to each following taxable year that ends before the LAMBRA expiration date or to each of the 15 taxable years following the taxable year of loss, if longer.

(2) For the purposes of this subdivision:

(A) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(B) "Taxpayer" means a person or entity that conducts a trade or business within a LAMBRA and, for the first two taxable years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA and this state.

(i) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the taxable year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second taxable year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the taxable year prior to commencing business operations in the LAMBRA shall be zero. The deduction shall be allowed only if the taxpayer has a net increase in jobs in the state, and if one or more full-time employees is employed within the LAMBRA.

(ii) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(I) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(II) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(iii) In the case of a taxpayer who first commences doing business in the LAMBRA during the taxable year, for purposes of subclauses (I) and (II), respectively, of clause (ii) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the taxable year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(C) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the taxpayer's business activities within a LAMBRA prior to the LAMBRA expiration date. The attributable loss shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified as follows:

(i) Loss shall be apportioned to a LAMBRA by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The LAMBRA" shall be substituted for "this state."

(D) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to a LAMBRA determined in accordance with the provisions of Chapter 17 (commencing with Section 25101) of Part 11, modified as follows:

(i) Business income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The LAMBRA" shall be substituted for "this state."

(iii) If a loss carryover is allowable pursuant to this section for any taxable year after the LAMBRA designation has expired, the LAMBRA shall be deemed to remain in existence for purposes of computing this limitation.

(E) "LAMBRA expiration date" means the date the LAMBRA designation expires, is no longer binding, or becomes inoperative pursuant to Section 7110 of the Government Code.

(d) A taxpayer who qualifies as a "qualified taxpayer" shall, for the taxable year of the net operating loss and any taxable year to which that net operating loss may be carried, designate on the original return filed for each year the subdivision of this section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one subdivision of this section, the designation is to be made after taking into account subdivision (e).

(e) If a taxpayer is eligible to qualify under more than one subdivision of this section as a "qualified taxpayer," with respect to

a net operating loss in a taxable year, the taxpayer shall designate which subdivision of this section is to apply to the taxpayer.

(f) Notwithstanding Section 17276, the amount of the loss determined under this section shall be the only net operating loss allowed to be carried over from that taxable year and the designation under subdivision (d) shall be included in the election under Section 17276.1.

SEC. 18. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) (1) The term "tax" includes any of the following:

(A) The tax imposed under Chapter 2 (commencing with Section 23101).

(B) The tax imposed under Chapter 3 (commencing with Section 23501).

(C) The tax on unrelated business taxable income, imposed under Section 23731.

(D) The tax on S corporations imposed under Section 23802.

(2) The term "tax" does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(b) For purposes of Article 5 (commencing with Section 18661) of Chapter 2, Article 3 (commencing with Section 19031) of Chapter 4, Article 6 (commencing with Section 19101) of Chapter 4, and Chapter 7 (commencing with Section 19501) of Part 10.2, and for purposes of Sections 18601, 19001, and 19005, the term "tax" shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 23081, the tax on limited liability companies, imposed under Section 23091, and the tax on registered limited liability partnerships and foreign limited liability partnerships imposed under Section 23097.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of S corporations, imposed under Section 23809.

(4) The tax on excess passive investment income of S corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits shall be allowed against the "tax" in the following order:

(1) Credits that do not contain carryover provisions.

(2) Credits that, when the credit exceeds the "tax," allow the excess to be carried over to offset the "tax" in succeeding taxable years. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits for taxes withheld under Section 18662.

(d) Notwithstanding any other provision of this part, each of the following shall be applicable:

(1) No credit shall reduce the "tax" below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits, but only after allowance of the credit allowed by Section 23453:

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by former Section 23601.4 (relating to solar energy).

(C) The credit allowed by Section 23601.5 (relating to solar energy).

(D) The credit allowed by Section 23609 (relating to research expenditures).

(E) The credit allowed by Section 23609.5 (relating to clinical testing expenses).

(F) The credit allowed by Section 23610.5 (relating to low-income housing).

(G) The credit allowed by former Section 23612 (relating to sales and use tax credit).

(H) The credit allowed by Section 23612.2 (relating to enterprise zone sales or use tax credit).

(I) The credit allowed by Section 23612.6 (relating to Los Angeles Revitalization Zone sales tax credit).

(J) The credit allowed by former Section 23622 (relating to enterprise zone hiring credit).

(K) The credit allowed by Section 23622.7 (relating to enterprise zone hiring credit).

(L) The credit allowed by former Section 23623 (relating to program area hiring credit).

(M) For each income year beginning on or after January 1, 1994, the credit allowed by Section 23623.5 (relating to Los Angeles Revitalization Zone hiring credit).

(N) The credit allowed by Section 23625 (relating to Los Angeles Revitalization Zone hiring credit).

(O) The credit allowed by Section 23649 (relating to qualified property).

(2) No credit against the tax shall reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) shall be allowed to be carried over to reduce the "tax" in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit that has been repealed or made inoperative shall continue to be allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part,

each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the costs paid or incurred.

SEC. 18.5. Section 23036 of the Revenue and Taxation Code is amended to read:

23036. (a) (1) The term "tax" includes any of the following:

(A) The tax imposed under Chapter 2 (commencing with Section 23101).

(B) The tax imposed under Chapter 3 (commencing with Section 23501).

(C) The tax on unrelated business taxable income, imposed under Section 23731.

(D) The tax on S corporations imposed under Section 23802.

(2) The term "tax" does not include any amount imposed under paragraph (1) of subdivision (e) of Section 24667 or paragraph (2) of subdivision (f) of Section 24667.

(b) For purposes of Article 5 (commencing with Section 18661) of Chapter 2, Article 3 (commencing with Section 19031) of Chapter 4, Article 6 (commencing with Section 19101) of Chapter 4, and Chapter 7 (commencing with Section 19501) of Part 10.2, and for purposes of Sections 18601, 19001, and 19005, the term "tax" shall also include all of the following:

(1) The tax on limited partnerships, imposed under Section 17935 or Section 23081, the tax on limited liability companies, imposed under Section 17941 or Section 23091, and the tax on registered limited liability partnerships and foreign limited liability partnerships imposed under Section 17948 or Section 23097.

(2) The alternative minimum tax imposed under Chapter 2.5 (commencing with Section 23400).

(3) The tax on built-in gains of S corporations, imposed under Section 23809.

(4) The tax on excess passive investment income of S corporations, imposed under Section 23811.

(c) Notwithstanding any other provision of this part, credits shall be allowed against the "tax" in the following order:

(1) Credits that do not contain carryover provisions.

(2) Credits that, when the credit exceeds the "tax," allow the excess to be carried over to offset the "tax" in succeeding taxable years. The order of credits within this paragraph shall be determined by the Franchise Tax Board.

(3) The minimum tax credit allowed by Section 23453.

(4) Credits for taxes withheld under Section 18662.

(d) Notwithstanding any other provision of this part, each of the following shall be applicable:

(1) No credit shall reduce the "tax" below the tentative minimum tax (as defined by paragraph (1) of subdivision (a) of Section 23455), except the following credits, but only after allowance of the credit allowed by Section 23453:

(A) The credit allowed by former Section 23601 (relating to solar energy).

(B) The credit allowed by former Section 23601.4 (relating to solar energy).

(C) The credit allowed by Section 23601.5 (relating to solar energy).

(D) The credit allowed by Section 23609 (relating to research expenditures).

(E) The credit allowed by Section 23609.5 (relating to clinical testing expenses).

(F) The credit allowed by Section 23610.5 (relating to low-income housing).

(G) The credit allowed by former Section 23612 (relating to sales and use tax credit).

(H) The credit allowed by Section 23612.2 (relating to enterprise zone sales or use tax credit).

(I) The credit allowed by Section 23612.6 (relating to Los Angeles Revitalization Zone sales tax credit).

(J) The credit allowed by former Section 23622 (relating to enterprise zone hiring credit).

(K) The credit allowed by Section 23622.5 (relating to enterprise zone hiring credit).

(L) The credit allowed by former Section 23623 (relating to program area hiring credit).

(M) For each income year beginning on or after January 1, 1994, the credit allowed by Section 23623.5 (relating to Los Angeles Revitalization Zone hiring credit).

(N) The credit allowed by Section 23625 (relating to Los Angeles Revitalization Zone hiring credit).

(O) The credit allowed by Section 23649 (relating to qualified property).

(2) No credit against the tax shall reduce the minimum franchise tax imposed under Chapter 2 (commencing with Section 23101).

(e) Any credit which is partially or totally denied under subdivision (d) shall be allowed to be carried over to reduce the "tax" in the following year, and succeeding years if necessary, if the provisions relating to that credit include a provision to allow a carryover of the unused portion of that credit.

(f) Unless otherwise provided, any remaining carryover from a credit that has been repealed or made inoperative shall continue to be allowed to be carried over under the provisions of that section as it read immediately prior to being repealed or becoming inoperative.

(g) Unless otherwise provided, if two or more taxpayers share in costs that would be eligible for a tax credit allowed under this part, each taxpayer shall be eligible to receive the tax credit in proportion to its respective share of the costs paid or incurred.

(h) Unless otherwise provided, in the case of an S corporation, any credit allowed by this part shall be computed at the S corporation

level, and any limitation on the expenses qualifying for the credit or limitation upon the amount of the credit shall be applied to the S corporation and to each shareholder.

SEC. 19. Section 23612 of the Revenue and Taxation Code is repealed.

SEC. 20. Section 23612.2 is added to the Revenue and Taxation Code, to read:

23612.2. (a) There shall be allowed as a credit against the "tax" (as defined by Section 23036) for the income year an amount equal to the sales or use tax paid or incurred during the income year by the taxpayer in connection with the taxpayer's purchase of qualified property.

(b) For purposes of this section:

(1) "Taxpayer" means either a bank or corporation engaged in a trade or business within an enterprise zone.

(2) "Qualified property" means:

(A) Any of the following:

(i) Machinery and machinery parts used for fabricating, processing, assembling, and manufacturing.

(ii) Machinery and machinery parts used for the production of renewable energy resources.

(iii) Machinery and machinery parts used for either of the following:

(I) Air pollution control mechanisms.

(II) Water pollution control mechanisms.

(B) The total cost of qualified property purchased and placed in service in any income year that may be taken into account by any taxpayer for purposes of claiming this credit shall not exceed twenty million dollars ($20,000,000).

(C) The qualified property is used by the taxpayer exclusively in an enterprise zone.

(D) The qualified property is purchased and placed in service before the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(3) "Enterprise zone" means the area designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(c) If the taxpayer has purchased property upon which a use tax has been paid or incurred, the credit provided by this section shall be allowed only if qualified property of a comparable quality and price is not timely available for purchase in this state.

(d) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit which exceeds the "tax" may be carried over and added to the credit, if any, in the following year, and succeeding years if necessary, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to increase the basis of the qualified property as otherwise required by Section 164(a) of the Internal Revenue Code with respect to sales or use tax paid or incurred in connection with the taxpayer's purchase of qualified property.

(f) (1) The amount of credit otherwise allowed under this section and Section 23622.7, including any credit carryover from prior years, that may reduce the "tax" for the income year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting "the enterprise zone" for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (d).

SEC. 21. Section 23622 of the Revenue and Taxation Code is repealed.

SEC. 21.5. Section 23622 is added to the Government Code, to read:

23622. (a) There shall be allowed as a credit against the "tax" (as defined by Section 23036) an amount equal to the sum of each of the following:

(1) Fifty percent for qualified wages in the first year of employment.

(2) Forty percent for qualified wages in the second year of employment.

(3) Thirty percent for qualified wages in the third year of employment.

(4) Twenty percent for qualified wages in the fourth year of employment.

(5) Ten percent for qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) For up to 1,350 qualified employees who are employed by the taxpayer in the Long Beach Enterprise Zone in aircraft manufacturing activities described in Codes 3721 to 3728, inclusive, and Code 3812 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "qualified wages" means that portion of hourly wages that does not exceed 202 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the individual commences employment with the taxpayer.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(c) For purposes of this section:

(1) "Qualified disadvantaged individual" means an individual:

(A) Who is a qualified employee within the meaning of subdivision (d).

(B) Who is hired by the employer after the designation of the area in which services were performed as an enterprise zone (under Section 7073 of the Government Code).

(C) Who is any of the following immediately preceding the individual's commencement of employment with the taxpayer:

(i) An individual who is eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.) and who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act.

(ii) Any individual who is eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(iii) Any individual who is eligible as determined by the Employment Development Department under the federal Targeted Jobs Tax Credit Program as long as that program is in effect.

(2) Priority shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible under the federal Targeted Jobs Tax Credit Program.

(d) For purposes of this section, "qualified employee" means an individual:

(1) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone, and

(2) Who performs at least 50 percent of his or her services for the taxpayer during the income year in an enterprise zone.

(e) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification which provides that a qualified individual meets the eligibility requirements specified in subparagraph (C) of paragraph (1) of subdivision (c).

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(f) (1) For purposes of this section, all employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single employer. In

that case, the credit (if any) allowable by this section to each member shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit. For purposes of this subdivision, "controlled group of corporations" has the meaning given to that term by Section 1563(a) of the Internal Revenue Code, except that:

(A) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(B) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue Code.

(2) If an employer acquires the major portion of a trade or business of another employer (hereafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (g)) for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(g) (1) If the employment of any employee with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable unemployment compensation provisions that the termination was due to the misconduct of that individual.

(iv) A termination of employment of an individual due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of an individual, if that individual is replaced by other qualified employees so as to create a

net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated:

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the employee continues to be employed by the acquiring corporation, or

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(h) In the case of (1) an organization to which Section 593 of the Internal Revenue Code applies, and (2) a regulated investment company or a real estate investment trust subject to taxation under this part rules similar to the rules provided in subsections (e) and (h) of Section 46 of the Internal Revenue Code shall apply.

(i) For purposes of this section, "enterprise zone" means an area for which designation as an enterprise zone is in effect under Section 7073 of the Government Code.

(j) The credit shall be reduced by the credit allowed under Section 23621. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (k) or (*l*).

(k) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit which exceeds the "tax" may be carried over and added to the credit, if any, in the following year, and succeeding years if necessary, for the number of years in which the designation of an enterprise zone is binding, or 15 income years, if longer, until the credit has been exhausted. The credit shall be applied first to the earliest income years possible.

(*l*) (1) The amount of the credit otherwise allowed under this section and Section 23612, including any credit carryover from prior years, that may reduce the "tax" for the income year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributed to the enterprise zone determined as if that attributed income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributed income described in paragraph (1) shall be determined in accordance with Chapter 17 (commencing with Section 25101), modified for purposes of this section as follows:

(A) For income years beginning on or after January 1, 1991, and ending on or before December 31, 1996, income shall be apportioned to the enterprise zone by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) "The enterprise zone" shall be substituted for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (k).

SEC. 22. Section 23622.7 is added to the Revenue and Taxation Code, to read:

23622.7. (a) There shall be allowed a credit against the "tax" (as defined by Section 23036) to a taxpayer who employs a qualified employee in an enterprise zone during the income year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) That portion of wages paid or incurred by the taxpayer during the income year to qualified employees that does not exceed 150 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the day the employee commences employment with the taxpayer.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the taxpayer within the enterprise zone within the 60-month period prior to the zone expiration date shall continue to qualify for the credit under this section after the zone expiration date, in accordance with all provisions of this section applied as if the enterprise zone designation were still in existence and binding.

(2) "Minimum wage" means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) "Zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(4) (A) "Qualified employee" means an individual who meets all of the following requirements:

(i) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the income year in an enterprise zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, or its successor.

(III) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an economically disadvantaged individual 14 years of age or older.

(IV) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a dislocated worker who meets any of the following:

Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff.

Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilty.

(VII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for or a recipient of any of the following:

Federal Supplemental Security Income benefits.

Aid to Families with Dependent Children.

Food stamps.

State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(IX) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a resident of a targeted employment area (as defined in Section 7072 of the Government Code).

(X) An employee who qualified the taxpayer for the enterprise zone hiring credit under former Section 23622 or the program area hiring credit under former Section 23623.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible under the federal Targeted Jobs Tax Credit Program.

(5) "Taxpayer" means a bank or corporation engaged in a trade or business within an enterprise zone designated pursuant to

Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(c) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification that provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Employment Development Department shall develop a form for this purpose.

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(d) (1) For purposes of this section:

(A) All employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section to each member shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit, and shall be allocated in that manner.

(C) For purposes of this subdivision, "controlled group of corporations" means "controlled group of corporations" as defined in Section 1563(a) of the Internal Revenue Code, except that:

(i) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(ii) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue Code.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the "predecessor") or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (e)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(e) (1) If the employment of any qualified employee with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment, whether or not consecutive, or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the income year in which that employment is

terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that income year and all prior income years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that employee.

(iii) A termination of employment of a qualified employee, if it is determined under the applicable unemployment compensation provisions that the termination was due to the misconduct of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified employee shall not be treated as terminated by either of the following:

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the qualified employee continues to be employed by the acquiring corporation.

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the qualified employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(f) Rules similar to the rules provided in Section 46(e) and (h) of the Internal Revenue Code shall apply to both of the following:

(1) An organization to which Section 593 of the Internal Revenue Code applies:

(2) A regulated investment company or a real estate investment trust subject to taxation under this part.

(g) For purposes of this section, "enterprise zone" means an area designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(h) The credit allowable under this section shall be reduced by the credit allowed under Sections 23623.5, 23625, and 23646 claimed for

the same employee. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (i) or (j).

(i) In the case where the credit otherwise allowed under this section exceeds the "tax" for the income year, that portion of the credit that exceeds the "tax" may be carried over and added to the credit, if any, in succeeding income years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 23612.2, including any credit carryover from prior years, that may reduce the "tax" for the income year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting "the enterprise zone" for "this state."

(3) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding income years, as if it were an amount exceeding the "tax" for the income year, as provided in subdivision (i).

SEC. 23. Section 23623 of the Revenue and Taxation Code is repealed.

SEC. 24. Section 24356.2 of the Revenue and Taxation Code is repealed.

SEC. 25. Section 24356.3 of the Revenue and Taxation Code is repealed.

SEC. 26. Section 24356.7 is added to the Revenue and Taxation Code, to read:

24356.7. (a) A taxpayer may elect to treat 40 percent of the cost of any Section 24356.7 property as an expense that is not chargeable to a capital account. Any cost so treated shall be allowed as a deduction for the income year in which the taxpayer places the Section 24356.7 property in service.

(b) (1) An election under this section for any income year shall do both of the following:

(A) Specify the items of Section 24356.7 property to which the election applies and the percentage of the cost of each of those items that are to be taken into account under subdivision (a).

(B) Be made on the taxpayer's original return of the tax imposed by this part for the income year.

(2) Any election made under this section, and any specification contained in that election, may not be revoked except with the consent of the Franchise Tax Board.

(c) (1) For purposes of this section, "Section 24356.7 property" means any recovery property that is:

(A) Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code).

(B) Purchased and placed in service by the taxpayer for exclusive use in a trade or business conducted within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(C) Purchased and placed in service before the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(2) For purposes of paragraph (1), "purchase" means any acquisition of property, but only if all of the following apply:

(A) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of losses under Sections 24427 through 24429. However, in applying Sections 24428 and 24429 for purposes of this section, subdivision (d) of Section 24429 shall be treated as providing that the family of an individual shall include only his or her spouse, ancestors, and lineal descendants.

(B) The property is not acquired by one member of an affiliated group from another member of the same affiliated group.

(C) The basis of the property in the hands of the person acquiring it is not determined in whole or in part by reference to the adjusted basis of that property in the hands of the person from whom it is acquired.

(3) For purposes of this section, the cost of property does not include that portion of the basis of that property that is determined by reference to the basis of other property held at any time by the person acquiring that property.

(4) This section shall not apply to any property for which the taxpayer could not make a federal election under Section 179 of the Internal Revenue Code because of the application of the provisions of Section 179 (d) of the Internal Revenue Code.

(5) For purposes of subdivision (b) of this section, both of the following apply:

(A) All members of an affiliated group shall be treated as one taxpayer.

(B) The taxpayer shall apportion the dollar limitation contained in subdivision (f) among the members of the affiliated group in whatever manner the board shall prescribe.

(6) For purposes of paragraphs (2) and (5), "affiliated group" means "affiliated group" as defined in Section 1504 of the Internal Revenue Code, except that, for these purposes, the phrase "more than 50 percent" shall be substituted for the phrase "at least 80

percent" each place it appears in Section 1504(a) of the Internal Revenue Code.

(d) For purposes of this section, "taxpayer" means a bank or corporation that conducts a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to claim additional depreciation pursuant to Section 24356 with respect to any property that constitutes Section 24356.7 property. However, the taxpayer may claim depreciation by any method permitted by Section 24349 commencing with the income year following the income year in which Section 24356.7 property is placed in service.

(f) The aggregate cost of all Section 24356.7 property that may be taken into account under subdivision (a) for any income years shall not exceed the following applicable amount for the income year of the designation of the relevant enterprise zone and income years thereafter:

	The applicable amount is:
Income year of designation	$100,000
1st income year thereafter	100,000
2nd income year thereafter	75,000
3rd income year thereafter	75,000
Each income year thereafter	50,000

(g) Any amounts deducted under subdivision (a) with respect to Section 24356.7 property that ceases to be used in the taxpayer's trade or business within an enterprise zone at any time before the close of the second income year after the property is placed in service shall be included in income in the income year in which the property ceases to be so used.

SEC. 27. Section 24384 of the Revenue and Taxation Code is repealed.

SEC. 28. Section 24384.5 is added to the Revenue and Taxation Code, to read:

24384.5. (a) There shall be allowed as a deduction the amount of net interest received by the taxpayer in payment of indebtedness of a person or entity engaged in a trade or business located in an enterprise zone.

(b) No deduction shall be allowed under this section unless at the time the indebtedness is incurred each of the following requirements are met:

(1) The trade or business is located solely within an enterprise zone.

(2) The indebtedness is incurred solely in connection with activity within the enterprise zone.

(3) The taxpayer has no equity or other ownership interest in the debtor.

(c) "Enterprise zone" means an area designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

SEC. 29. Section 24416.1 of the Revenue and Taxation Code is amended to read:

24416.1. (a) A qualified taxpayer, as defined in Section 24416.2, may elect to take the deduction provided by Section 172 of the Internal Revenue Code, relating to the net operating loss deduction, as modified by Section 24416, in computing net income under Section 24341, with the following exceptions to Section 24416:

(1) Subdivision (a) of Section 24416, relating to years in which allowable losses are sustained, shall not be applicable.

(2) Subdivision (b) of Section 24416, relating to the 50-percent reduction of losses, shall not be applicable.

(3) The provisions of subparagraphs (B) and (C) of Section 172 (b) (1) of the Internal Revenue Code shall not apply. To the extent applicable to California law, net operating losses attributable to entities with losses described by Section 172(b)(1)(J) shall be applied in accordance with Section 172(b)(1)(A) and (B) of the Internal Revenue Code.

(b) Corporations whose income is subject to the provisions of Section 25101 or 25101.15 shall make the computations required by Section 25108.

(c) The election to compute the net operating loss under this section shall be made in a statement attached to the original return, timely filed for the year in which the net operating loss is incurred and shall be irrevocable. In addition to the exceptions specified in subdivision (a), Section 24416.2 shall be applicable.

(d) Any carryover of a net operating loss sustained by a qualified taxpayer, as defined in subdivision (a) or (b) of Section 24416.2 as that section read immediately prior to January 1, 1997, shall, if previously elected, continue to be a deduction, as provided in subdivision (a), applied as if the provisions of subdivision (a) or (b) of Section 24416.2, as that section read prior to January 1, 1997, still applied.

SEC. 29.5. Section 24416.2 of the Revenue and Taxation Code is amended to read:

24416.2. The term "qualified taxpayer" as used in Section 24416.1 means any of the following:

(a) A bank or corporation engaged in the conduct of a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(1) A net operating loss shall not be a net operating loss carryback for any income year and a net operating loss for any income year

beginning on or after the date that the area in which the taxpayer conducts a trade or business is designated as an enterprise zone shall be a net operating loss carryover to each of the 15 income years following the income year of loss.

(2) For purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer's business activities within the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) prior to the enterprise zone expiration date. That attributable loss shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting "enterprise zone" for "this state."

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified for purposes of this section by substituting "enterprise zone" for "this state."

(C) "Enterprise zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(b) A bank or corporation engaged in the conduct of a trade or business within the Los Angeles Revitalization Zone designated pursuant to Section 7102 of the Government Code.

(1) (A) A net operating loss shall not be a net operating loss carryback for any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated the Los Angeles Revitalization Zone shall be a net operating loss carryover to each following income year that ends before the Los Angeles Revitalization Zone expiration date or to each of the 15 income years following the income year of loss, if longer.

(B) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five years following the income year of the loss. Subdivision (b) of Section 24416.1 shall not apply.

(2) For the purposes of this subdivision:

(A) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer's business activities within the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) prior to the Los Angeles Revitalization Zone

expiration date. The attributable loss shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified as follows:

(i) The loss shall be apportioned to the Los Angeles Revitalization Zone by multiplying the loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The Los Angeles Revitalization Zone" shall be substituted for this state.

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to the Los Angeles Revitalization Zone (as defined in Section 7102 of the Government Code) determined in accordance with the provisions of paragraph (3).

(3) Attributable income shall be that portion of the taxpayer's California source business income which is apportioned to the Los Angeles Revitalization Zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the Los Angeles Revitalization Zone in accordance with the provisions of Article 2 (commencing with Section 25120) of Chapter 17, modified as follows:

(A) Business income shall be apportioned to the Los Angeles Revitalization Zone by multiplying total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(B) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the Los Angeles Revitalization Zone during the income year and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(C) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Los Angeles Revitalization Zone during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the income year.

(4) "Los Angeles Revitalization Zone expiration date" means the date the Los Angeles Revitalization Zone designation expires, is repealed, or becomes inoperative pursuant to Section 7102, 7103, or 7104 of the Government Code.

(5) This subdivision shall be inoperative on the first day of the income year beginning on or after the determination date, and each income year thereafter, with respect to the taxpayer's business activities within a geographic area that is excluded from the map pursuant to Section 7102 of the Government Code, or an excluded area determined pursuant to Section 7104 of the Government Code.

The determination date is the earlier of the first effective date of a determination under subdivision (c) of Section 7102 of the Government Code occurring after December 1, 1994, or the first effective date of an exclusion of an area from the amended Los Angeles Revitalization Zone under Section 7104 of the Government Code. However, if the taxpayer has any unused loss amount as of the date this section becomes inoperative, that unused loss amount may continue to be carried forward as provided in this subdivision.

(6) This subdivision shall cease to be operative on January 1, 1998. However, any unused net operating loss may continue to be carried over to following years as provided in this subdivision.

(c) For each income year beginning on or after January 1, 1995, and before January 1, 2003, a taxpayer engaged in the conduct of a trade or business within a LAMBRA.

(1) (A) A net operating loss shall not be a net operating loss carryback for any income year and, except as provided in subparagraph (B), a net operating loss for any income year beginning on or after the date the area in which the taxpayer conducts a trade or business is designated a LAMBRA shall be a net operating loss carryover to each following income year that ends before the LAMBRA expiration date or to each of the 15 income years following the income year of loss, if longer.

(B) In the case of a financial institution to which Section 585, 586, or 593 of the Internal Revenue Code applies, a net operating loss for any income year beginning on or after January 1, 1984, shall be a net operating loss carryover to each of the five years following the income year of the loss. Subdivision (b) of Section 24416.1 shall not apply.

(2) For the purposes of this subdivision:

(A) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(B) "Taxpayer" means a bank or corporation that conducts a trade or business within a LAMBRA and, for the first two income years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the LAMBRA and this state.

(i) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the income year prior to commencing business operations in the LAMBRA from the total number of full-time employees the taxpayer employed in this state during the second income year after commencing business operations in the LAMBRA. For taxpayers who commence doing business in this state with their LAMBRA business operation, the number of employees for the income year prior to commencing business operations in the LAMBRA shall be zero. The deduction shall be allowed only if the taxpayer has a net

increase in jobs in the state, and if one or more full-time employees is employed within the LAMBRA.

(ii) The total number of employees employed in the LAMBRA shall equal the sum of both of the following:

(I) The total number of hours worked in the LAMBRA for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(II) The total number of months worked in the LAMBRA for the taxpayer by employees who are salaried employees divided by 12.

(iii) In the case of a taxpayer that first commences doing business in the LAMBRA during the income year, for purposes of subclauses (I) and (II), respectively, of clause (ii) the divisors "2,000" and "12" shall be multiplied by a fraction, the numerator of which is the number of months of the income year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(C) "Net operating loss" means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer's business activities within a LAMBRA prior to the LAMBRA expiration date. The attributable loss shall be determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified as follows:

(i) Loss shall be apportioned to a LAMBRA by multiplying the loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The LAMBRA" shall be substituted for "this state."

(D) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to a LAMBRA determined in accordance with the provisions of Chapter 17 (commencing with Section 25101), modified as follows:

(i) Business income shall be apportioned to a LAMBRA by multiplying total business income by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) "The LAMBRA" shall be substituted for "this state."

(iii) If a loss carryover is allowable pursuant to this section for any income year after the LAMBRA designation has expired, the LAMBRA shall be deemed to remain in existence for purposes of computing this limitation.

(E) "LAMBRA expiration date" means the date the LAMBRA designation expires, is no longer binding, or becomes inoperative pursuant to Section 7110 of the Government Code.

(d) A taxpayer who qualifies as a "qualified taxpayer" shall, for the income year of the net operating loss and any income year to which that net operating loss may be carried, designate on the original return filed for each year the subdivision of this section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one subdivision of this section,

the designation is to be made after taking into account subdivision (e).

(e) If a taxpayer is eligible to qualify under more than one subdivision of this section as a "qualified taxpayer," with respect to a net operating loss in an income year, the taxpayer shall designate which subdivision of this section is to apply to the taxpayer.

(f) Notwithstanding Section 24416, the amount of the loss determined under this section shall be the only net operating loss allowed to be carried over from that income year and the designation under subdivision (d) shall be included in the election under Section 24416.1.

SEC. 30. If this bill and Senate Bill 715 of the 1995–96 Regular Session are both enacted, the changes made to Sections 17052.13, 17052.15, 17053.8, 17053.10, 17053.11, 17053.17, 17053.45, 17053.46, 23612, 23612.6, 23622, 23623, 23623.5, 23625, 23645, and 23646 of the Revenue and Taxation Code by Senate Bill 715 of the 1995–96 Regular Session shall be applied in the computation of taxes for taxable or income years beginning before December 31, 1996.

SEC. 31. This act shall become operative only if Assembly Bill 296 of the 1995–96 Regular Session is enacted.

SEC. 32. Section 4.5 of this bill incorporates amendments to Section 17039 of the Revenue and Taxation Code proposed by both this bill and SB 715. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 17039 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 715, in which case Section 4 of this bill shall not become operative.

SEC. 33. Sections 6.5 and 21.5 of this bill shall only become operative if both this bill and Senate Bill 38 are enacted and become effective on or before January 1, 1997, and this bill is chaptered last.

SEC. 34. Section 18.5 of this bill incorporates amendments to Section 23036 of the Revenue and Taxation Code proposed by both this bill and SB 715. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 23036 of the Revenue and Taxation Code, and (3) this bill is enacted after SB 715, in which case Section 18 of this bill shall not become operative.

CHAPTER 956

An act to add and repeal Sections 13202.3 and 14907 of the Vehicle Code, relating to vehicles, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 13202.3 is added to the Vehicle Code, to read:

13202.3. (a) The department shall immediately suspend or delay the privilege of any person to drive a motor vehicle for six months upon receipt of a duly certified abstract of the record of any court showing the person has been convicted of any controlled substance offense specified in subdivision (c). For each successive offense, the department shall suspend the person's driving privilege for those possessing a license or delay the eligibility for those not in possession of a license at the time of their conviction for an additional six months. This subdivision does not apply if, upon conviction, the court orders the department to suspend, restrict, or revoke the driving privilege as required under Section 13202 or 13202.5, if the suspension, restriction, or revocation is for a period of not less than six months.

(b) In the absence of compelling circumstances warranting an exception, whenever a court in this state convicts a person of any controlled substance offense specified in subdivision (c), the court in which the conviction occurs shall require all driver's licenses held by the person to be surrendered to the court. The court shall, not later than 10 days after the conviction, transmit to the department a certified abstract of the conviction, together with any driver's license surrendered.

(c) This section applies to convictions involving controlled substances contained in the following provisions:

(1) The laws of the United States, each state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico. For purposes of this subdivision, "conviction" means a conviction of any controlled substance offense prohibited by any federal or state law, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any controlled substance offense.

(2) Division 10 (commencing with Section 11000) of the Health and Safety Code, involving the possession, distribution, manufacture, cultivation, sale, or transfer of any substance or the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell or transfer any of those substances, the possession of which is prohibited under that division.

(3) Article 2 (commencing with Section 23152) of Chapter 12 of Division 11.

(d) Suspension or delay of driving privileges pursuant to this section shall be in addition to any penalty imposed upon conviction of any violation specified in subdivision (c), unless the court has ordered suspension, revocation, or restriction as required under Section 13202 or 13202.5.

(e) This section shall remain in effect only until March 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before that date, deletes or extends the date.

SEC. 2. Section 14907 is added to the Vehicle Code, to read:

14907. (a) Notwithstanding any other provision of this code, in lieu of the fees in Section 14904, before a driver's license may be issued, reissued, or returned to a person after the suspension or delay of the person's privilege to operate a motor vehicle pursuant to Section 13202.3, there shall be paid to the department a fee in an amount of twenty-four dollars ($24) to pay the costs of the administration of these license actions by the department.

(b) This section does not apply to a suspension or revocation that is set aside by the department or a court.

(c) This section shall remain in effect only until March 1, 1997, and as of that date is repealed, unless a later enacted statute, which is enacted before that date, deletes or extends the date.

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

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

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to avoid jeopardizing the receipt of federal transportation funds, it is necessary that this act take effect immediately.

CHAPTER 957

An act to amend Section 259 of, to add Chapter 9 (commencing with Section 689.010) to Division 1 of Title 9 of Part 2 of, and to repeal Sections 639.5 and 640.1 of, the Code of Civil Procedure, to amend Section 4506.3 of, to add Section 5246 to, to add Article 3 (commencing with Section 3680) to Chapter 6 of Part 1 of Division 9 of, to add Article 4 (commencing with Section 4250) to Chapter 2 of Part 2 of Division 9 of, and to add Division 14 (commencing with Section 10000) to, the Family Code, to amend Section 70141 of the Government Code, to amend Sections 11350.1, 11475.1, and 11478.2

of, and to add Sections 11350.7, 11354, 11355, and 11356 to, the Welfare and Institutions Code, relating to family law.

[Approved by Governor September 26, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 259 of the Code of Civil Procedure is amended to read:

259. Subject to the supervision of the court, every court commissioner shall have power to do all of the following:

(a) Hear and determine ex parte motions for orders and alternative writs and writs of habeas corpus in the superior court for which the court commissioner is appointed.

(b) Take proof and make and report findings thereon as to any matter of fact upon which information is required by the court. Any party to any contested proceeding may except to the report and the subsequent order of the court made thereon within five days after written notice of the court's action. A copy of the exceptions shall be filed and served upon opposing party or counsel within the five days. The party may argue any exceptions before the court on giving notice of motion for that purpose within 10 days from entry thereof. After a hearing before the court on the exceptions, the court may sustain, or set aside, or modify its order.

(c) Take and approve any bonds and undertakings in actions or proceedings, and determine objections to the bonds and undertakings.

(d) Administer oaths and affirmations, and take affidavits and depositions in any action or proceeding in any of the courts of this state, or in any matter or proceeding whatever, and take acknowledgments and proof of deeds, mortgages, and other instruments requiring proof or acknowledgment for any purpose under the laws of this or any other state or country.

(e) Act as temporary judge when otherwise qualified so to act and when appointed for that purpose, or by written consent of an appearing party. While acting as temporary judge the commissioner shall receive no compensation therefor other than compensation as commissioner.

(f) Hear and report findings and conclusions to the court for approval, rejection, or change, all preliminary matters including motions or petitions for the custody and support of children, the allowance of temporary spousal support, costs and attorneys' fees, and issues of fact in contempt proceedings in proceedings for support, dissolution of marriage, nullity of marriage, or legal separation.

(g) Hear actions to establish paternity and to establish or enforce child and spousal support pursuant to subdivision (a) of Section 4251 of the Family Code.

(h) Hear, report on, and determine all uncontested actions and proceedings subject to the requirements of subdivision (e).

(i) Charge and collect the same fees for the performance of official acts as are allowed by law to notaries public in this state for like services. This subdivision does not apply to any services of the commissioner, the compensation for which is expressly fixed by law. The fees so collected shall be paid to the treasurer of the county, for deposit in the general fund of the county.

(j) Provide an official seal, upon which must be engraved the words "Court Commissioner" and the name of the county, or city and county, in which the commissioner resides.

(k) Authenticate with the official seal the commissioner's official acts.

SEC. 2. Section 639.5 of the Code of Civil Procedure is repealed.

SEC. 3. Section 640.1 of the Code of Civil Procedure is repealed.

SEC. 4. Chapter 9 (commencing with Section 689.010) is added to Division 1 of Title 9 of Part 2 of the Code of Civil Procedure, to read:

CHAPTER 9. ENFORCEMENT OF SUPPORT JUDGMENTS

689.010. For the purpose of the remedies provided under this chapter, jurisdiction is conferred upon the superior court.

689.020. (a) Except as otherwise provided by statute, whenever a warrant may properly be issued by the district attorney pursuant to Section 11350.7 of the Welfare and Institutions Code, and the warrant may be levied with the same effect as a levy pursuant to a writ of execution, the district attorney may use any of the remedies available to a judgment creditor, including, but not limited to, those provided in Chapter 6 (commencing with Section 708.010) of Division 2.

(b) The proper court for the enforcement of the remedies provided under this chapter is the superior court in the county where the district attorney enforcing the support obligation is located.

689.030. (a) Whenever the district attorney, pursuant to Section 11350.7 of the Welfare and Institutions Code, levies upon property pursuant to a warrant for the collection of a support obligation:

(1) If the debtor is a natural person, the debtor is entitled to the same exemptions to which a judgment debtor is entitled. Except as provided in subdivisions (b) and (c), the claim of exemption shall be made, heard, and determined as provided in Chapter 4 (commencing with Section 703.010) of Division 2 in the same manner as if the property were levied upon under a writ of execution.

(2) A third person may claim ownership or the right to possession of the property or a security interest in or lien on the property. Except as provided in subdivisions (b) and (c) or as otherwise

provided by statute, the third-party claim shall be made, heard, and determined as provided in Division 4 (commencing with Section 720.010) in the same manner as if the property were levied upon under a writ of execution.

(b) In the case of a warrant issued pursuant to Section 11350.7 of the Welfare and Institutions Code, the claim of exemption or the third-party claim shall be filed with the district attorney who issued the warrant.

(c) A claim of exemption or a third-party claim pursuant to this section shall be heard and determined in the court specified in Section 689.010 in the county where the district attorney enforcing the support obligation is located.

689.040. (a) Notwithstanding any other provision of law, in the case of a writ of execution issued by a court of competent jurisdiction pursuant to Chapter 3 (commencing with Section 699.010) and Chapter 5 (commencing with Section 706.010) of Division 2, the district attorney, when enforcing a support obligation pursuant to Section 11475.1 of the Welfare and Institutions Code, may perform the duties of the levying officer, except that the district attorney need not give himself or herself the notices that the levying officer is required to serve on a judgment creditor or creditor or the notices that a judgment creditor or creditor is required to give to the levying officer.

(b) Notwithstanding subdivision (a) of Section 700.140, if the writ of execution is for a deposit or credits or personal property in the possession or under the control of a bank or savings and loan association, the district attorney may deliver or mail the writ of execution to a centralized location designated by the bank or savings and loan association. If the writ of execution is received at the designated central location, it will apply to all deposits and credits and personal property held by the bank or savings and loan association regardless of the location of that property.

689.050. For the purpose of this chapter:

(a) "Judgment creditor" or "creditor" means the district attorney seeking to collect a child or spousal support obligation pursuant to a support order.

(b) "Judgment debtor" or "debtor" means the debtor from whom the support obligation is sought to be collected.

SEC. 5. Article 3 (commencing with Section 3680) is added to Chapter 6 of Part 1 of Division 9 of the Family Code, to read:

Article 3. Simplified Procedure for Modification of Support Order

3680. (a) The Legislature finds and declares the following:

(1) There is currently no simple method available to parents to quickly modify their support orders when circumstances warrant a change in the amount of support.

(2) The lack of a simple method for parents to use to modify support orders has led to orders in which the amount of support ordered is inappropriate based on the parents' financial circumstances.

(3) Parents should not have to incur significant costs or experience significant delays in obtaining an appropriate support order.

(b) Therefore, it is the intent of the Legislature that the Judicial Council adopt rules of court and forms for a simplified method to modify support orders. This simplified method should be designed to be used by parents who are not represented by counsel.

SEC. 6. Article 4 (commencing with Section 4250) is added to Chapter 2 of Part 2 of Division 9 of the Family Code, to read:

Article 4. Child Support Commissioners

4250. (a) The Legislature finds and declares the following:

(1) Child and spousal support are serious legal obligations.

(2) The current system for obtaining, modifying, and enforcing child and spousal support orders is inadequate to meet the future needs of California's children due to burgeoning caseloads within district attorneys' offices and the growing number of parents who are representing themselves in family law actions.

(3) The success of California's child support enforcement program depends upon its ability to establish and enforce child support orders quickly and efficiently.

(4) There is a compelling state interest in creating an expedited process in the courts that is cost-effective and accessible to families, for establishing and enforcing child support orders in cases being enforced by the district attorney.

(5) There is a compelling state interest in having a simple, speedy, conflict-reducing system, that is both cost-effective and accessible to families, for resolving all issues concerning children, including support, health insurance, custody, and visitation in family law cases that do not involve enforcement by the district attorney.

(b) Therefore, it is the intent of the Legislature to: (1) provide for commissioners to hear child support cases being enforced by the district attorney; (2) adopt uniform and simplified procedures for all child support cases; and (3) create an Office of the Family Law Facilitator in the courts to provide education, information, and assistance to parents with child support issues.

4251. (a) Commencing July 1, 1997, each superior court shall provide sufficient commissioners to hear Title IV-D child support cases filed by the district attorney. The number of child support commissioners required in each county shall be determined by the Judicial Council as prescribed by paragraph (3) of subdivision (b) of Section 4252. All actions or proceedings filed by the district attorney, or by any other party in a support action or proceeding in which enforcement services are being provided by the district attorney

pursuant to Section 11475.1 of the Welfare and Institutions Code, for an order to establish, modify, or enforce child or spousal support, including actions to establish paternity, shall be referred for hearing to a child support commissioner unless a child support commissioner is not available due to exceptional circumstances, as prescribed by the Judicial Council pursuant to paragraph (7) of subdivision (b) of Section 4252.

(b) The commissioner shall act as a temporary judge unless an objection is made by the district attorney or any other party. The Judicial Council shall develop a notice which shall be included on all forms and pleadings used to initiate a child support action or proceeding that advises the parties of their right to review by a superior court judge and how to exercise that right. The parties shall also be advised by the court prior to the commencement of the hearing that the matter is being heard by a commissioner who shall act as a temporary judge unless any party objects to the commissioner acting as a temporary judge. While acting as a temporary judge, the commissioner shall receive no compensation other than compensation as a commissioner.

(c) If any party objects to the commissioner acting as a temporary judge, the commissioner may hear the matter and make findings of fact and a recommended order. Within 10 court days, a judge shall ratify the recommended order unless either party objects to the recommended order, or where a recommended order is in error. In both cases, the judge shall issue a temporary order and schedule a hearing de novo within 10 court days. Any party may waive his or her right to the review hearing at any time.

(d) The commissioner shall, where appropriate, do any of the following:

(1) Review and determine ex parte applications for orders and writs.

(2) Take testimony.

(3) Establish a record, evaluate evidence, and make recommendations or decisions.

(4) Enter judgments or orders based upon voluntary acknowledgments of support liability and parentage and stipulated agreements respecting the amount of child support to be paid.

(5) Enter default orders and judgments pursuant to Section 4253.

(6) In actions in which paternity is at issue, order the mother, child, and alleged father to submit to genetic tests.

(e) The commissioner shall, upon application of any party, join issues concerning custody, visitation, and protective orders in the action filed by the district attorney, subject to Section 11350.1 of the Welfare and Institutions Code. After joinder, the commissioner shall:

(1) Refer the parents for mediation of disputed custody or visitation issues pursuant to Section 3170 of the Family Code.

(2) Accept stipulated agreements concerning custody, visitation, and protective orders and enter orders pursuant to the agreements.

(3) Refer contested issues of custody, visitation, and protective orders to a judge or to another commissioner for hearing. A child support commissioner may hear contested custody, visitation, and restraining order issues only if the court has adopted procedures to segregate the costs of hearing Title IV-D child support issues from the costs of hearing other issues pursuant to applicable federal requirements.

(f) The district attorney shall be served notice by the moving party of any proceeding under this section in which support is at issue. Any order for support that is entered without the district attorney having received proper notice shall be voidable upon the motion of the district attorney.

4252. (a) One or more child support commissioners shall be appointed by the superior court to perform the duties specified in Section 4251. The child support commissioners first priority always shall be to hear Title IV-D child support cases. The child support commissioners shall specialize in hearing child support cases, and their primary responsibility shall be to hear Title IV-D child support cases. Child support commissioner positions shall not be subject to the limitation on other commissioner positions imposed upon the counties by Article 13 (commencing with Section 70140) of Chapter 5 of Title 8 of the Government Code. The number of child support commissioner positions allotted to each superior court shall be determined by the Judicial Council in accordance with caseload standards developed pursuant to paragraph (3) of subdivision (b), subject to appropriations in the annual Budget Act.

(b) The Judicial Council shall do all of the following:

(1) Establish minimum qualifications for child support commissioners.

(2) Establish minimum educational and training requirements for child support commissioners and other court personnel that are assigned to Title IV-D child support cases. Training programs shall include both federal and state laws concerning child support, and related issues.

(3) Establish caseload, case processing, and staffing standards for child support commissioners on or before April 1, 1997, which shall set forth the maximum number of cases that each child support commissioner can process. These standards shall be reviewed and, if appropriate, revised by the Judicial Council every two years.

(4) Adopt uniform rules of court and forms for use in Title IV-D child support cases.

(5) Offer technical assistance to counties regarding issues relating to implementation and operation of the child support commissioner system, including assistance related to funding, staffing, and the sharing of resources between counties.

(6) Establish procedures for the distribution of funding to the courts for child support commissioners, family law facilitators

pursuant to Division 14 (commencing with Section 10000) and related allowable costs.

(7) Adopt rules that define the exceptional circumstances in which judges may hear Title IV-D child support matters as provided in subdivision (a) of Section 4251.

(8) Undertake other actions as appropriate to ensure the successful implementation and operation of child support commissioners in the counties.

4253. Notwithstanding any other provision of law, when hearing child support matters, a commissioner or referee may enter default orders if the defendant does not respond to notice or other process within the time prescribed to respond to that notice.

SEC. 7. Section 4506.3 of the Family Code is amended to read:

4506.3. The Judicial Council, in consultation with the California Family Support Council, the State Department of Social Services, and title insurance industry representatives, shall develop a single form, which conforms with the requirements of Section 27361.6 of the Government Code, for the substitution of payee, for notice directing payment of support to the district attorney pursuant to Sections 4200 and 4201, and for notice that support has been assigned pursuant to Section 11477 of the Welfare and Institutions Code.

SEC. 8. Section 5246 is added to the Family Code, to read:

5246. (a) This section applies only to Title IV-D cases where support enforcement services are being provided by the district attorney pursuant to Section 11475.1 of the Welfare and Institutions Code.

(b) After the court has ordered an earnings assignment for support pursuant to Section 5230 or 5253, the district attorney may serve on the employer a notice of assignment in lieu of the earnings assignment order in the manner specified in Section 5232.

(c) The notice of assignment shall contain, at a minimum, the following information:

(1) The amount of current support ordered by the court.

(2) Any additional amount to be withheld and applied to arrearages.

(3) The date of the most recent support order.

(4) The name and address of the district attorney to whom the support is to be paid.

(5) The amount of arrearages and the date through which the arrearages have been calculated, and a statement as to whether or not the arrearages include interest.

(6) Instructions to the employer on how to comply with the earnings assignment order.

(7) A written statement of the obligor's rights under the law to seek to quash or modify the earnings assignment order, together with a blank form which the obligor can file with the court to request a hearing to modify or quash the assignment with instructions on how to file the form and obtain a hearing date.

(d) If the underlying court order for support does not provide for an arrearage payment, or if an additional arrearage accrues after the date of the court order for support, the district attorney may send a notice of assignment directly to the employer which specifies the updated arrearage amount and directs the employer to withhold an additional amount not to exceed 3 percent of the arrearage or fifty dollars ($50), whichever is greater, to be applied towards liquidation of the arrearages.

(e) Within 10 days of service of the notice of assignment, the employer shall deliver both of the following to the obligor:

(1) A copy of the notice of assignment.

(2) The form to request a hearing described in paragraph (7) of subdivision (c).

(f) If the obligor requests a hearing, a hearing date shall be scheduled within 20 days of the filing of the request with the court. The clerk of the court shall provide notice of the hearing to the district attorney and the obligor no later than 10 days prior to the hearing.

(1) If at the hearing the obligor establishes that he or she is not the obligor or good cause or an alternative arrangement as provided in Section 5260, the court may order that service of the earnings assignment order be quashed. If the court quashes service of the earnings assignment order, the district attorney shall notify the employer within 10 days.

(2) If the obligor contends at the hearing that the payment of arrearages at the rate specified in this section is excessive or that the total arrearages owing is incorrect, and if it is determined that payment of the arrearages at the rate specified in this section creates an undue hardship upon the obligor or that the withholding would exceed the maximum amount permitted by Section 1673(b) of Title 15 of the United States Code Annotated, the rate at which the arrearages must be paid shall be reduced to a rate that is fair and reasonable considering the circumstances of the parties and the best interest of the child. If it is determined at a hearing that the total amount of arrearages calculated is erroneous, the court shall modify the amount calculated to the correct amount. If the court modifies the total amount of arrearages owed or reduces the monthly payment due on the arrearages, the district attorney shall serve the employer with an amended notice of assignment within 10 days.

(g) If an obligor's current support obligation has terminated by operation of law, the district attorney may serve a notice of assignment on the employer which directs the employer to continue withholding from the obligor's earnings an amount not to exceed the current support order that was in effect or 3 percent of the total support arrearages including interest, whichever is greater, until such time that the employer is notified by the district attorney that the arrearages have been paid in full. The employer shall provide the obligor with the same documents as provided in subdivision (e). The

obligor shall be entitled to the same rights to a hearing as specified in subdivision (f).

(h) The district attorney shall retain a copy of the notice of assignment and shall file a copy with the court whenever a hearing concerning the notice of assignment is requested.

(i) Nothing in this section prohibits the district attorney from seeking a payment on arrearages which is greater than the amount specified in this section. The district attorney may seek a higher payment on arrearages by filing an ex parte motion with the court.

SEC. 9. Division 14 (commencing with Section 10000) is added to the Family Code, to read:

DIVISION 14. FAMILY LAW FACILITATOR ACT

10000. This division shall be known and may be cited as the Family Law Facilitator Act.

10001. (a) The Legislature finds and declares the following:

(1) Child and spousal support are serious legal obligations. The entry of a child support order is frequently delayed while parents engage in protracted litigation concerning custody and visitation. The current system for obtaining child and spousal support orders is suffering because the family courts are unduly burdened with heavy case loads and do not have sufficient personnel to meet increased demands on the courts.

(2) Reports to the Legislature regarding the family law pilot projects in the Superior Courts of the Counties of Santa Clara and San Mateo indicate that the pilot projects have provided a cost-effective and efficient method for the courts to process family law cases that involve unrepresented litigants with issues concerning child support, spousal support, and health insurance.

(3) The reports to the Legislature further indicate that the pilot projects in both counties have been successful in making the process of obtaining court orders concerning child support, spousal support, and health insurance more accessible to unrepresented parties. Surveys conducted by both counties indicate a high degree of satisfaction with the services provided by the pilot projects.

(4) There is a compelling state interest in having a speedy, conflict-reducing system for resolving issues of child support, spousal support, and health insurance that is cost-effective and accessible to families that cannot afford legal representation.

(b) Therefore, it is the intent of the Legislature to make the services provided in the family law pilot projects in the Counties of Santa Clara and San Mateo available to unrepresented parties in the superior courts of all California counties.

10002. Each superior court shall maintain an office of the family law facilitator. The office of the family law facilitator shall be staffed by an attorney licensed to practice law in this state who has mediation

or litigation experience, or both, in the field of family law. The family law facilitator shall be appointed by the superior court.

10003. This division shall apply to all actions or proceedings for temporary or permanent child support, spousal support, or health insurance in a proceeding for dissolution of marriage, nullity of marriage, legal separation, or exclusive child custody, or pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12) or the Domestic Violence Prevention Act (Division 10 (commencing with Section 6200)).

10004. Services provided by the family law facilitator shall include, but are not limited to, the following: providing educational materials to parents concerning the process of establishing parentage and establishing, modifying, and enforcing child and spousal support in the courts; distributing necessary court forms and voluntary declarations of paternity; providing assistance in completing forms; preparing support schedules based upon statutory guidelines; and providing referrals to the district attorney, family court services, and other community agencies and resources that provide services for parents and children.

10005. (a) By local rule, the superior court may designate additional duties of the family law facilitator, which may include, but are not limited to, the following:

(1) Meeting with litigants to mediate issues of child support, spousal support, and maintenance of health insurance, subject to Section 10012. Actions in which one or both of the parties are unrepresented by counsel shall have priority.

(2) Drafting stipulations to include all issues agreed to by the parties, which may include issues other than those specified in Section 10003.

(3) If the parties are unable to resolve issues with the assistance of the family law facilitator, prior to or at the hearing, and at the request of the court, the family law facilitator shall review the paperwork, examine documents, prepare support schedules, and advise the judge whether or not the matter is ready to proceed.

(4) Assisting the clerk in maintaining records.

(5) Preparing formal orders consistent with the court's announced order in cases where both parties are unrepresented.

(6) Serving as a special master in proceedings and making findings to the court unless he or she has served as a mediator in that case.

(b) If staff and other resources are available and the duties listed in subdivision (a) have been accomplished, the duties of the family law facilitator may also include the following:

(1) Assisting the court with research and any other responsibilities which will enable the court to be responsive to the litigants' needs.

(2) Developing programs for bar and community outreach through day and evening programs, videotapes, and other innovative means that will assist unrepresented and financially disadvantaged litigants in gaining meaningful access to family court. These

programs shall specifically include information concerning underutilized legislation, such as expedited child support orders (Chapter 5 (commencing with Section 3620) of Part 1 of Division 9), and preexisting, court-sponsored programs, such as supervised visitation and appointment of attorneys for children.

10006. The court shall adopt a protocol wherein all litigants, both unrepresented by counsel and represented by counsel, have ultimate access to a hearing before the court.

10007. The court shall provide the family law facilitator at no cost to the parties.

10008. (a) Except as provided in subdivision (b), nothing in this chapter shall be construed to apply to a child for whom services are provided or required to be provided by a district attorney pursuant to Section 11475.1 of the Welfare and Institutions Code.

(b) In cases in which the services of the district attorney are provided pursuant to Section 11475.1 of the Welfare and Institutions Code, either parent may utilize the services of the family law facilitator that are specified in Section 10004. In order for a custodial parent who is receiving the services of the district attorney pursuant to Section 11475.1 of the Welfare and Institutions Code to utilize the services specified in Section 10005 relating to support, the custodial parent must obtain written authorization from the district attorney. It is not the intent of the Legislature in enacting this section to limit the duties of district attorneys with respect to seeking child support payments or to in any way limit or supersede other provisions of this code respecting temporary child support.

10010. The Judicial Council shall adopt minimum standards for the office of the family law facilitator and any forms or rules of court that are necessary to implement this division.

10011. The Director of the State Department of Social Services shall seek approval from the United States Department of Health and Human Services, Office of Child Support Enforcement, to utilize funding under Title IV-D of the Social Security Act for the services provided pursuant to this division.

10012. (a) In a proceeding in which mediation is required pursuant to paragraph (1) of subdivision (a) of Section 10005, where there has been a history of domestic violence between the parties or where a protective order as defined in Section 6218 is in effect, at the request of the party alleging domestic violence in a written declaration under penalty of perjury or protected by the order, the family law facilitator shall meet with the parties separately and at separate times.

(b) Any intake form that the office of the family law facilitator requires the parties to complete before the commencement of mediation shall state that, if a party alleging domestic violence in a written declaration under penalty of perjury or a party protected by a protective order so requests, the mediator will meet with the parties separately and at separate times.

SEC. 10. Section 70141 of the Government Code is amended to read:

70141. (a) To assist the court in disposing of its business connected with the administration of justice, the superior court of any city and county may appoint not exceeding 10 commissioners, and the superior court of every county, except a county with a population of 4,000,000 or over, may appoint one commissioner. Each person so appointed shall be designated as "court commissioner" of the county.

(b) In addition to the court commissioners authorized by subdivision (a) or any other provision of law, either the superior court or the municipal court, but not both, of any county or city and county may appoint one additional commissioner, at the same rate of compensation as the other commissioner or commissioners for that court, upon adoption of a resolution by the board of supervisors pursuant to subdivision (c).

(c) The county or city and county shall be bound by, and the resolution adopted by the board of supervisors shall specifically recognize, the following conditions:

(1) The county or city and county has sufficient funds for the support of the position and any staff who will provide direct support to the position, agrees to assume any and all additional costs that may result therefrom, and agrees that no state funds shall be made available, or shall be used, in support of this position or any staff who provide direct support to this position.

(2) The additional commissioner shall not be deemed a judicial position for purposes of calculating trial court funding pursuant to Section 77202.

(3) The salary for this position and for any staff who provide direct support to this position shall not be considered as part of court operations for purposes of Sections 77003 and 77204.

(4) The county or city and county agrees not to seek funding from the state for payment of the salary, benefits, or other compensation for such a commissioner or for any staff who provide direct support to such a commissioner.

(d) The court may provide that the additional commissioner may perform all duties authorized for a commissioner of that court in the county. In a county or city and county that has undertaken a consolidation of the trial courts, the additional commissioner shall be appointed by the superior, municipal, or justice courts pursuant to the consolidation agreement.

(e) In addition to the court commissioners authorized by subdivisions (a) and (b), the superior court of any county or city and county shall appoint additional commissioners pursuant to Sections 4251 and 4252 of the Family Code. These commissioners shall receive a salary equal to 85 percent of a superior court judge's salary. These commissioners shall not be deemed a court operation for purposes of Section 77003.

SEC. 11. Section 11350.1 of the Welfare and Institutions Code is amended to read:

11350.1. (a) Notwithstanding any other statute, in any action brought by the district attorney for the support of a minor child or children, the action may be prosecuted in the name of the county on behalf of the child, children, or a parent of the child or children. The parent who has requested or is receiving support enforcement services of the district attorney shall not be a necessary party to the action but may be subpoenaed as a witness. Except as provided in subdivision (e), in an action under this section there shall be no joinder of actions, or coordination of actions, or cross-complaints, and the issues shall be limited strictly to the question of parentage, if applicable, and child support, including an order for medical support. A final determination of parentage may be made in any action under this section as an incident to obtaining an order for support. An action for support or parentage pursuant to this section shall not be delayed or stayed because of the pendency of any other action between the parties.

(b) Judgment in an action brought pursuant to this section, and in an action brought pursuant to Section 11350, if at issue, may be rendered pursuant to a noticed motion, which shall inform the defendant that in order to exercise his or her right to trial, he or she must appear at the hearing on the motion.

If the defendant appears at the hearing on the motion, the court shall inquire of him or her if he or she desires to subpoena evidence and witnesses, if parentage is at issue and genetic tests have not already been conducted whether he or she desires blood tests, and if he or she desires a trial. If his or her answer is in the affirmative, a continuance shall be granted to allow him or her to exercise those rights. A continuance shall not postpone the hearing to more than 90 days from the date of service of the motion. In the event that a continuance is granted, the court may make an order for temporary support without prejudice to the right of the court to make an order for temporary support as otherwise allowed by law.

(c) In any action to enforce a spousal support order the action may be pled in the name of the county in the same manner as an action to establish a child support obligation. The same restrictions on joinder of actions, coordination of actions, and cross-complaints, and delay because of the pendency of any other action as relates to actions to establish a child support obligation shall also apply to actions to enforce a spousal support order.

(d) Nothing contained in this section shall be construed to prevent the parties from bringing an independent action under the Family Code or otherwise, and litigating the issue of support. In that event, the court in those proceedings shall make an independent determination on the issue of support which shall supersede the support order made pursuant to this section.

(e) (1) After a support order, including a temporary support order and an order for medical support only, has been entered in an action brought pursuant to this section, the parent who has requested or is receiving support enforcement services of the district attorney shall become a party to the action brought pursuant to this section, only in the manner and to the extent provided by this section, and only for the purposes allowed by this section.

(2) Notice of the parent's status as a party shall be given to the parent by the district attorney in conjunction with the notice required by subdivision (e) of Section 11478.2. The complaint shall contain this notice. Service of the complaint on the parent in compliance with Section 1013 of the Code of Civil Procedure, or as otherwise provided by law, shall constitute compliance with this section.

(3) The parent who has requested or is receiving support enforcement services of the district attorney is a party to an action brought under this section for issues relating to the support, custody, and visitation of a child, and for restraining orders, and for no other purpose. The district attorney shall not be required to serve or receive service of papers, pleadings, or documents, or participate in, or attend any hearing or proceeding relating to issues of custody or visitation, except as otherwise required by law. Orders concerning custody and visitation may be made in an action pursuant to this subdivision only if orders concerning custody and visitation have not been previously made by a court of competent jurisdiction in this state or another state and the court has jurisdiction and is the proper venue for custody and visitation determinations. All issues regarding custody and visitation shall be heard and resolved in the manner provided by the Family Code. Except as otherwise provided by law, the district attorney shall control support and parentage litigation brought pursuant to this section, and the manner, method, and procedures used in establishing parentage and in establishing and enforcing support obligations unless and until the parent who requested or is receiving support enforcement services has requested in writing that the district attorney close his or her case and the case has been closed in accordance with federal regulation.

(f) (1) A parent who has requested or is receiving support enforcement services of the district attorney may take independent action to modify a support order made pursuant to this section while support enforcement services are being provided by the district attorney. The parent shall serve the district attorney with notice of any action filed to modify the support order and provide the district attorney with a copy of the modified order within 15 calendar days after the date the order is issued.

(2) A parent who has requested or is receiving support enforcement services of the district attorney may take independent action to enforce a support order made pursuant to this section while support enforcement services are being provided by the district

attorney with the written consent of the district attorney. At least 30 days prior to filing an independent enforcement action, the parent shall provide the district attorney with written notice of the parent's intent to file an enforcement action which includes a description of the type of enforcement action the parent intends to file. Within 30 days of receiving the notice, the district attorney shall either provide written consent for the parent to proceed with the independent enforcement action or notify the parent that he or she objects to the parent filing the proposed independent enforcement action. The district attorney may object only if the district attorney is currently using an administrative or judicial method to enforce the support obligation or if the proposed independent enforcement action would interfere with an investigation being conducted by the district attorney. If the district attorney does not respond to the parent's written notice within 30 days, the district attorney shall be deemed to have given consent.

(3) The court shall order that all payments of support shall be made to the district attorney in any action filed under this section by the parent who has requested, or is receiving, support enforcement services of the district attorney unless support enforcement services have been terminated by the district attorney by case closure as provided by federal law. Any order obtained by a parent prior to support enforcement services being terminated in which the district attorney did not receive proper notice pursuant to this section shall be voidable upon the motion of the district attorney.

(g) The Judicial Council shall prepare the notice required by subdivision (e).

SEC. 12. Section 11350.7 is added to the Welfare and Institutions Code, to read:

11350.7. (a) Notwithstanding any other provision of law, if any support obligor is delinquent in the payment of support for at least 30 days and the district attorney is enforcing the support obligation pursuant to Section 11475.1, the district attorney may issue a warrant for the collection of that support and may levy on and sell vehicles and vessels as defined in the Vehicle Code, or aircraft.

(b) A warrant may be issued by a district attorney for a support obligation which accrued under a court order or judgment if the obligor had notice of the accrued support arrearage as provided in this section, and did not make a timely request for review.

(c) The notice requirement shall be satisfied by the district attorney sending a statement of support arrearages to the obligor at the obligor's last known address by first-class mail, postage prepaid. The notice shall advise the obligor of the amount of the support arrearage. The notice shall advise the obligor that the obligor may have the arrearage determination reviewed by administrative procedures and state how such a review may be obtained. The notice shall also advise the obligor of his or her right to seek a judicial determination of arrearages pursuant to Section 11350.8 and shall

include a form to be filed with the court to request a judicial determination of arrearages. If the obligor requests an administrative review of the arrearage determination within 20 days from the date the notice was mailed to the obligor, the district attorney shall review the assessment or determination and shall not issue the warrant for a disputed amount of support until the administrative review procedure is completed.

(d) If the obligor requests a judicial determination of the arrearages within 20 days from the date the notice was mailed to the obligor, the district attorney shall not issue the warrant for a disputed amount of support until the judicial determination is complete.

(e) The warrant shall be directed to any sheriff, constable, marshal, or the Department of the California Highway Patrol and shall have the same force and effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the manner and with the same force and effect as a levy and sale pursuant to a writ of execution. The district attorney may pay or advance to the levying officer the same fees, commissions, and expenses for his or her services under this section as are provided by law for similar services pursuant to a writ of execution, except for those fees and expenses for which the district attorney is exempt by law from paying. The district attorney, and not the court, shall approve the fees for publication in a newspaper.

(f) The fees, commissions, expenses, and the reasonable costs associated with the sale of property levied upon by warrant pursuant to this section, including, but not limited to, appraisers' fees, auctioneers' fees, and advertising fees are an obligation of the support obligor and may be collected from the obligor by virtue of the warrant or in any other manner as though these items were support payments delinquent for at least 30 days.

SEC. 13. Section 11354 is added to the Welfare and Institutions Code, to read:

11354. In any action or proceeding brought by the district attorney to establish parentage pursuant to Section 11475.1, the court shall enter a judgment establishing parentage upon the filing of a written stipulation between the parties provided that the stipulation is accompanied by a written advisement and waiver of rights which is signed by the defendant. The written advisement and waiver of rights shall be developed by the Judicial Council.

SEC. 14. Section 11355 is added to the Welfare and Institutions Code, to read:

11355. (a) Notwithstanding any other provision of law, in any action filed by the district attorney pursuant to Section 11350, 11350.1, or 11475.1, a judgment shall be entered if the defendant fails to file an answer or otherwise appear in the action within 30 days of service of process upon the defendant.

(b) If the defendant fails to file an answer with the court within 30 days of having been served as specified in subdivision (c) of

Section 11475.1, the proposed judgment shall become effective unless the district attorney has filed a declaration and amended proposed judgment pursuant to subdivision (c).

(c) If the district attorney receives additional financial information within 30 days of service of the complaint and proposed judgment on the defendant and the additional information would result in a support order that is different from the amount in the proposed judgment, the district attorney shall file a declaration setting forth the additional information and an amended proposed judgment. The declaration and amended proposed judgment shall be served on the defendant in compliance with Section 1013 of the Code of Civil Procedure or otherwise as provided by law. The defendant's time to answer or otherwise appear shall be extended to 30 days from the date of service of the declaration and amended proposed judgment.

(d) Upon entry of the judgment, the clerk of the court shall mail by first-class mail, postage prepaid, a notice to the defendant that his or her default has been taken and that the proposed judgment has been entered.

SEC. 15. Section 11356 is added to the Welfare and Institutions Code, to read:

11356. (a) In any action filed by the district attorney pursuant to Section 11350, 11350.1, or 11475.1, the court may, on any terms that may be just, relieve the defendant from that part of the judgment or order concerning the amount of child support to be paid. This relief may be granted after the six-month time limit of Section 473 of the Code of Civil Procedure has elapsed, based on the grounds, and within the time limits, specified in this section.

(b) This section shall apply only to judgments or orders for support that were based upon presumed income as specified in subdivision (c) of Section 11475.1 and that were entered after the entry of the default of the defendant under Section 11355. This section shall apply only to the amount of support ordered and not that portion of the judgment or order concerning the determination of parentage.

(c) The court may set aside the child support order contained in a judgment described in subdivision (b) if the defendant's income was substantially different at the time the judgment was entered from the income defendant was presumed to have. A "substantial difference" means that amount of income that would result in an order for support that deviates from the order entered by default by 20 percent or more. If the difference between the defendant's actual income and the presumed income would result in an order for support that deviates from the order entered by default by less than 20 percent, the court may set aside the child support order only if the court states in writing or on the record that the defendant is experiencing an extreme financial hardship due to the circumstances enumerated in Section 4701 of the Family Code and that a set aside

of the default judgment is necessary to accommodate those circumstances.

(d) Application for relief under this section shall be accompanied by a copy of the answer or other pleading proposed to be filed together with an income and expense declaration and tax returns for any relevant years. The Judicial Council may combine the application for relief under this section and the proposed answer into a single form.

(e) The burden of proving that the actual income of the defendant deviated substantially from the presumed income shall be on the defendant.

(f) A motion for relief under this section shall be filed within 90 days of the first collection of money by the district attorney or the obligee. The 90-day time period shall run from the date that the district attorney receives the first collection or from the date that the defendant is served with notice of the collection, whichever date occurs first. If service of the notice is by mail, the date of service shall be as specified in Section 1013 of the Code of Civil Procedure.

(g) In all proceedings under this section, before granting relief, the court shall consider the amount of time that has passed since the entry of the order, the circumstances surrounding the defendant's default, the relative hardship on the child or children to whom the duty of support is owed, the caretaker parent, and the defendant, and other equitable factors that the court deems appropriate.

(h) If the court grants the relief requested, the court shall issue a new child support order using the appropriate child support guidelines currently in effect. The new order shall have the same commencement date as the order set aside.

SEC. 16. Section 11475.1 of the Welfare and Institutions Code is amended to read:

11475.1. (a) Each county shall maintain a single organizational unit located in the office of the district attorney which shall have the responsibility for promptly and effectively establishing, modifying, and enforcing child support obligations, including medical support, enforcing spousal support orders established by a court of competent jurisdiction, and determining paternity in the case of a child born out of wedlock. The district attorney shall take appropriate action, both civil and criminal, to establish, modify, and enforce child support and, when appropriate, enforce spousal support orders when the child is receiving public assistance, including Medi-Cal, and, when appropriate, may take the same actions on behalf of a child who is not receiving public assistance, including Medi-Cal.

(b) Actions brought by the district attorney to establish paternity or child support or to enforce child support obligations shall be completed within the time limits set forth by federal law. The district attorney's responsibility applies to spousal support only where the spousal support obligation has been reduced to an order of a court of competent jurisdiction. In any action brought for modification or

revocation of an order that is being enforced under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.), the effective date of the modification or revocation shall be as prescribed by federal law (42 U.S.C. Sec. 666(a)(9)), or any subsequent date.

(c) (1) The Judicial Council, in consultation with the department and representatives of the California Family Support Council, the Senate Committee on Judiciary, the Assembly Committee on Judiciary, and a legal services organization providing representation on child support matters, shall develop simplified summons, complaint, and answer forms for any action for support brought pursuant to this section or Section 11350.1. The Judicial Council may combine the summons and complaint in a single form.

(2) The simplified complaint form shall provide the defendant with notice of the amount of child support that is sought pursuant to the guidelines set forth in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of the Family Code based upon the income or income history of the defendant as known to the district attorney. If the defendant's income or income history is unknown to the district attorney, the complaint shall inform the defendant that income shall be presumed in an amount that results in a court order equal to the minimum basic standard of adequate care provided in Section 11452 unless information concerning the defendant's income is provided to the court. The complaint form shall be accompanied by a proposed judgment. The complaint form shall include a notice to the defendant that the proposed judgment will become effective if he or she fails to file an answer with the court within 30 days of service.

(3) (A) The simplified answer form shall be written in simple English and shall permit a defendant to answer and raise defenses by checking applicable boxes. The answer form shall include instructions for completion of the form and instructions for proper filing of the answer.

(B) The answer form shall be accompanied by a blank income and expense declaration or simplified financial statement and instructions on how to complete the financial forms. The answer form shall direct the defendant to file the completed income and expense declaration or simplified financial statement with the answer, but shall state that the answer will be accepted by a court without the income and expense declaration or simplified financial statement.

(C) The clerk of the court shall accept and file answers, income and expense declarations, and simplified financial statements that are completed by hand provided they are legible.

(4) (A) The simplified complaint form prepared pursuant to this subdivision shall be used by the district attorney or the Attorney General in all cases brought under this section or Section 11350.1.

(B) The simplified answer form prepared pursuant to this subdivision shall be served on all defendants with the simplified complaint. Failure to serve the simplified answer form on all defendants shall not invalidate any judgment obtained. However,

failure to serve the answer form may be used as evidence in any proceeding under Section 11356 of this code or Section 473 of the Code of Civil Procedure.

(C) The Judicial Council shall add language to the governmental summons, for use by the district attorney with the governmental complaint to establish parental relationship and child support, informing defendants that a blank answer form should have been received with the summons and additional copies may be obtained from either the district attorney's office or the superior court clerk.

(d) In any action brought or enforcement proceedings instituted by the district attorney pursuant to this section for payment of child or spousal support, an action to recover an arrearage in support payments may be maintained by the district attorney at any time within the period otherwise specified for the enforcement of a support judgment, notwithstanding the fact that the child has attained the age of majority.

(e) The county shall undertake an outreach program to inform the public that the services described in subdivisions (a) to (c), inclusive, are available to persons not receiving public assistance. There shall be prominently displayed in every public area of every office of the units established by this section a notice, in clear and simple language prescribed by the Director of Social Services, that the services provided in subdivisions (a) to (c), inclusive, are provided to all individuals whether or not they are recipients of public social services.

(f) In any action to establish a child support order brought by the district attorney in the performance of duties under this section, the district attorney may make a motion for an order effective during the pendency of that action, for the support, maintenance, and education of the child or children that are the subject of the action. This order shall be referred to as an order for temporary support. This order shall have the same force and effect as a like or similar order under the Family Code.

The district attorney shall file a motion for an order for temporary support within the following time limits:

(1) If the defendant is the mother, a presumed father under Section 7611 of the Family Code, or any father where the child is at least six months old when the defendant files his answer, the time limit is 90 days after the defendant files an answer.

(2) In any other case where the defendant has filed an answer prior to the birth of the child or not more than six months after the birth of the child, then the time limit is nine months after the birth of the child.

If more than one child is the subject of the action, the limitation on reimbursement shall apply only as to those children whose parental relationship and age would bar recovery were a separate action brought for support of that child or those children.

If the district attorney fails to file a motion for an order for temporary support within time limits specified in this section, the district attorney shall be barred from obtaining a judgment of reimbursement for any support provided for that child during the period between the date the time limit expired and the motion was filed, or, if no such motion is filed, when a final judgment is entered.

Nothing in this section prohibits the district attorney from entering into cooperative arrangements with other county departments as necessary to carry out the responsibilities imposed by this section pursuant to plans of cooperation with the departments approved by the State Department of Social Services.

Nothing in this section shall otherwise limit the ability of the district attorney from securing and enforcing orders for support of a spouse or former spouse as authorized under any other provision of law.

(g) As used in this article, "enforcing obligations" includes, but is not limited to, (1) the use of all interception and notification systems operated by the State Department of Social Services for the purposes of aiding in the enforcement of support obligations, (2) the obtaining by the district attorney of an initial order for child support, which may include medical support or which is for medical support only, by civil or criminal process, (3) the initiation of a motion or order to show cause to increase an existing child support order, and the response to a motion or order to show cause brought by an obligor parent to decrease an existing child support order, or the initiation of a motion or order to show cause to obtain an order for medical support, and the response to a motion or order to show cause brought by an obligor parent to decrease or terminate an existing medical support order, without regard to whether the child is receiving public assistance, and (4) the response to a notice of motion or order to show cause brought by an obligor parent to decrease an existing spousal support order when the child or children are residing with the obligee parent and the district attorney is also enforcing a related child support obligation owed to the obligee parent by the same obligor.

(h) As used in this section, "out of wedlock" means that the biological parents of the child were not married to each other at the time of the child's conception.

(i) The district attorney is the public agency responsible for administering wage withholding for the purposes of Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.). The district attorney shall seek an earnings assignment order for support in any case as soon as the obligor is in arrears in payment of support pursuant to Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code.

Nothing in this section shall limit the authority of the district attorney granted by other sections of this code or otherwise granted by law.

(j) In the exercise of the authority granted under this article, the district attorney may intervene, pursuant to subdivision (b) of Section 387 of the Code of Civil Procedure, by ex parte application, in any action under the Family Code, or other proceeding wherein child support is an issue or a reduction in spousal support is sought. By notice of motion, order to show cause, or responsive pleading served upon all parties to the action, the district attorney may request such relief as appropriate which the district attorney is authorized to seek.

(k) The district attorney shall comply with any guidelines established by the State Department of Social Services which set time standards for responding to requests for assistance in locating absent parents, establishing paternity, establishing child support awards, and collecting child support payments.

(*l*) As used in this article, medical support activities which the district attorney is authorized to perform are limited to the following:

(1) The obtaining and enforcing of court orders for health insurance coverage.

(2) Any other medical support activity mandated by federal law or regulation.

(m) (1) Notwithstanding any other provision of law, venue for an action or proceeding under this part shall be determined as follows:

(A) Venue shall be in the superior court in the county that is currently expending public assistance.

(B) If public assistance is not currently being expended, venue shall be in the superior court in the county where the child who is entitled to current support resides or is domiciled.

(C) If current support is no longer payable through, or enforceable by, the district attorney, venue shall be in the superior court in the county that last provided public assistance for actions to enforce arrearages assigned pursuant to Section 11477.

(D) If subparagraphs (A), (B), and (C) do not apply, venue shall be in the superior court in the county of residence of the support obligee.

(E) If the support obligee does not reside in California, and subparagraphs (A), (B), (C), and (D) do not apply, venue shall be in the superior court of the county of residence of the obligor.

(2) Notwithstanding paragraph (1), if the child becomes a resident of another county after an action under this part has been filed, venue may remain in the county where the action was filed until the action is completed.

(n) The district attorney of one county may appear on behalf of the district attorney of any other county in an action or proceeding under this part.

SEC. 17. Section 11478.2 of the Welfare and Institutions Code is amended to read:

11478.2. (a) In all actions involving paternity or support, including, but not limited to, proceedings under the Family Code,

and under this division, the district attorney and Attorney General represent the public interest in establishing, modifying, and enforcing support obligations. No attorney-client relationship shall be deemed to have been created between the district attorney or Attorney General and any person by virtue of the action of the district attorney or the Attorney General in carrying out these statutory duties.

(b) The provisions of subdivision (a) are declarative of existing law.

(c) In all requests for services of the district attorney or Attorney General pursuant to Section 11475.1 relating to actions involving paternity or support, not later than the same day an individual makes a request for these services in person, and not later than five working days after either (1) a case is referred for services from the county welfare department, (2) receipt of a request by mail for an application for services, or (3) an individual makes a request for services by telephone, the district attorney or Attorney General shall give notice to the individual requesting services or on whose behalf services have been requested that the district attorney or Attorney General does not represent the individual or the children who are the subject of the case, that no attorney-client relationship exists between the district attorney or Attorney General and those persons, and that no such representation or relationship shall arise if the district attorney or Attorney General provides the services requested. Notice shall be in bold print and in plain English and shall be translated into the language understandable by the recipient when reasonable. The notice shall include the advice that the absence of an attorney-client relationship means that communications from the recipient are not privileged and that the district attorney or Attorney General may provide support enforcement services to the other parent in the future.

(d) The district attorney or Attorney General shall give the notice required pursuant to subdivision (c) to all recipients of services under Section 11475.1 who have not otherwise been provided that notice, not later than the date of the next annual notice required under Section 11476.2. This notice shall include notification to the recipient of services under Section 11475.1 that the recipient may inspect the clerk's file at the county clerk's office, and that, upon request, the district attorney, or, if appropriate, the Attorney General, will furnish a copy of the most recent order entered in the case.

(e) The district attorney, or, if appropriate, the Attorney General, shall serve a copy of the complaint for paternity or support, or both on recipients of support services under Section 11475.1, as specified in paragraph (2) of subdivision (e) of Section 11350.1. A notice shall accompany the complaint which informs the recipient that the district attorney or Attorney General may enter into a stipulated order resolving the complaint, and that if the recipient wishes to

assist the prosecuting attorney, he or she should send all information on the noncustodial parent's earnings and assets to the prosecuting attorney.

(f) (1) The district attorney or Attorney General shall provide written notice to recipients of services under Section 11475.1 of the initial date and time, and purpose of every hearing in a civil action for paternity or support. The notice shall include the following language:

IMPORTANT NOTICE

It may be important that you attend the hearing. The district attorney does not represent you or your children. You may have information about the noncustodial parent, such as information about his or her income or assets, or your need for support that will not be presented to the court unless you attend the hearing. With the permission of the court, you have the right to be heard in court and tell the court what you think the court should do with the child support order.

If you have a court order for support that arose as part of your divorce, this hearing could change your rights or your children's rights to support. You have the right to attend the hearing and, with the permission of the court, to be heard.

If you would like to attend the hearing and be told about any changes to the hearing date or time, notify this office by _____. The district attorney or Attorney General will then have to tell you about any changes to the hearing date or time.

(2) The notice shall state the purpose of the hearing or be attached to the motion or other pleading which caused the hearing to be scheduled.

(3) The notice shall be provided separate from all other material and shall be in at least 14-point type. The failure of the district attorney or Attorney General to comply with this subdivision shall not affect the validity of any order.

(4) The notice shall be provided not later than seven calendar days prior to the hearing, or, if the district attorney or Attorney General receives notice of the hearing less than seven days prior to the hearing, within two days of the receipt by the district attorney or Attorney General of the notice of the hearing.

(5) The district attorney or Attorney General shall, in order to implement this subdivision, make reasonable efforts to ensure that the district attorney or Attorney General has current addresses for recipients of support enforcement services.

(g) The district attorney or Attorney General shall give notice to recipients of services under Section 11475.1 of every order obtained by the district attorney or Attorney General that establishes or modifies the support obligation for the recipient or the children who are the subject of the order, by sending a copy of the order to the recipient. The notice shall be made within 30 calendar days after the order has been filed. The district attorney or Attorney General shall also give notice to these recipients of every order obtained in any other jurisdiction, that establishes or modifies the support obligation for the recipient or the children who are the subject of the order, and which is received by the district attorney or Attorney General, by sending a copy of the order to the recipient within 30 calendar days after the district attorney or Attorney General has received a copy of the order. In any action enforced under Chapter 6 (commencing with Section 4800) of Part 5 of Division 9 of the Family Code, the notice shall be made in compliance with the requirements of that chapter. The failure of the district attorney or Attorney General to comply with this subdivision shall not affect the validity of any order.

(h) The district attorney or Attorney General shall give notice to the noncustodial parent against whom a civil action is filed that the district attorney or Attorney General is not the attorney representing any individual, including, but not limited to, the custodial parent, the child, or the noncustodial parent.

(i) Nothing in this section shall be construed to preclude any person who is receiving services under Section 11475.1 from filing and prosecuting an independent action to establish, modify, and enforce an order for current support on behalf of himself or herself or a child if that person is not receiving public assistance.

(j) A person who is receiving services under Section 11475.1 but who is not currently receiving public assistance on his or her own behalf or on behalf of a child shall be asked to execute, or consent to, any stipulation establishing or modifying a support order in any action in which that person is named as a party, before the stipulation is filed. The district attorney or Attorney General shall not submit to the court for approval a stipulation to establish or modify a support order in such an action without first obtaining the signatures of all parties to the action, their attorneys of record, or persons authorized to act on their behalf.

(k) The district attorney or Attorney General shall not enter into a stipulation which reduces the amount of past due support, including interest and penalties accrued pursuant to an order of current support, on behalf of a person who is receiving support enforcement services under Section 11475.1 and who is owed support arrearages that exceed unreimbursed public assistance paid to the recipient of the support enforcement services, without first obtaining the consent of the person who is receiving services under Section 11475.1 on his or her own behalf or on behalf of the child.

(*l*) The notices required in this section shall be provided in the following manner:

(1) In all cases in which the person receiving services under Section 11475.1 resides in California, notice shall be provided by mailing the item by first-class mail to the last known address of, or personally delivering the item to, that person.

(2) In all actions enforced under Chapter 6 (commencing with Section 4800) of Part 5 of Division 9 of the Family Code, unless otherwise specified, notice shall be provided by mailing the item by first-class mail to the initiating court.

(m) Notwithstanding any other provision of this section, the notices provided for pursuant to subdivisions (c) to (g), inclusive, shall not be required in foster care cases.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for any costs incurred pursuant to this act because this act provides additional revenue that is specifically intended to fund the costs in an amount sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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

CHAPTER 958

An act to add Division 15 (commencing with Section 10100) to the Family Code, relating to family law.

[Approved by Governor September 26, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Division 15 (commencing with Section 10100) is added to the Family Code, to read:

DIVISION 14. FRIEND OF THE COURT ACT

10100. This division shall be known as the Friend of the Court Act.

10101. It is the intent of the Legislature to create in each superior court of this state an office of the friend of the court for the purpose of enforcement of child custody and visitation, similar to the program in effect in the State of Michigan.

It is the intent of the Legislature to provide that this office shall be created in consultation with the State Department of Social Services, the Judicial Council, the State Bar of California, family court services

offices, appropriate legislative staff, and other appropriate advocacy groups, and that its establishment be contingent on federal funding.

10102. Should the United States Congress pass, and the President sign, legislation providing federal funding for state programs designed to enforce child custody or visitation rights, the State Department of Social Services shall submit an application for this funding on behalf of the State of California for the purpose of funding the friend of the court program.

CHAPTER 959

An act to amend Section 45028 of the Education Code, and to amend Section 3543.2 of the Government Code, relating to certificated school employees.

[Approved by Governor September 26, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 45028 of the Education Code is amended to read:

45028. (a) Effective July 1, 1970, each person employed by a school district in a position requiring certification qualifications, except a person employed in a position requiring administrative or supervisory credentials, shall be classified on the salary schedule on the basis of uniform allowance for years of training and years of experience, except if a public school employer and the exclusive representative negotiate and mutually agree to a salary schedule based on criteria other than a uniform allowance for years of training and years of experience pursuant to Chapter 10.7 (commencing with Section 3540) of the Government Code. Employees shall not be placed in different classifications on the schedule, nor paid different salaries, solely on the basis of the respective grade levels in which such employees serve.

In no case shall the governing board of a school district draw orders for the salary of any teacher in violation of this section, nor shall any superintendent draw any requisition for the salary of any teacher in violation thereof.

This section shall not apply to teachers of special day and evening classes in elementary schools, teachers of special classes for elementary pupils, teachers of special day and evening high school classes and substitute teachers.

(b) It is not a violation of the uniformity requirement of this section for a school district, with the agreement of the exclusive representative of certificated employees, if any, to grant any employee hired after a locally specified date differential credit for

prior years of experience or prior units of credit for purposes of initial placement on the district's salary schedule.

This subdivision is declaratory of existing law.

SEC. 2. Section 3543.2 of the Government Code is amended to read:

3543.2. (a) The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean health and welfare benefits as defined by Section 53200, leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for the evaluation of employees, organizational security pursuant to Section 3546, procedures for processing grievances pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8, the layoff of probationary certificated school district employees, pursuant to Section 44959.5 of the Education Code, and alternative compensation or benefits for employees adversely affected by pension limitations pursuant to Section 22515 of the Education Code, to the extent deemed reasonable and without violating the intent and purposes of Section 415 of the Internal Revenue Code. In addition, the exclusive representative of certificated personnel has the right to consult on the definition of educational objectives, the determination of the content of courses and curriculum, and the selection of textbooks to the extent such matters are within the discretion of the public school employer under the law. All matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating, provided that nothing herein may be construed to limit the right of the public school employer to consult with any employees or employee organization on any matter outside the scope of representation.

(b) Notwithstanding Section 44944 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding causes and procedures for disciplinary action, other than dismissal, including a suspension of pay for up to 15 days, affecting certificated employees. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 44944 of the Education Code shall apply.

(c) Notwithstanding Section 44955 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding procedures and criteria for the layoff of certificated employees for lack of funds. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 44955 of the Education Code shall apply.

(d) Notwithstanding Section 45028 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding the payment

of additional compensation based upon criteria other than years of training and years of experience. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 45028 of the Education Code shall apply.

(e) Pursuant to Section 45028 of the Education Code, the public school employer and the exclusive representative shall, upon the request of either party, meet and negotiate a salary schedule based on criteria other than a uniform allowance for years of training and years of experience. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 45028 of the Education Code requiring a salary schedule based upon a uniform allowance for years of training and years of experience shall apply. A salary schedule established pursuant to this subdivision shall not result in the reduction of the salary of any teacher.

CHAPTER 960

An act to amend Section 18731 of, and to add Article 16 (commencing with Section 18871) to Chapter 3 of Part 10.2 of Division 2 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 26, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 18731 of the Revenue and Taxation Code is amended to read:

18731. (a) Any individual may designate on the tax return that a contribution in excess of the tax liability, if any, be made to the Veterans Memorial Account in the General Fund, as established pursuant to Section 1316 of the Military and Veterans Code.

(b) The contribution shall be in full dollar amounts and may be made individually by each signatory on the joint return.

(c) A designation under subdivision (a) shall be made for any taxable year beginning on or after January 1, 1991, and before January 1, 1997, on the initial return for that taxable year, and once made shall be irrevocable.

In the event that payments and credits reported on the return, together with any other credits associated with the taxpayer's account, do not exceed the tax liability, if any, shown thereupon, the return shall be treated as though no designation had been made.

If the amount designated exceeds the amount actually available for designation, the amount designated shall be adjusted to correspond to the amount actually available for designation.

(d) In the event a taxpayer designates a contribution to more than one account, and the amount available is insufficient to satisfy the total amount designated, the contribution shall be allocated among the designees on a pro rata basis.

(e) The Franchise Tax Board shall revise the forms of the return to include a space labeled the Veterans Memorial Account to allow for the designation permitted under subdivision (a). The forms shall also include in the instructions the information that the contribution may be in the amount of one dollar ($1) or more and that the contribution shall be used to build a memorial to California veterans.

(f) A deduction shall be allowed under Article 6 (commencing with Section 17201) of Chapter 3 of Part 10 for any contribution made pursuant to subdivision (a).

SEC. 2. Article 16 (commencing with Section 18871) is added to Chapter 3 of Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

Article 16. General Provisions

18871. In implementing this chapter, both of the following requirements shall apply:

(a) Unless otherwise specifically required by law, each voluntary contribution fund or account established by this chapter shall be included on the forms of the return through the taxable year immediately preceding the year of repeal of the article establishing that voluntary contribution fund or account.

(b) Notwithstanding the repeal of any article of this chapter, the voluntary contribution fund or account specified in that article shall continue in effect until December 31 of the year of the repeal of that article, and any contribution designated pursuant to that article on a timely filed initial return for the taxable year immediately preceding the date of repeal shall be transferred and disbursed, and all costs incurred by the Franchise Tax Board and Controller in connection with the transfer and disbursement of these contribution amounts shall continue to be paid, in accordance with that article as it read immediately prior to its repeal.

CHAPTER 961

An act to amend Sections 69766 and 69768 of, and to add Article 2.5 (commencing with Section 69522) to Chapter 2 of Part 42 of, the Education Code, to amend Section 20057 of the Government Code, and to amend Section 10340 of the Public Contract Code, relating to postsecondary education, and making an appropriation therefor.

[Approved by Governor September 26, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Article 2.5 (commencing with Section 69522) is added to Chapter 2 of Part 42 of the Education Code, to read:

Article 2.5. Auxiliary Organization

69522. (a) The commission may establish an auxiliary organization for the purpose of providing operational and administrative services for the commission's participation in the Federal Family Education Loan Program.

(b) The auxiliary organization shall be established as a nonprofit public benefit corporation subject to the Nonprofit Public Benefit Corporation Law in Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, except that if there is a conflict with this article and the Nonprofit Public Benefit Corporation Law, this article shall prevail.

(c) The commission shall maintain its responsibility for financial aid program administration, policy leadership program evaluation, and information development and coordination. The auxiliary organization shall provide operational and support services essential to the administration of the Federal Family Education Loan Program, if those services are determined by the commission to be consistent with the overall mission of the commission. The implementation and effectuation of the auxiliary organization shall be carried out so as to enhance the administration and delivery of commission programs and services.

(d) The operations of the auxiliary organization shall be conducted in conformity with an operating agreement approved annually by the commission. Prior to approval, the commission shall provide the proposed annual operating agreement to the Department of Finance for its review and comment. The operations of the auxiliary organization shall be limited to services prescribed in that agreement.

(e) The commission shall oversee the development and operations of the auxiliary organization in a manner that ensures broad public input and consultation with representatives of the financial aid community, colleges, and universities, and state agencies.

69522.5. (a) Notwithstanding any other provision of law, employees of the commission may be assigned to work for the auxiliary organization to provide services pursuant to this article. While they are assigned to work for the auxiliary organization, these employees shall remain employees of the commission and the status, rights, and benefits of these employees shall be based on their employment as civil service employees of the commission.

(b) Employees of the auxiliary organization shall not be employees of the State of California, and shall not be subject to the

requirements of Chapter 10.3 (commencing with Section 3512) of, or of Chapter 10.5 (commencing with Section 3525) of, Division 4 of Title 1 of the Government Code. Employees of the auxiliary organization shall have the right to representation consistent with the National Labor Relations Act (29 U.S.C. Secs. 151 et seq.).

69523. (a) For purposes of this section, the following definitions apply:

(1) "Executive employee" is any management employee with responsibility for the development and execution of the auxiliary organization's policy.

(2) "Full-time employee" is a person who is employed in a permanent position for 40 hours per week or for the required number of hours of a particular work shift, whichever is lesser. Persons employed on a temporary, intermittent, irregular time base, or on a limited-term basis, are not full-time employees unless those employees are engaged on a continuing 12-month basis and are employed for 40 hours per week or for the required number of hours of a particular work shift, whichever is the lesser.

(3) "Temporary employee" is either of the following:

(A) An employee employed for a research project, workshop, institute, or other special project funded by any grant, contract, or gift.

(B) An employee whose contract of employment is for a fixed term not exceeding three years.

(b) The operating agreement approved by the commission pursuant to Section 69522 may include provisions requiring the board of directors of the auxiliary organization to provide salaries, working conditions, and benefits for the full-time employees of the auxiliary organization that are comparable to those provided commission employees performing similar services.

69524. Retirement benefits for employees of the auxiliary organization may be provided under contract with the Public Employees' Retirement System in accordance with the terms and conditions of the Public Employees' Retirement Law (Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code), or may be provided by other than the Public Employees' Retirement System.

69525. (a) The auxiliary organization established pursuant to Section 69522 shall be governed by a board of directors nominated and appointed by the commission. One member of the board of directors shall be an employee of the auxiliary organization, and one member of the board of directors shall be a student enrolled in a California public or private postsecondary educational institution. The commission shall determine the composition of the remainder of the board of directors, including both the size and categories of membership of the board.

(b) The board of directors shall, during each fiscal year, hold at least one business meeting each quarter. The board of directors shall

have the benefit of the advice and counsel of at least one attorney admitted to practice law in this state and at least one licensed certified public accountant. Neither the attorney nor the certified public accountant need be members of the board.

(c) No member of the board of directors shall be financially interested in any contract or other transaction entered into by the board of which he or she is a member, and, except as provided in subdivision (d), any contract or transaction entered into in violation of this subdivision is void.

(d) No contract or other transaction entered into by the board of directors is void under subdivision (c), nor shall any member of that board be disqualified or deemed guilty of misconduct in office under those provisions, if both of the following circumstances exist:

(1) The member's financial interest is disclosed or known to the board of directors and noted in the minutes, and the board of directors thereafter authorizes, approves, or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of that financially interested member or members.

(2) The contract or transaction is just and reasonable as to the auxiliary organization at the time it is authorized or approved.

(e) Subdivision (d) does not apply if any of the following circumstances exists:

(1) The contract or transaction is between the auxiliary organization and a member of the board of directors.

(2) The contract or transaction is between the auxiliary organization and a partnership or unincorporated association of which any member of the board of directors is a partner or in which he or she is the owner or holder, directly or indirectly, of a proprietorship interest.

(3) The contract or transaction is between the auxiliary organization and a corporation in which any member of the board of directors is the owner or holder, directly or indirectly, of 5 percent or more of the outstanding common stock.

(4) A member of the board of directors is interested in a contract or transaction within the meaning of subdivision (c) and, without first disclosing that interest to the board of directors at a public meeting of the board, influences or attempts to influence another member or members of the board to enter into the contract or transaction.

(f) It is unlawful for any person to utilize any information, not a matter of public record, that is received by him or her by reason of his or her membership on the board of directors, for personal pecuniary gain, regardless of whether he or she is or is not a member of the board of directors at the time that gain is realized.

(g) The board of directors of the auxiliary organization shall conduct its business in public meetings in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with

Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

69526. (a) The board of directors shall approve all expenditures and fund authorizations of the auxiliary organization. Authorizations of expenditure of funds for use outside of the normal business operations of the auxiliary organization shall be approved by an officer of the commission and in accordance with commission policy.

(b) The commission, in consultation with the Department of Finance and the board of directors of the auxiliary organization, shall do all of the following:

(1) Institute a standard accounting and reporting system for the management and operations of the auxiliary organization.

(2) Implement financial standards that will ensure the fiscal viability of the auxiliary organization. The standards shall include proper provision for professional management, adequate working capital, adequate reserve funds for current operations and capital replacements, and adequate provisions for new business requirements.

(3) Institute procedures to ensure that transactions of the auxiliary organization are consistent with the mission of the commission.

(4) Develop policies for the expenditure of funds derived from indirect cost payments not required to implement paragraph (2). The use of those funds shall be regularly reported to the board of directors.

(c) The auxiliary organization shall not accept any grant, contract, bequest, trust, or gift, unless it is so conditioned that it may be used only for purposes consistent with the policies of the commission.

69527. (a) A certified public accountant shall be selected by the auxiliary organization and shall audit all funds of the auxiliary organization in accordance with applicable auditing and reporting procedures developed by the commission and the Department of Finance. The auxiliary organization shall contract for and receive the audit annually, and shall submit the audit to the commission and the Department of Finance. The auxiliary organization shall publish and disseminate its annual audited statement and make it available to any person upon request. Distribution of the published audited statement of financial condition at a regularly scheduled meeting of the board of directors shall be deemed compliance with this requirement.

(b) The Department of Finance may review the performance and operation of the auxiliary organization.

69528. The auxiliary organization may contract with the commission for the provision of support services, which may include, but are not limited to, accounting, personnel, clerical, administrative support, and other services necessary for the administration of the auxiliary organization.

69529. The annual operating agreement with the board of directors of the auxiliary organization, approved by the commission pursuant to subdivision (d) of Section 69522, shall cover all of the following:

(a) Any support services provided or special programs administered by the auxiliary organization.

(b) The sources of revenue available to the auxiliary organization, including agreements concerning federal administrative cost allowances, guarantee fees charged to borrowers, and retention of funds obtained through collections on defaulted loans.

(c) Support and administrative services to be provided by commission staff, including accounting, personnel, clerical, administrative support, and other services necessary for the administration of the auxiliary organization.

69529.5. The commission shall report the following information to the Legislature on January 1, 1998, and on January 1 of each year thereafter, with respect to the operation of the auxiliary organization:

(a) A description of the services provided by the auxiliary organization.

(b) The auxiliary organization's annual budget, funded activities, and personnel, including the sources of revenue available to fund its operations.

(c) Descriptions of changes made in the delivery of loans to California students and enhancements to programs and activities administered by the commission. The descriptions shall reflect all changes, both positive and negative.

SEC. 2. Section 69766 of the Education Code is amended to read:

69766. (a) There is hereby created in the State Treasury the State Guaranteed Loan Reserve Fund. All money received from federal, state or local governments, including money deposited in the Federal Trust Fund for purposes of this article, or from other private or public sources, for the purposes of this article shall be deposited in the fund, except that no moneys from the General Fund shall be deposited in the fund. Notwithstanding Section 13340 of the Government Code, the money deposited in the fund, other than any moneys previously received from the General Fund, is hereby continuously appropriated, without regard to fiscal years, for purposes of this article. The continuous appropriation made by this section shall be available to assume the obligation under any outstanding budget act appropriation from the fund.

(b) The total amount of all outstanding debts, obligations, and liabilities that may be incurred or created under this article, including any obligation to repay to the United States any funds provided under Title IV of the "Higher Education Act of 1965," and extensions thereof, or any similar act of Congress, is limited to the amount contained in the State Guaranteed Loan Reserve Fund, and the state shall not be liable beyond the amount contained in the fund for these debts, obligations, and liabilities.

SEC. 3. Section 69768 of the Education Code is amended to read:

69768. (a) The funds in the State Guaranteed Loan Reserve Fund shall be paid out by the State Treasurer on warrants drawn by the Controller and requisitioned by the commission in carrying out the purposes of this article and the federal act.

(b) The commission is hereby authorized to make advance payments from the fund to the auxiliary organization for services rendered to the commission under Article 2.5 (commencing with Section 69522). Notwithstanding any other provision of law, advance payments to the auxiliary organization and any fees charged by the auxiliary organization for services rendered to the commission pursuant to an operating agreement may be deposited with a private financial institution.

SEC. 4. Section 20057 of the Government Code is amended to read:

20057. "Public agency" also includes the following:

(a) The Commandant, Veterans' Home of California, with respect to employees of the Veterans' Home Exchange and other post fund activities whose compensation is paid from the post fund of the Veterans' Home of California.

(b) Any auxiliary organization operating pursuant to Chapter 7 (commencing with Section 89900) of Part 55 of the Education Code and in conformity with regulations adopted by the Trustees of the California State University and any auxiliary organization operating pursuant to Article 6 (commencing with Section 72670) of Chapter 6 of Part 45 of the Education Code and in conformity with regulations adopted by the Board of Governors of the California Community Colleges.

(c) Any student body or nonprofit organization composed exclusively of students of the California State University or community college or of members of the faculty of the California State University or community college, or both, and established for the purpose of providing essential activities related to, but not normally included as a part of, the regular instructional program of the California State University or community college.

(d) A state organization of governing boards of school districts, the primary purpose of which is the advancing of public education through research and investigation.

(e) Any nonprofit corporation whose membership is confined to public agencies as defined in Section 20056.

(f) A section of the California Interscholastic Federation.

(g) Any credit union incorporated under Division 5 (commencing with Section 14000) of the Financial Code, or incorporated pursuant to federal law, with 95 percent of its membership limited to employees who are members of or retired members of this system or the State Teachers' Retirement System, and their immediate families, and employees of any credit union. For the purposes of this subdivision, "immediate family" means those

persons related by blood or marriage who reside in the household of a member of the credit union who is a member of or retired member of this system or the State Teachers' Retirement System. The credit union shall pay any costs that are in addition to the normal charges required to enter into a contract with the board. All the payments made by the credit union that are in addition to the normal charges required shall be added to the total amount appropriated by the Budget Act for the administrative expense of this system. For purposes of this subdivision, a credit union shall not be deemed to be a public agency unless it has entered into a contract with the board pursuant to Chapter 5 (commencing with Section 20460) prior to January 1, 1988. After January 1, 1988, the board shall not enter into a contract with any credit union as a public agency.

(h) Any county superintendent of schools that was a contracting agency on July 1, 1983, and any school district or community college district that was a contracting agency with respect to local policemen, as defined in Section 20430, on July 1, 1983.

(i) Any school district or community college district that has established a police department, pursuant to Section 39670 or 72330 of the Education Code, and has entered into a contract with the board on or after January 1, 1990, for school safety members, as defined in Section 20444.

(j) A nonprofit corporation formed for the primary purpose of assisting the development and expansion of the educational, research, and scientific activities of a district agricultural association formed pursuant to Part 3 (commencing with Section 3801) of Division 3 of the Food and Agricultural Code, and the nonprofit corporation described in the California State Exposition and Fair Law (former Article 3 (commencing with Section 3551) of Chapter 3 of Part 2 of Division 3 of the Food and Agricultural Code, as added by Chapter 15 of the Statutes of 1967).

(k) A public or private nonprofit corporation that operates a regional center for the developmentally disabled in accordance with Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code. "Public agency" for purposes of this part shall only constitute the employees of the regional center. Notwithstanding any other provision of this part, the agency may elect by appropriate provision or amendment of its contract not to provide credit for service prior to the effective date of its contract.

(*l*) Independent data-processing centers formed pursuant to former Article 2 (commencing with Section 10550) of Chapter 6 of Part 7 of the Education Code, as it read on December 31, 1990. An agency included pursuant to this subdivision shall only provide benefits that are identical to those provided to a school member.

(m) Any local agency formation commission.

(n) A nonprofit corporation organized for the purpose of and engaged in conducting a citrus fruit fair as defined in Section 4603 of the Food and Agricultural Code.

(o) (1) A public or private nonprofit corporation that operates an independent living center providing services to severely handicapped people and established pursuant to federal P.L. 93-112, that receives the approval of the board, and that provides at least three of the following services:

(A) Assisting severely handicapped people to obtain personal attendants who provide in-home supportive services.

(B) Locating and distributing information about housing in the community usable by severely handicapped people.

(C) Providing information about financial resources available through federal, state and local government, and private and public agencies to pay all or part of the cost of the in-home supportive services and other services needed by severely handicapped people.

(D) Counseling by people with similar disabilities to aid the adjustment of severely handicapped people to handicaps.

(E) Operation of vans or buses equipped with wheelchair lifts to provide accessible transportation to otherwise unreachable locations in the community where services are available to severely handicapped people.

(2) "Public agency" for purposes of this part shall constitute only the employees of the independent living center.

(3) Notwithstanding any other provisions of this part, the public or private nonprofit corporation may elect by appropriate provision or amendment of its contract not to provide credit for service prior to the effective date of its contract.

(p) A hospital that is managed by a city legislative body in accordance with Article 8 (commencing with Section 37650) of Chapter 5 of Part 2 of Division 3 of Title 4.

(q) (1) Except as provided in paragraph (2), "public agency" also includes any entity formed pursuant to the Federal Job Training Partnership Act of 1982 (29 U.S.C. Sec. 1501 et seq.) or Division 8 (commencing with Section 15000) of the Unemployment Insurance Code.

(2) "Public agency," for purposes of this part, does not include a private industry council as set forth in the Federal Job Training Partnership Act of 1982 (29 U.S.C. Sec. 1501 et seq.) or Division 8 (commencing with Section 15000) of the Unemployment Insurance Code.

(r) The Tahoe transportation district that is established by Article IX of Section 66801.

(s) The California Firefighter Joint Apprenticeship Program formed pursuant to Chapter 4 (commencing with Section 3070) of Division 3 of the Labor Code.

(t) A public health department or district that is managed by the governing body of a county of the 15th class, as defined by Sections 28020 and 28036, as amended by Chapter 1204 of the Statutes of 1971.

(u) A nonprofit corporation or association conducting an agricultural fair pursuant to Section 25905 may enter into a contract

with the board for the participation of its employees as members of this system, upon obtaining a written advisory opinion from the United States Department of Labor that the participation of the officers and employees of the nonprofit corporation or association in this system would not affect this system's exemption as a governmental plan under Section 1001 et seq. of Title 29 of the United States Code. The nonprofit corporation or association shall be deemed a "public agency" only for that purpose.

(v) An auxiliary organization established pursuant to Article 2.5 (commencing with Section 69522) of Chapter 2 of Part 42 of the Education Code upon obtaining a written advisory opinion from the United States Department of Labor that the participation of the officers and employees of the auxiliary organization in this system would not affect this system's exemption as a governmental plan under Section 1001 et seq. of Title 29 of the United States Code. The auxiliary organization is a "public agency" only for this purpose.

SEC. 5. Section 10340 of the Public Contract Code is amended to read:

10340. (a) Except as provided by subdivision (b), state agencies shall secure at least three competitive bids or proposals for each contract.

(b) Three competitive bids or proposals are not required in any of the following cases:

(1) In cases of emergency where a contract is necessary for the immediate preservation of the public health, welfare, or safety, or protection of state property.

(2) When the agency awarding the contract has advertised the contract in the California State Contracts Register and has solicited all potential contractors known to the agency but has received less than three bids or proposals.

(3) The contract is with another state agency, a local governmental entity, an auxiliary organization of the California State University, an auxiliary organization of a California community college, a foundation organized to support the Board of Governors of the California Community Colleges, or an auxiliary organization of the Student Aid Commission established pursuant to Section 69522 of the Education Code.

(4) The contract meets the conditions prescribed by the department pursuant to subdivision (a) of Section 10348.

(5) The contract has been awarded without advertising and calling for bids pursuant to Section 19404 of the Welfare and Institutions Code.

(c) Any agency which has received less than three bids or proposals on a contract shall document, in a manner prescribed by the department, the names and addresses of the firms or individuals it solicited for bids or proposals.

CHAPTER 962

An act to amend Sections 25143, 25143.5, 25200.10, 25200.11, and 25205 of the Health and Safety Code, and to amend Section 71000 of, and to add Section 71068 to, the Public Resources Code, relating to the environment.

[Approved by Governor September 26, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 25143 of the Health and Safety Code is amended to read:

25143. (a) The department may grant a variance from one or more of the requirements of this chapter, or the regulations adopted pursuant to this chapter, for the management of a hazardous waste if all of the following conditions apply:

(1) One of the following conditions applies:

(A) The hazardous waste is solely a non-RCRA hazardous waste or the hazardous waste or its management is exempt from, or is not otherwise regulated pursuant to, the federal act.

(B) The requirement from which a variance is being granted is not a requirement of the federal act, or the regulations adopted to implement the federal act.

(C) The department has issued, or is simultaneously issuing, a variance from the federal act for the hazardous waste or its management pursuant to subdivision (c).

(2) The department makes one of the following findings:

(A) The hazardous waste, the amount of the hazardous waste, or the hazardous waste management activity or management unit is insignificant or unimportant as a potential hazard to human health and safety, and the environment, when managed in accordance with the conditions, limitations, and other requirements specified in the variance.

(B) The requirements, from which a variance is being granted, are insignificant or unimportant in preventing or minimizing a potential hazard to human health and safety or the environment.

(C) The handling, processing, or disposal of the hazardous waste, or the hazardous waste management activity, is regulated by another governmental agency in a manner that ensures it will not pose a substantial present or potential hazard to human health and safety, and the environment.

(D) A requirement imposed by another public agency provides protection of human health and safety or the environment equivalent to the protection provided by the requirement from which the variance is being granted.

(3) The variance is granted in accordance with this section.

(b) The department may grant a variance only upon receipt of a variance application for a site or sites owned or operated by an individual or business. The individual or business submitting the application for a variance shall submit to the department sufficient information to enable the department to determine if all of the conditions required by subdivision (a) are satisfied for all situations within the scope of the requested variance.

(c) (1) In addition to the variances authorized pursuant to subdivisions (a) and (b), the department, after making one of the findings specified in paragraph (2) of subdivision (a), may also grant a variance from the requirements of the federal act, upon receiving the authorization specified in paragraph (2), in accordance with the provisions of Section 260.30, subsection (c) of Section 260.31, and Section 260.33 of Title 40 of the Code of Federal Regulations, or any successor federal regulations, regarding a variance from classifications as a solid waste for a commodity-like material that has been reclaimed and is to be further reclaimed.

(2) The department may grant a variance pursuant to this subdivision only after the department obtains authorization from the Environmental Protection Agency to implement the regulations adopted pursuant to the federal act specified in paragraph (1).

(d) Each variance issued pursuant to this section shall be issued on a form prescribed by the department and shall, as applicable, include, but not be limited to, all of the following:

(1) Information identifying the individual or business to which the variance applies. This identification shall be by name, location of the site or sites, type of hazardous waste generated or managed, or type of hazardous waste management activity, as applicable.

(2) As applicable, a description of the physical characteristics and chemical composition of the hazardous waste or the specifications of the hazardous waste management activity or unit to which the variance applies.

(3) The time period during which the variance is effective.

(4) A specification of the requirements of this chapter or the regulations adopted pursuant to this chapter from which the variance is granted.

(5) A specification of the conditions, limitations, or other requirements to which the variance is subject.

(e) (1) Variances issued pursuant to subdivision (a) are subject to review at the discretion of the department and may be revoked or modified at any time.

(2) The department shall revoke or modify a variance if the department finds any of the following:

(A) The conditions required by subdivision (a) are no longer satisfied.

(B) The holder of the variance is in violation of one or more of the conditions, limitations, or other requirements of the variance, and, as

a result of the violation, the conditions required by subdivision (a) are no longer satisfied.

(C) If the variance was granted because of the finding specified in subparagraph (C) or (D) of paragraph (2) of subdivision (a), the holder of the variance is in violation of one or more of the regulatory requirements of another governmental agency to which the holder is subject and the violation invalidates that finding.

(f) The department may waive all, or part, of the fees for an application for a variance by an individual or business, if a variance has previously been granted for the same hazardous waste stream or activity under substantially similar operating conditions in the same industry.

SEC. 1.5. Section 25143 of the Health and Safety Code is amended to read:

25143. (a) The department may grant a variance from one or more of the requirements of this chapter, or the regulations adopted pursuant to this chapter, for the management of a hazardous waste if all of the following conditions apply:

(1) One of the following conditions applies:

(A) The hazardous waste is solely a non-RCRA hazardous waste or the hazardous waste or its management is exempt from, or is not otherwise regulated pursuant to, the federal act.

(B) The requirement from which a variance is being granted is not a requirement of the federal act, or the regulations adopted to implement the federal act.

(C) The department has issued, or is simultaneously issuing, a variance from the federal act for the hazardous waste or its management pursuant to subdivision (c).

(2) The department makes one of the following findings:

(A) The hazardous waste, the amount of the hazardous waste, or the hazardous waste management activity or management unit is insignificant or unimportant as a potential hazard to human health and safety or to the environment, when managed in accordance with the conditions, limitations, and other requirements specified in the variance.

(B) The requirements, from which a variance is being granted, are insignificant or unimportant in preventing or minimizing a potential hazard to human health and safety or the environment.

(C) The handling, processing, or disposal of the hazardous waste, or the hazardous waste management activity, is regulated by another governmental agency in a manner that ensures it will not pose a substantial present or potential hazard to human health and safety, and the environment.

(D) A requirement imposed by another public agency provides protection of human health and safety or the environment equivalent to the protection provided by the requirement from which the variance is being granted.

(3) The variance is granted in accordance with this section.

(b) (1) The department may grant a variance upon receipt of a variance application for a site or sites owned or operated by an individual or business concern. The individual or business concern submitting the application for a variance shall submit to the department sufficient information to enable the department to determine if all of the conditions required by subdivision (a) are satisfied for all situations within the scope of the requested variance.

(2) The department may also grant a variance, on its own initiative, to one or more individuals or business concerns. If the variance is granted to more than one individual or business concern, the department, in granting the variance pursuant to this paragraph, shall comply with all the following requirements:

(A) The department shall make all of the following findings, in addition to the findings required pursuant to paragraph (2) of subdivision (a):

(i) That the variance is necessary to address a temporary situation, or that the variance is needed to address an ongoing situation pending the adoption of regulations by the department.

(ii) Based upon information available to the department at the time the variance is granted, that the variance will not create a substantive competitive disadvantage for a member or members of a specific class of facilities.

(iii) That there are no reasonably foreseeable site-specific physical or operating conditions which could potentially impact the finds made by the department pursuant to paragraph (2) of subdivision (a). This finding shall be supported by substantial evidence in the record as a whole, and shall be based upon both of the following:

(I) The types of hazardous waste streams, the estimated amounts of hazardous waste, and the locations that are affected by the variance. The estimate of the amounts of hazardous waste that are affected by the variance shall be based upon information reasonably available to the department.

(II) Due inquiry, with respect to the hazardous waste streams and management activities affected by the variance, regarding the potential for mismanagement, enforcement and site remediation experience, and proximity to sensitive receptors.

(B) The variance shall not be granted for a period of more than one year. A variance granted pursuant to this paragraph may be renewed for one additional one-year period, if the department makes a finding that the variance has not resulted in harm to human health or safety or to the environment and that there has been substantial compliance with the conditions contained in the variance.

(C) The department shall issue a public notice at least 30 days prior to granting the variance to allow an opportunity for public comment. The public notice shall be issued in the California Regulatory Register, to the department's regulatory mailing list, and to all potentially affected hazardous waste facilities and generators known to the department. The department shall, upon request, hold

a public meeting prior to granting the variance. In granting the variance and in making the findings required by paragraph (2) of subdivision (a) and subparagraph (A), the department shall consider all public comments received.

(D) The department shall not grant a variance pursuant to this paragraph from the definition of, or classification as, a hazardous waste, or from requirements pertaining to the investigation or remediation of releases of hazardous waste or constituents.

(E) The authority of the department to grant or renew variances pursuant to this paragraph shall remain in effect only until January 1, 2002, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date. This subparagraph shall not be construed to invalidate any variance granted pursuant to this paragraph prior to the expiration of the department's authority.

(c) (1) In addition to the variances authorized pursuant to subdivisions (a) and (b), the department, after making one of the findings specified in paragraph (2) of subdivision (a), may also grant a variance from the requirements of the federal act, upon receiving the authorization specified in paragraph (2), in accordance with the provisions of Section 260.30, 260.31, 260.32, and 260.33 of Title 40 of the Code of Federal Regulations, or any successor federal regulations, regarding a variance from classification of a material as a solid waste or variances classifying enclosed devices using controlled flame combustion as boilers.

(2) The department may grant a variance pursuant to this subdivision only after the department obtains authorization from the Environmental Protection Agency to implement the provisions of the federal act specified in paragraph (1).

(d) Each variance issued pursuant to this section shall be issued on a form prescribed by the department and shall, as applicable, include, but not be limited to, all of the following:

(1) Information identifying the individuals or business concerns to which the variance applies. This identification shall be by name, location of the site or sites, type of hazardous waste generated or managed, or type of hazardous waste management activity, as applicable.

(2) As applicable, a description of the physical characteristics and chemical composition of the hazardous waste or the specifications of the hazardous waste management activity or unit to which the variance applies.

(3) The time period during which the variance is effective.

(4) A specification of the requirements of this chapter or the regulations adopted pursuant to this chapter from which the variance is granted.

(5) A specification of the conditions, limitations, or other requirements to which the variance is subject.

(e) (1) Variances issued pursuant to this section are subject to review at the discretion of the department and may be revoked or modified at any time.

(2) The department shall revoke or modify a variance if the department finds any of the following:

(A) The conditions required by this section are no longer satisfied.

(B) The holder of the variance is in violation of one or more of the conditions, limitations, or other requirements of the variance, and, as a result of the violation, the conditions required by this section are no longer satisfied.

(C) If the variance was granted because of the finding specified in subparagraph (C) or (D) of paragraph (2) of subdivision (a), the holder of the variance is in violation of one or more of the regulatory requirements of another governmental agency to which the holder is subject and the violation invalidates that finding.

(f) (1) (A) The department may, upon mutual agreement with an individual or business concern applying for a variance, charge a fee that is equal to the actual cost of the department in reviewing and making a determination on the variance.

(B) If the applicant pays a fee pursuant to subparagraph (A), the applicant is not subject to the variance fee required by Section 25205.7.

(2) The department may waive all, or part, of the fees required by Section 25205.7 for an application for a variance by an individual or business concern.

(g) Within 30 days from the date of granting a variance, the department shall issue a public notice on the California Regulatory Register.

SEC. 2. Section 25143.5 of the Health and Safety Code is amended to read:

25143.5. (a) Except as provided in subdivisions (d), (e) and (f), the department shall classify as nonhazardous waste any fly ash, bottom ash, and flue gas emission control residues, generated from a biomass combustion process, as defined in subdivision (g), if the combustion process will be adequately monitored and controlled so as to prevent the handling or the disposal of any waste in a manner prohibited by law, unless the department determines that the ash or residue is hazardous, by testing a representative sample of the ash or residue pursuant to criteria adopted by the department.

(b) The fly ash, bottom ash, and flue gas emission control residues that are classified as nonhazardous by the department are exempt from this chapter.

(c) An operator of a biomass facility which converts biomass into energy for which the department has classified the ash or residue as hazardous shall notify the department whenever there has been a significant change in the waste entering the combustion process, the combustion process itself, or in the management of the ash or residues generated by the facility. An operator of a biomass facility

that converts biomass into energy, with regard to which the department has classified the ash or residue as nonhazardous, shall notify the department when there has been a significant change in the waste entering the combustion process or in the combustion process itself.

(d) For purposes of classifying fly ash, bottom ash, and flue gas emission control residues generated by the combustion of municipal solid waste in a facility, with regard to which the department classified the ash or residue as nonhazardous, on or before January 1, 1985, the sampling of the ash or residue, for purposes of classification by the department, shall occur at the point in the process following onsite treatment of the ash or residue.

(e) Notwithstanding any other provision of law, this section applies only to fly ash, bottom ash, and flue gas emission control residues which are not RCRA hazardous waste.

(f) Notwithstanding any other provision of law, the test specified in the regulations adopted by the department with regard to a waste exhibiting the characteristic of corrosivity if representative samples of the waste are not aqueous and produce a solution with a pH that is less than, or equal to, two or greater than, or equal to, 12.5, as specified in paragraph (3) of subdivision (a) of Section 66261.22 of Title 22 of the California Code of Regulations, as that section read on January 1, 1996, shall not apply to ash generated from a biomass combustion process that is managed in accordance with applicable regulations administered by the California regional water quality control board, is used beneficially in a manner that results in lowering the pH below 12.5 but above 2.0, is not accumulated speculatively, and is available for commercial use.

(g) For purposes of this section, the following definitions shall apply:

(1) "Biomass combustion process" means a combustion process that has a primary energy source of biomass or biomass waste, and of which 75 percent of the total energy input is from those sources during any calendar year, and of which 25 percent or less of the other energy sources do not include sewage sludge, industrial sludge, medical waste, hazardous waste, radioactive waste, or municipal solid waste.

(2) "Biomass" or "biomass waste" means any organic material not derived from fossil fuels, such as agricultural crop residues, bark, lawn, yard and garden clippings, leaves, silvicultural residue, tree and brush pruning, wood and wood chips, and wood waste, including these materials when separated from other waste streams. "Biomass" or "biomass waste" does not include material containing sewage sludge, industrial sludge, medical waste, hazardous waste, or radioactive waste.

SEC. 3. Section 25200.10 of the Health and Safety Code is amended to read:

25200.10. (a) For purposes of this section, "facility" means the entire site that is under the control of the owner or operator seeking a hazardous waste facilities permit.

(b) Except as provided in subdivisions (d) and (e), the department, or a unified program agency approved to implement this section pursuant to Section 25404.1, shall require, and any permit issued by the department shall require, corrective action for all releases of hazardous waste or constituents from a solid waste management unit or a hazardous waste management unit at a facility engaged in hazardous waste management, regardless of the time at which waste was released at the facility. Any corrective action required pursuant to this section shall require that corrective action be taken beyond the facility boundary where necessary to protect human health and safety or the environment, unless the owner or operator demonstrates to the satisfaction of the department or the unified program agency, whichever agency required the corrective action, that despite the owner's or operator's best efforts, the owner or operator is unable to obtain the necessary permission to undertake this action. When corrective action cannot be completed prior to issuance of the permit, the permit shall contain schedules of compliance for corrective action and assurances of financial responsibility for completing the corrective action.

(c) This section does not limit the department's authority, or a unified program agency's authority pursuant to Chapter 6.11 (commencing with Section 25404), to require corrective action pursuant to Section 25187.

(d) This section does not apply to a permit issued to a public agency or person for the operation of a temporary household hazardous waste collection facility pursuant to Article 10.8 (commencing with Section 25218).

(e) Unless otherwise expressly required by another provision of this chapter, the corrective action required by subdivision (a) does not apply to a person who treats hazardous waste pursuant to a conditional exemption pursuant to this chapter, if the person is not otherwise required to obtain a hazardous waste facilities permit or other grant of authorization for any other hazardous waste management activity at the facility. This subdivision does not limit the department's authority, the authority of a local health officer or other local public officer authorized pursuant to Section 25187.7, or the authority of a unified program agency approved pursuant to Section 25404.1, to order corrective action pursuant to Section 25187.

(f) (1) Pursuant to Article 8 (commencing with Section 25180), the department shall require any offsite facility that was granted interim status pursuant to Section 25200.5 prior to January 1, 1992, and which is not subject to Section 25201.6, to comply with subdivisions (a) to (d), inclusive, of Section 25200.14. The grant of interim status of a facility subject to this subdivision which, as of July 1, 1997, has not

complied with subdivisions (a) to (d), inclusive, of Section 25200.14, shall terminate on that date.

(2) For purposes of this subdivision, a facility is in compliance with subdivisions (a) to (d), inclusive, of Section 25200.14 only if the facility owner or operator has substantively performed the requirements of subdivisions (a) to (d), inclusive, of Section 25200.14 and the regulations adopted pursuant to those provisions, and the facility owner or operator has not merely agreed to a schedule for future compliance, except insofar as submission of a schedule pursuant to the requirements of subdivision (d) of Section 25200.14 may constitute substantive compliance with that subdivision.

(3) Notwithstanding paragraph (2), a facility shall be deemed to be in compliance with this subdivision if the department or a federal agency has completed a RCRA facility, or equivalent assessment for the facility on or before July 1, 1997.

SEC. 4. Section 25200.11 of the Health and Safety Code is amended to read:

25200.11. (a) On or before July 1, 1993, the department shall take final action on each application for a hazardous waste facilities permit to be issued pursuant to Section 25200 for an offsite hazardous waste facility which is not subject to the time limits specified in Section 25200.7 and which has been operating under a grant of interim status pursuant to Section 25200.5 prior to January 1, 1992, if the permit application was submitted to the department before January 1, 1992. In taking final action pursuant to this section, the department shall either issue the hazardous waste facilities permit or make a final denial of the application. The department may extend final action for one year upon its determination that the permit application is complete and that more time is needed for review and evaluation of the application.

(b) On July 1, 1992, interim status granted for any existing offsite hazardous waste facility, which is not subject to the time limits specified in Section 25200.7, shall be terminated, unless the department has received an application for a final hazardous waste facilities permit pursuant to Section 25200 on or before June 30, 1992.

(c) Except for facilities subject to Section 25201.6, for any offsite facility, which facility or portion of facility was first granted interim status pursuant to Section 25200.5 on or after January 1, 1992, the department shall provide public notice for a permit determination to issue or deny a hazardous waste facilities permit for the facility, including a permit modification to incorporate a portion of a facility operating under a grant of interim status, not later than the following dates:

(1) For interim status that was first granted on or after January 1, 1992, but prior to January 1, 1994, not more than four years from the date that interim status was first granted.

(2) For interim status that was first granted on or after January 1, 1994, but prior to January 1, 1996, not more than three years from the date that interim status was first granted.

(3) For interim status that was granted on or after January 1, 1996, not more than two years from the date that interim status was first granted.

(d) For purposes of complying with this section, any change in the owner or operator of the hazardous waste facility shall not affect the applicability of this section with respect to permit determinations required for the facility, including a permit modification to incorporate a portion of the facility operating under a grant of interim status.

(e) The department shall update and make available to the public, by March 1 and September 1 of each year, a status report and workplan describing its efforts in permitting and regulating offsite facilities operating under a grant of interim status pursuant to Section 25200.5, including permit modifications to incorporate a portion of a facility operating under a grant of interim status, except those facilities subject to Section 25201.6. The status report and workplan shall include all of the following elements:

(1) A listing of all offsite facilities, or portions of facilities, operating under a grant of interim status, the date on which the grant of interim status was first made, the schedule for making a permit determination, and a description of the department's resources that are committed to permitting, regulating, and overseeing interim status activities at these facilities.

(2) A status report on enforcement and other regulatory activities that have been taken by the department to ensure that these facilities are operating in compliance with the interim status authority granted by the department pursuant to this chapter.

(f) (1) Except as provided in paragraph (2), on or before July 1, 1997, for any facility operating under a grant of interim status pursuant to Section 25200.5, based on operations conducted on November 19, 1980, the department shall review the basis for the grant of interim status, including any amendments of that grant, and shall prepare status reports concerning the results of that review. If the department discovers an error in the scope of a grant of interim status made before July 1, 1997, and the error was caused in whole, or in part, by an intentional or negligent false statement or representation in the documents filed for purposes of establishing or obtaining interim status, the department shall take immediate action to correct the error, to the full extent authorized by law. In determining whether the scope of a grant of interim status made before July 1, 1997, complies with this chapter, the department shall require evidence other than facility owner or operator or employee declarations pertaining to previous activities that are the basis for that eligibility for interim status.

(2) Paragraph (1) does not apply to a facility for which, on or before March 1, 1997, a draft permit has been issued by and is being processed by the department, a draft environmental impact report, or other appropriate document prepared pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) has been issued and made available for public comment and the environmental impact report or other document prepared pursuant to the California Environmental Quality Act considers all impacts to the environment from facility operations, including, at a minimum, all changes to operations since November 19, 1980, that were not addressed by a previous finally approved document prepared pursuant to the California Environmental Quality Act. The issuance of an appropriate document under the California Environmental Quality Act shall be deemed to have been issued for purposes of this paragraph if the lead agency has determined in writing that no further document is necessary under that act for purposes of the permit issuance.

SEC. 5. Section 25205 of the Health and Safety Code is amended to read:

25205. (a) Except as provided in Section 25245.5, the department shall not issue or renew a permit to operate a hazardous waste facility unless the owner or operator of the facility establishes and maintains the financial assurances required pursuant to Article 12 (commencing with Section 25245).

(b) The grant of interim status of a facility, or any portion thereof, that is operating under a grant of interim status pursuant to Section 25200.5, based on the facility having been in existence on November 19, 1980, shall terminate on July 1, 1997, unless the department certifies, on or before July 1, 1997, that the facility is in compliance with the financial assurance requirements of Article 12 (commencing with Section 25245) for a facility in operation since November 19, 1980, for all units, tanks, and equipment for which the facility has authorization to operate pursuant to its grant of interim status.

SEC. 6. Section 71000 of the Public Resources Code is amended to read:

71000. This part shall be known, and may be cited, as the Environmental Protection Permit Reform Act of 1993.

SEC. 7. Section 71068 is added to the Public Resources Code, to read:

71068. (a) Upon the completion of a demonstration of any standardized electronic format and protocol and alternative signature technique pursuant to this part, to the satisfaction of the advisory committee, the secretary shall adopt that electronic format and protocol standard for use as an optional alternative to submitting environmental data on paper to any state or local agency.

(b) Any local agency requiring the submission of an element of environmental data not found in the data dictionary maintained by the secretary pursuant to Section 71062 may petition the secretary for inclusion of that data element. The secretary shall include an additional data item in the data dictionary only if the local agency demonstrates both of the following:

(1) One of the following applies:

(A) A specific requirement for that item in existing law or regulation.

(B) A principle of mathematics or science that requires the collection of that data item to meet another specific purpose under the applicable law.

(2) There is no other way to meet the local agency's needs using combinations of data elements already incorporated into the data dictionary.

(c) The electronic submission of environmental data to any state or local agency in accordance with the data standards adopted under this part constitutes compliance with the environmental data reporting or other usage requirements imposed pursuant to the laws specified in subdivisions (a) to (f), inclusive, of Section 71061, and has the same force and effect as if the data had been submitted in ink on paper.

(d) Notwithstanding any other provision of law, no person or state or local agency shall be required to submit or receive environmental data electronically, but every state or local agency that elects to engage in electronic data management with regard to environmental data shall employ the electronic reporting standards adopted by the secretary under this part.

(e) Nothing in this section limits any existing authority of a local agency to require the submission of environmental data.

SEC. 7.5. Sections 1.5 of this bill incorporates amendments to Section 25143 of the Health and Safety Code proposed by both this bill and AB 2776 and makes additional conforming changes. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1997, (2) each bill amends Section 25143 of the Health and Safety Code, and (3) this bill is enacted after AB 2776, in which case Section 1 of this bill shall not become operative.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative

on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 963

An act to amend Sections 33501, 33503, 33507, 33601, 33605, 33701, and 33702 of, to add Section 33806 to, to repeal Section 33504 of, and to repeal and add Section 33800 of, the Public Resources Code, relating to the Coachella Valley Mountains Conservancy, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 33501 of the Public Resources Code is amended to read:

33501. The Coachella Valley Mountains Conservancy is hereby created as a state agency within the Resources Agency to acquire and hold, in perpetual open space, mountainous lands surrounding the Coachella Valley and to provide for the public's enjoyment of, and the enhancement of their recreational and educational experiences on, those lands in a manner consistent with the protection of the lands and the resource values specified in Section 33500.

SEC. 2. Section 33503 of the Public Resources Code is amended to read:

33503. (a) The governing board of the conservancy consists of the following 20 voting members:

(1) The mayor or a member of the city council of each of the Cities of Cathedral City, Desert Hot Springs, Indian Wells, La Quinta, Palm Desert, Palm Springs, and Rancho Mirage, appointed by a majority of the membership of the respective city council of each city.

(2) The Chairperson of the Tribal Council of the Agua Caliente Band of Cahuilla Indians.

(3) Two members of the Board of Supervisors of the County of Riverside, appointed by a majority of the membership of the board of supervisors.

(4) Three members chosen from the general public who reside within the conservancy's territory, one of whom shall be appointed by the Governor, one of whom shall be appointed by the Senate Committee on Rules, and one of whom shall be appointed by the Speaker of the Assembly.

(5) The Secretary of the Resources Agency.

(6) The Director of Fish and Game.

(7) The Executive Director of the Wildlife Conservation Board.

(8) The Director of Parks and Recreation.

(9) The Vice President, Division of Agriculture and Natural Resources, of the University of California.

(10) The State Director for California of the United States Bureau of Land Management.

(11) The Regional Forester for the Pacific Southwest Region of the United States Forest Service.

(b) Any state or federal official who is a member of the governing board and whose principal office is not within the territory of the conservancy may designate a member of his or her executive staff to vote on his or her behalf and otherwise discharge the duties of the member when the member is not in attendance. Notice of any such designation shall be promptly communicated in writing to the chairperson of the conservancy.

SEC. 3. Section 33504 of the Public Resources Code is repealed.

SEC. 4. Section 33507 of the Public Resources Code is amended to read:

33507. A majority of the members appointed to the governing board of the conservancy shall constitute a quorum, and, except as provided in subdivision (b) of Section 33702, no official action relating to the acquisition of any interest in real property shall be taken by the governing board except in the presence of a quorum and upon the recorded votes of a majority of the members appointed to the governing board. Any official action affecting any matter other than relating to the acquisition of an interest in real property shall be taken by the governing board in the presence of a quorum and upon the recorded votes of a majority of the members appointed to the governing board who are present and voting.

SEC. 5. Section 33601 of the Public Resources Code is amended to read:

33601. The conservancy may:

(a) Sue and be sued.

(b) Determine the qualifications of, recommend the salary of, and appoint, an executive director who shall be exempt from civil service and serve at the pleasure of the conservancy. In addition, the conservancy may employ other staff pursuant to the State Civil Service Act and as may be authorized in the annual state Budget Act.

(c) Enter into contracts pursuant to Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code, for services requiring knowledge, experience, and ability not possessed by the conservancy's staff.

(d) Enter into other agreements with public agencies, private entities, and persons necessary for the proper discharge of the conservancy's duties.

SEC. 6. Section 33605 of the Public Resources Code is amended to read:

33605. The conservancy may accept any revenue, money, grants, fees, rents, royalties, goods, services, donations, bequests, or gifts of any interest in real property from any public agency, private entity,

or person for any lawful purpose of the conservancy subject to the requirements of Sections 11005 to 11005.7, inclusive, of the Government Code. A gift of personal property that is subject to the requirements of Sections 11005 and 11005.1 of the Government Code shall be deemed approved by the Director of Finance, unless it is disapproved within 60 days of receipt of a request from the executive director of the conservancy to approve the gift.

SEC. 7. Section 33701 of the Public Resources Code is amended to read:

33701. The conservancy may not exercise the power of eminent domain. The conservancy may request the State Public Works Board to exercise the power of eminent domain on behalf of the conservancy pursuant to the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code). The conservancy may initiate a request only with respect to uninhabited real property within the territory of the conservancy containing mountainous lands and after providing at least 60 days' notice of its intention to request acquisition by eminent domain. The notice shall be sent either to the city in which the real property is situated; the county if the real property is situated in an unincorporated area; or the Tribal Council of the Agua Caliente Band of Cahuilla Indians if the real property is situated within the trust lands of the Agua Caliente Indian Reservation. The State Public Works Board shall not, acquire any real property by eminent domain in response to a request of the conservancy if either of the following is the case:

(a) No part of the real property is mountainous land.

(b) The acquisition is objected to by the city in which the real property is situated; by the county if the real property is situated in an unincorporated area; or by the Tribal Council of the Agua Caliente Band of Cahuilla Indians if the real property is situated within the trust lands of the Agua Caliente Indian Reservation. To be effective, the objection shall be made by a resolution of the city council, the county board of supervisors, or the Tribal Council of the Agua Caliente Band of Cahuilla Indians, as the case may be, adopted within 60 days from the date of receipt of notice from the conservancy. The city, the county, or the tribal council, as the case may be, may at any subsequent time rescind its objection.

SEC. 8. Section 33702 of the Public Resources Code is amended to read:

33702. (a) Except as provided in subdivisions (b) and (c), the acquisition of real property or interests in real property under this division is subject to the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code).

(b) Any acquisition of real property or any interest in real property within the territory of the conservancy, which is located in an area designated as a National Scenic Area and which has a value

of less than two hundred fifty thousand dollars ($250,000), shall not be subject to the Property Acquisition Law.

(c) Any acquisition of real property from the County of Riverside, which was acquired by the county as a result of the nonpayment of taxes, and which has a value of less than two hundred fifty thousand dollars ($250,000), shall not be subject to the Property Acquisition Law, if the administrative secretary of the State Public Works Board has received written notice that the conservancy has adopted a resolution requesting that the real property be removed from public sale and the Director of Finance has not, within 60 days from the date that the written notice was received, notified the executive director of the conservancy that the real property must be acquired under the Property Acquisition Law.

(d) Except as provided in Section 33701, and subject to Section 33507, the conservancy may acquire any property, and any interest in property, on behalf of itself or a state agency represented on the governing board, within its territory if acquisition of the property is in furtherance of the conservancy's purposes, as set forth in Section 33501. The conservancy may initiate, negotiate, and participate in agreements with local, state, and federal public agencies or nonprofit entities for the management of land under the conservancy's ownership or control, in furtherance of the conservancy's purposes. The conservancy may also hold, manage, maintain, administer, occupy, and care for that property in the event that no appropriate public or private entity is available to undertake that responsibility without cost to the conservancy. The conservancy shall give primary priority to the acquisition of property, the development of which would have visual impact from the floor of the Coachella Valley, and secondary priority to property, the acquisition of which will preserve wildlife habitat.

(e) (1) Except as provided in paragraph (2), the conservancy shall not sell, exchange, lease, or otherwise dispose of or encumber, any mountainous lands unless authorized by a four-fifths vote of the governing board or a two-thirds vote of the electors residing within the conservancy.

(2) The conservancy may transfer any mountainous lands to another public agency or to any nonprofit organization that has as its primary purpose the preservation, protection, or enhancement of land in its natural, scenic, historic, agricultural, forested, or open-space condition or use, if the transfer is authorized in the presence of a quorum and upon the recorded votes of a majority of the voting members of the governing board, and if the transferee agrees to hold, manage, maintain, administer, occupy, and care for the property in perpetuity and in furtherance of the conservancy's purposes, as set forth in Section 33501.

(3) Any lease entered into pursuant to this subdivision shall not exceed five years and shall include the express provision that the

lease may be terminated at any time that the governing board determines that the land is needed for conservancy purposes.

(f) Notwithstanding subdivision (d) and the requirements specified in subdivision (e), the conservancy may sell, exchange, lease, or otherwise dispose of or encumber, property that is not mountainous land on any terms that are in the best interests of the conservancy.

SEC. 9. Section 33800 of the Public Resources Code is repealed.

SEC. 10. Section 33800 is added to the Public Resources Code, to read:

33800. (a) The conservancy may incur debt only for the purpose of acquiring real property. To acquire that property, the conservancy may only borrow money from, and incur a debt to, an entity that is represented on the conservancy's governing board if the debt instrument pertaining to the acquisition of the property states that the security for the debt created therein is limited to the real property to be acquired, and includes an acknowledgment that no state funds or state credit will be obligated or committed to repay the debt.

(b) Any debt instrument that is entered into by the conservancy after January 1, 1997, shall be null and void, except for a debt instrument that complies with subdivision (a) and is approved by the Department of Finance.

SEC. 11. Section 33806 is added to the Public Resources Code, to read:

33806. The Coachella Valley Mountains Conservancy Fund is hereby created in the State Treasury. The money in the fund shall be made available for expenditure by the conservancy, upon appropriation by the Legislature, for the purposes of this division.

SEC. 12. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that statutory changes be made that are necessary to enable the Coachella Valley Mountains Conservancy to continue to pursue its mission, with funds provided under the Budget Act of 1996, for expenditure during the 1996–97 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 964

An act to amend Sections 9765 and 9786 of, and to add and repeal Section 9701.5 of, the Business and Professions Code, relating to human remains.

[Approved by Governor September 26, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 9650.4 of the Business and Professions Code is amended to read:

9650.4. (a) Any cemetery authority that does not file its report within the time prescribed by Section 9650 may be assessed a fine by the board in an amount not to exceed four hundred dollars ($400) per month for a maximum of five months. The amount of the fine shall be established by regulation in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Failure to pay the fine within 15 days after receipt of written notification of the assessment or, where a timely request for waiver or reduction of the fine has been filed, within 15 days after receipt of written notification of the board's decision in the matter, shall be cause for disciplinary action.

(b) A cemetery authority may request waiver or reduction of a fine by making a written request therefor. The request shall be postmarked within the time specified above for payment of the fine and shall be accompanied by a statement showing good cause for the request.

(c) The board may waive or reduce the fine where a timely request is made and where it determines, in its discretion, that the cemetery authority has made a sufficient showing of good cause for the waiver or reduction.

SEC. 2. Section 9701.5 is added to the Business and Professions Code, to read:

9701.5. (a) Notwithstanding any other provision of this chapter, Section 9702.5 does not apply to an applicant for a cemetery salesperson's license.

(b) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 3. Section 9765 of the Business and Professions Code is amended to read:

9765. Every cemetery authority operating a cemetery shall pay an annual regulatory charge for each cemetery to be fixed by the board at not more than four hundred dollars ($400). In addition to an annual regulatory charge for each cemetery, an additional quarterly charge of not more than eight dollars and fifty cents ($8.50) for each burial, entombment, or inurnment, and not more than eight dollars and fifty cents ($8.50) for each cremation made during the preceding quarter shall be paid to the department and these charges shall be deposited in the Cemetery Fund. If the cemetery authority performed the cremation and either the burial, entombment, or inurnment, the total of all additional charges shall be not more than eight dollars and fifty cents ($8.50).

Notwithstanding any other provision of law, including any provision contained in the Budget Act of 1996, this section shall remain in effect until the loans authorized by Chapter 38, Statutes of 1996, and by Chapter 162, Statutes of 1996, are repaid, with interest at the rate accruing to moneys in the Pooled Money Investment Account, but no later than April 1, 2003, pursuant to a loan repayment plan approved by the Department of Finance.

SEC. 4. Section 9786 of the Business and Professions Code is amended to read:

9786. Every crematory licensee operating a crematory pursuant to a license issued in compliance with this article shall pay an annual regulatory charge for each crematory, to be fixed by the board at not more than four hundred dollars ($400). In addition to an annual regulatory charge for each crematory, every licensee operating a crematory pursuant to a license issued pursuant to this article shall pay an additional charge of not more than eight dollars and fifty cents ($8.50) per cremation made during the preceding quarter, which charges shall be deposited in the Cemetery Fund.

Notwithstanding any other provision of law, including any provision contained in the Budget Act of 1996, this section shall remain in effect until the loans authorized by Chapter 38, Statutes of 1996, and by Chapter 162, Statutes of 1996, are repaid, with interest at the rate accruing to moneys in the Pooled Money Investment Account, but no later than April 1, 2003, pursuant to a loan repayment plan approved by the Department of Finance.

SEC. 5. All references in this act to the Cemetery Board shall be deemed to refer to the Department of Consumer Affairs, pursuant to Section 102.1 of the Business and Professions Code.

CHAPTER 965

An act to add Section 790.1 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 26, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 790.1 is added to the Public Utilities Code, to read:

790.1. In any proceeding pending after January 1, 1996, the commission shall apply this article in its consideration of any matter concerning the sale by a water corporation of real property that is not necessary or useful in the provision of water utility service, for any sale that occurred prior to that date. If the water corporation has not invested the net proceeds therefrom in utility infrastructure, plant,

facilities, and properties that are necessary or useful in the provision of water service to the public, it may elect to do so during the period provided in subdivision (c) of Section 790 and that period shall be deemed to have commenced as of January 1, 1996.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 966

An act to repeal and add Chapter 12.3 (commencing with Section 8876.1) of Division 1 of Title 2 of the Government Code, relating to seismic safety, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Chapter 12.3 (commencing with Section 8876.1) of Division 1 of Title 2 of the Government Code is repealed.

SEC. 2. Chapter 12.3 (commencing with Section 8876.1) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 12.3. CENTER FOR EARTHQUAKE ENGINEERING RESEARCH

8876.1. The Legislature hereby finds and declares the following:

(a) This state is located along a major tectonic plate boundary that is part of the Circum-Pacific seismic belt, and it is inevitable that earthquakes will continue to occur along the state's numerous faults causing extensive damage to property and potentially extensive loss of life and injury. In the last decade, this state and its residents have endured a number of moderate earthquakes resulting in injuries, loss of life, and in excess of thirty billion dollars ($30,000,000,000) in property damage. Projected losses in future earthquakes could exceed one hundred fifty billion dollars ($150,000,000,000) as was the case for the recent Kobe earthquake in Japan.

(b) Moderate, potentially damaging earthquakes occur on the average of every couple of years somewhere in this state, and another great earthquake in southern California can be expected within the next 20 to 30 years. However, recent increased seismic activity in the San Francisco Bay area and Los Angeles Basin, coupled with new estimates of long-term seismic patterns, suggest that the seismicity in this state has been anomalously low in the recent past, and we may be returning to a normal period of more frequent large earthquakes. Also, a damaging earthquake near San Diego cannot be ruled out.

(c) Continued advances in the knowledge and practice of science, engineering, and other earthquake-related disciplines are critical to the development of state and local earthquake risk reduction programs and practices that lead to improvements in existing and new buildings, dams and utility systems, transportation facilities, communications systems, fire and toxic materials safety, and disaster preparedness.

(d) It is important to all California residents that new and improved cost-effective earthquake risk reduction measures be developed that will appreciably lower the potential for death, injury, damage to property and disruption of lives and businesses in this state.

(e) It is the consensus of the California engineering and scientific communities that while damaging earthquakes are inevitable in this state, significant levels of earthquake risk reduction will be achievable if steps are taken to provide the needed focus and coordination of earthquake risk reduction efforts.

(f) In 1986, the Governor signed Senate Bill 1667, which formalized this state's commitment to the establishment of a center for earthquake engineering research within the state, but this center has yet to be established.

(g) The National Science Foundation has indicated that it may fund such a center on a competitive basis at a level of two million dollars ($2,000,000) per year for five years beginning in 1996, if the center matches the foundation contribution on at least a dollar-for-dollar basis from nonfederal funds.

(h) A center for earthquake engineering research will provide a much needed multidisciplinary, integrated research program to develop new and improved cost-effective earthquake risk reduction measures.

(i) A center for earthquake engineering research will enhance California's worldwide competitiveness in the fields of earthquake design and construction and may serve as a catalyst for developing new products and services that have global implications.

(j) Therefore, it is in the interest of the safety of all California residents and visitors that a center for earthquake engineering research be created to develop, through research and application, new and improved, cost-effective risk reduction measures that will reduce the potential for death and injury and damage to property.

8876.2. The Legislature hereby requests that on or after July 1, 1996, the University of California establish the California Center for Earthquake Engineering Research in this state. The center shall involve all the university members of the California Universities for Research in Earthquake Engineering. The center shall be the first step to realizing the goals and objectives contained in the Seismic Safety Commission's research and implementation plan for earthquake risk reduction drafted pursuant to Section 8899.15.

(a) The objective of the center shall be to reduce casualties, property losses, and economic or other disruptive consequences of earthquakes in areas of high seismicity through the advancement of knowledge and technology in the earthquake engineering field. The center shall develop methods for identifying and quantifying the risks of great urban earthquakes and shall develop cost-effective strategies for reducing those risks to reasonable levels.

(b) The center shall operate a comprehensive, multiple college and university research program designed to meet the requirements of National Science Foundation funding, taking full advantage of the capabilities of leading colleges and universities in the state. The center shall carry out an integrated plan for a coordinated research program and shall actively manage all of the activities funded by it. Colleges, universities, organizations, agencies, and researchers with special expertise in the earthquake engineering field shall be encouraged to submit proposals to the center and to cooperate in obtaining additional funding from private or public research sponsors for collaborative research involving the center.

(c) The center shall conduct research on topics relevant to regions of high seismicity such as the following:

(1) Performance-based design at the scale of individual buildings, utility or transportation components, and other structures as complemented by performance-based design at the urban scale of large numbers of these facilities.

(2) Identification of key sources of future earthquake losses, quantification of these sources of risk, and development of strategies for reliably controlling losses.

(3) Development of cost-effective techniques for the analysis and design of retrofit measures for existing construction.

(4) Improved structural design and analysis methods for new construction.

(5) Development of techniques for determining the suitability of sites and for understanding critical design relationships among soil conditions, foundations, and structures and for predicting response to earthquake ground motions and earthquake-caused ground failures.

(6) Experimentation to verify the seismic behavior of bridges, dams, ports, critical communications facilities, utility and transportation system elements, and nonstructural and structural components of buildings.

(7) Development of a research infrastructure, including upgrading experimental facilities to more accurately simulate earthquakes.

(8) Expansion of the data base of performance from actual earthquakes to ensure that the unfortunate occurrence of earthquakes also serves the positive societal and scientific purpose of systematically advancing knowledge.

(9) Encouragement and development of emerging technologies, design strategies, and analytical capabilities that offer the potential for breakthroughs in earthquake risk reduction.

8876.3. The center shall disseminate its findings among the academic community, design professionals, government officials, building regulatory personnel, and the public. In carrying out this objective, the center shall devise an effective dissemination program that includes actions such as the following:

(a) Publication of the results of research in appropriate print, electronic, or audio-visual formats to reach technical audiences and, where appropriate, nontechnical users.

(b) Encouragement of interdisciplinary communication among civil, structural, and geotechnical engineers, earth scientists, planners, and architects during all phases of the research projects.

(c) Training of practitioners, educators, and researchers to inform them of the latest developments in the earthquake engineering field.

(d) Facilitation of the educational development of faculty and students at all grade levels.

(e) Sponsorship of seminars, briefings, courses, and other means of widening the circle of knowledge among design practitioners, university faculty and students, construction industry technicians and representatives, building department personnel, and other potential audiences.

8876.4. The center shall cooperate and coordinate with other leading organizations in the earthquake engineering field to achieve the following collaborative objectives:

(a) Timely communication to potential users of center research project results to facilitate the implementation of research into practice and application.

(b) Enhancement of the focus and value of center research projects through better understanding by researchers of the needs of earthquake engineering practitioners and other users of earthquake research.

8876.5. (a) The Legislature finds that the National Science Foundation will require the center to provide an annual report of its activities. The center shall make a copy of that report available to the Governor, the Legislature, and the Seismic Safety Commission.

(b) The Legislature further finds that the National Science Foundation will require the center to have an external oversight committee consisting of representatives from industry, government, and academia to provide advice on the center's goals, planning,

research thrusts, and accomplishments regarding earthquake hazard mitigation needs in the nation. The Seismic Safety Commission shall appoint a member of the commission or staff to serve on the oversight committee.

8876.6. The governance, administration, and operation of the center shall be established by agreement between the University of California and the National Science Foundation.

8876.7. In carrying out its responsibilities under this chapter, the Seismic Safety Commission, in close consultation with the Business, Transportation and Housing Agency, the Office of Emergency Services, and the State and Consumers Services Agency, may do the following:

(a) Monitor the work of the center on behalf of the state.

(b) Produce and deliver for each year that the center is in operation, an independent evaluation of the work conducted at the center as it pertains to the objectives of the center and reducing earthquake losses and earthquake risk in the state recognizing that as a national center it will undertake basic research of national and international consequence as well. The report shall include the following tasks:

(1) Interpret the results of research to indicate how the research may affect state law and policy.

(2) Recommend ways to promote the application of research.

(3) Recommend priorities that would contribute to achieving the center's objectives, provide direct benefits to California residents and businesses, and lead to the completion of specific recommendations in the state's earthquake risk reduction program.

8876.8. Funding for the Seismic Safety Commission under this chapter shall be made available by interagency agreement with the University of California the first year that the center is in operation and the commission shall seek a budget augmentation in all subsequent years that the center is in operation in order to produce and deliver an independent evaluation, monitor the work of the center, and provide a forum at which the information may be disseminated to those interested, as prescribed in Section 8876.7.

8876.9. (a) The Earthquake Risk Reduction Fund of 1996 is hereby created in the State Treasury for support of the center. All moneys for support of the center shall be deposited into the fund and are available to the Regents of the University of California if the Director of Finance determines that matching federal funds have been approved and are available for support of the center.

(b) The sum of one million dollars ($1,000,000), only to be used for activities related to transportation infrastructure, is hereby transferred from the State Highway Account to the Earthquake Risk Reduction Fund of 1996 and the sum of five hundred thousand dollars ($500,000) is hereby transferred from the General Fund to the Earthquake Risk Reduction Fund of 1996, and, if the Director of Finance determines that matching federal funds have been

approved and are available, is hereby appropriated from that fund to the Regents of the University of California for expenditure during the 1996–97 fiscal year for support of the center.

8876.10. No provision of this chapter shall apply to the Regents of the University of California, unless the regents adopt a resolution making that provision applicable.

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

In order to significantly reduce the threats to life and safety from earthquakes in the near future, to take advantage of the support of the National Science Foundation, and in order that research, development, and implementation of the work of the Center for Earthquake Engineering and Research may be done as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 967

An act to amend Sections 10086, 10089.5, 10089.6, 10089.8, 10089.10, 10089.11, 10089.13, 10089.20, 10089.23, 10089.25, 10089.26, 10089.34, and 10089.50 of, to amend and renumber Sections 10089.7 and 10089.15 of, to add Sections 10089.17, 10089.21, 10089.22, 10089.52, and 10089.53 to, the Insurance Code, relating to earthquake insurance, making an appropriation therefor and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. The Legislature finds and declares as follows:

The California Earthquake Authority, created by Chapter 944 of the Statutes of 1995, shall become operational and may issue policies of basic residential earthquake insurance as soon as the Insurance Commissioner has certified that all of the following conditions have been met:

(a) The Internal Revenue Service has determined that the authority is exempt from federal income taxation.

(b) Insurers whose cumulative residential market share is more than 70 percent of the total residential property insurance market in California, exclusive of insurers who have withdrawn from the residential property insurance market as of January 1, 1995, have filed letters of intent, with binding contractual obligation, to participate in the authority. These letters of intent include acknowledgment of

the initial operating capital and potential loss assessment requirements.

(c) The authority has obtained appropriate risk transferability in the form of firm reinsurance commitments in an aggregate amount of not less than 200 percent of the total capital contributions committed by participating insurers.

SEC. 2. Section 10086 of the Insurance Code is amended to read:

10086. (a) If an offer of earthquake coverage is accepted, the coverage shall be continued at the applicable rates and conditions for the policy term, provided the policy of residential property insurance is not terminated by the named insured or insurer.

(1) At any renewal, an insurer may modify the terms and conditions of an existing policy, rider, or endorsement providing coverage against loss or damage caused by the peril of earthquake if the modified terms and conditions provide the minimum coverages required by Section 10089.

(2) An insurer that modifies the terms and conditions of an existing policy, rider, or endorsement shall provide the insured with the renewal notice in a stand-alone disclosure document stating the changes in the terms and conditions of the insured's existing policy, rider, or endorsement. Proof of mailing of the disclosure document by first-class mail to a named insured at the mailing address shown on the policy or application creates a conclusive presumption that the disclosure document was provided. The disclosure shall include the following statement in 14-point boldface type:

THE COVERAGE IN THE POLICY WE ARE OFFERING YOU WITH THIS RENEWAL HAS BEEN REDUCED, AND SUBSTANTIALLY DIFFERS FROM THE COVERAGES PROVIDED BY YOUR HOMEOWNERS' POLICY. INSURANCE COMPANIES ARE ALLOWED TO RENEW EARTHQUAKE INSURANCE POLICIES WITH COVERAGE THAT IS REDUCED FROM THE COVERAGE YOU PREVIOUSLY PURCHASED. YOU MAY REQUEST A SAMPLE COPY OF THIS NEW POLICY TO REVIEW PRIOR TO MAKING A DECISION TO ACCEPT THIS RENEWAL, AND WE WILL MAIL OR DELIVER IT TO YOU WITHIN 14 DAYS OF YOUR REQUEST. A REQUEST FOR THE SAMPLE COPY SHALL NOT CHANGE OR EXTEND THE POLICY EXPIRATION DATE SPECIFIED IN THE RENEWAL NOTICE. A SUMMARY OF THE CHANGES IS INCLUDED WITH THIS NOTICE.

The commissioner shall approve the form of the summary at the time he or she approves the policy. The summary shall include the information contained in subdivision (a) of Section 10083, and may be included with the renewal notice in standard type.

The commissioner may approve substantially similar disclosure forms if necessary to accurately disclose relevant information to the

policyholder. The commissioner may also approve disclosure forms substantially similar to the disclosure statement required by Section 10083 if necessary to accurately disclose relevant information to the policyholder.

(3) If the earthquake coverage is provided by a policy issued by the California Earthquake Authority, the following disclosure shall be provided in 14-point boldface type:

CALIFORNIA EARTHQUAKE AUTHORITY POLICY DISCLOSURE

THIS POLICY IS BEING PURCHASED FROM THE CALIFORNIA EARTHQUAKE AUTHORITY ("CEA"). THE COVERAGE IN THIS CEA POLICY SUBSTANTIALLY DIFFERS FROM THE COVERAGES PROVIDED IN YOUR HOMEOWNER'S POLICY. THE CEA IS NOT PART OF OR ASSOCIATED WITH YOUR HOMEOWNER'S INSURANCE COMPANY. IF LOSSES AS A RESULT OF AN EARTHQUAKE OR A SERIES OF EARTHQUAKES EXCEED THE AVAILABLE RESOURCES OF THE CEA, THIS POLICY IS NOT COVERED BY THE CALIFORNIA INSURANCE GUARANTY ASSOCIATION. THEREFORE, THE CALIFORNIA INSURANCE GUARANTY ASSOCIATION WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF THE CEA BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED. IN ADDITION, YOUR CEA POLICY MAY BE SUBJECT TO FUTURE SURCHARGES OF THE POLICY PREMIUM IN CERTAIN CASES WHERE AN EARTHQUAKE OR SERIES OF EARTHQUAKES HAS EXCEEDED AVAILABLE RESOURCES TO PAY CLAIMS. IN THAT CASE, THIS MEANS THAT IN ADDITION TO THE ANNUAL PREMIUM, YOU MAY BE CHARGED UP TO AN ADDITIONAL 20% OF THE PREMIUM.

(b) If the offer is not accepted, the insurer or any affiliated insurer shall be required on an every other year basis to offer earthquake coverage in connection with any continuation, renewal, or reinstatement of the policy following any lapse thereof, or with respect to any other policy that extends, changes, supersedes, or replaces the policy of residential property insurance.

(c) Nothing in this section shall preclude the named insured from terminating the earthquake coverage at any time.

SEC. 3. Section 10089.5 of the Insurance Code is amended to read:

10089.5. As used in this chapter:

(a) "Authority" means the California Earthquake Authority.

(b) "Available capital" means the sum of all moneys and invested assets actually held in the California Earthquake Authority Fund, except as otherwise allocated to pay specific losses and loss

adjustment expenses under policies of basic residential earthquake insurance. "Available capital" includes all interest or other income from the investment of money held in the California Earthquake Authority Fund. "Available capital" does not include the proceeds of contracts of reinsurance procured by or in the name of the authority pursuant to subdivision (a) of Section 10089.10, or any funds realized on account of any transaction pursuant to capital market contracts authorized by subdivision (b) of Section 10089.10.

(c) "Basic residential earthquake insurance" means that policy of residential earthquake insurance described in Section 10089 except as follow:

(1) (A) If one year after the authority commences operation the authority has available capital equal to or exceeding seven hundred million dollars ($700,000,000), any policy issued or renewed on or after that date shall provide, less any applicable deductible, not less than two thousand five hundred dollars ($2,500) in coverage for additional living expenses.

(B) If the authority met the available capital requirements of subparagraph (A) and two years after the authority commences operation the authority has available capital equal to or exceeding seven hundred million dollars ($700,000,000), any policy issued or renewed on or after that date shall provide, less any applicable deductible, not less than three thousand dollars ($3,000) in coverage for additional living expenses.

(2) (A) If the authority did not meet the available capital requirement of subparagraph (A) of paragraph (1) but, two years after the authority commences operation the authority has available capital equal to or exceeding seven hundred million dollars ($700,000,000), any policy issued or renewed on or after that date shall provide, less any applicable deductible, not less than two thousand five hundred dollars ($2,500) in coverage for additional living expenses.

(B) If the authority met the available capital requirements in as provided by subparagraph (A) and three years after the authority commences operation the authority has available capital equal to or exceeding seven hundred million dollars ($700,000,000), any policy issued or renewed on or after that date shall provide, less any applicable deductible, not less than three thousand dollars ($3,000) in coverage for additional living expenses.

(d) "Board" means the governing board of the authority.

(e) "Bonds" means bonds, notes, commercial paper, variable rate and variable maturity securities, and any other evidence of indebtedness.

(f) "Capital market contract" means an agreement between the authority and a purchaser pursuant to which the purchaser agrees to purchase bonds of the authority.

(g) "Nonparticipating insurer" means an insurer that elects not to transfer or place any residential earthquake policies in the authority.

(h) "Panel" means the advisory panel of the authority.

(i) "Participating insurer" means an insurer that has elected to join the authority.

(j) "Policy of residential property insurance" means those policies described in Section 10087.

(k) "Private capital market" means one or more purchasers of bonds of the authority pursuant to a capital market contract.

(*l*) "Qualifying residential property" includes all those residential dwellings set forth in Section 10087.

(m) "Residential earthquake insurance market share" means an individual insurer's total direct premium received for (1) residential earthquake policies and endorsements written or renewed by the insurer in California and (2) residential earthquake policies written or renewed by the authority for which the insurer has written or renewed an underlying policy of residential property insurance, divided by the total gross premiums received by all admitted insurers and the authority for their basic residential earthquake insurance in California.

(n) "Residential property insurance market share" means an individual insurer's total gross premiums received for residential property insurance policies written or renewed by the insurer, divided by the total gross premiums received by all admitted insurers for residential property insurance in California.

(o) "Revenue" means all income and receipts of the authority, including, but not limited to, income and receipts derived from premiums, bond purchase agreements, capital contributions by insurers, assessments levied on insurers, surcharges applied to authority earthquake policyholders, and all interest or other income from investment of money in any fund or account of the authority established for the payment of principal or interest, or premiums on bonds, including reserve funds.

SEC. 4. Section 10089.6 of the Insurance Code is amended to read:

10089.6. (a) There is hereby created the California Earthquake Authority, which shall be administered under the authority of the commissioner and have the powers conferred by this chapter. The authority shall be authorized to transact insurance in this state as necessary to sell policies of basic residential earthquake insurance in the manner set forth in Sections 10089.26, 10089.27, and 10089.28. The authority shall have no authority to transact any other type of insurance business.

(b) (1) The investments of the authority shall be limited to those securities eligible under Section 16430 of the Government Code.

(2) The rights, obligations, and duties owed by the authority to its insureds, beneficiaries of insureds, and applicants for insurance shall be the same as the rights, obligations, and duties owed by insurers to its insureds, beneficiaries of insureds and applicants for insurance under common law, regulations, and statutes. The authority shall be liable to its insureds, beneficiaries of insureds, and applicants for

insurance as an insurer is liable to its insureds, beneficiaries of insureds, and applicants for insurance under common law, regulations, and statutes.

(c) The operating expenses of the authority shall be capped at not more than 3 percent of the premium income received by the authority. The funds shall be available to pay any advocacy fees awarded in a proceeding under subdivision (c) of Section 10089.11.

SEC. 5. Section 10089.7 of the Insurance Code, as added by Section 1 of Chapter 848 of the Statutes of 1995, is amended and renumbered to read:

10089.70. The department shall establish a pilot program for the mediation of the disputes between insured complainants and insurers arising out of the Northridge earthquake of 1994 or any subsequent earthquake. The pilot program shall apply only to personal lines of insurance related to residential coverage. The goal of the pilot program shall be to favorably resolve a statistically significant number of disputes sent to mediation under the program. This chapter does not apply to any dispute that turns on a question of major insurance coverage or a purely legal interpretation, or disputes involving the actions of an agent or broker in which the insurer is not alleged to have been responsible for the conduct, or any complaint the commissioner finds to be frivolous, or any dispute in which a party is alleged to have committed fraud.

SEC. 6. Section 10089.8 of the Insurance Code is amended to read:

10089.8. (a) The authority shall operate pursuant to a written plan of operations. The panel shall submit a plan to the board for approval. If it approves the plan, the board shall submit the plan to the commissioner for his or her approval. On receiving the commissioner's approval, the board shall formally adopt the plan and submit the plan to the Legislature. Upon commencement of the issuance of insurance policies by the authority, any subsequent amendments to the plan of operation shall be approved by the board and the commissioner.

(b) If at any time the commissioner disapproves the submitted plan or any plan amendments adopted by the board, the board may within 15 days submit changes in the plan to the commissioner. If the commissioner disapproves the plan or the changes in the plan, or if the board fails to submit a plan or to make and submit the requested changes, the commissioner may require the board to adopt that plan or those changes directed by the commissioner.

(c) The plan of operations shall establish in detail the policies and procedures of the authority, including, but not limited to, financial operations of the authority, claims procedures, methods of premium collection, procedures consistent with constitutional, statutory, and common law requirements for resolving grievances of applicants or policyholders who are dissatisfied with application handling or adverse claims decisions, whether by the authority or by a servicing insurer, assessment procedures, a plan for resolution of assessment

disputes between the authority and insureds, grievances between the authority and participating carriers, servicing carrier fees and expenses, reasonable underwriting standards, and producer compensation.

SEC. 7. Section 10089.10 of the Insurance Code is amended to read:

10089.10. To expand the capacity of the authority and achieve maximum capacity for writing earthquake coverage, the authority shall do both of the following acts, on prior approval of the commissioner:

(a) The authority shall purchase contracts of reinsurance at rates and on terms the board considers reasonable and appropriate.

(b) The authority, through the Treasurer, shall enter capital market contracts on terms as the board and Treasurer may consider reasonable and appropriate. The Treasurer shall not withhold approval except for good cause related to the purposes of the authority. Such terms may include indemnification and contribution provisions protecting parties to the capital market contracts of the authority against material misstatements in or material omissions from the authority's official statements and other authority documents referred to in the capital markets contracts.

(c) The total annual expenditure for reinsurance contracts and capital market contracts pursuant to this section shall not exceed a reasonable and appropriate percentage of the annual earthquake insurance premiums collected by the authority.

SEC. 8. Section 10089.11 of the Insurance Code is amended to read:

10089.11. (a) The commissioner shall adopt regulations to implement the provisions of this chapter within 60 days of its effective date. The regulations shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of the Government Code, and for the purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(b) Regulations shall specify procedures for ratemaking and forms approval, define the type and quality of investments the authority is authorized to make, define coverage types and limits, set forth producer compensation rates, and specify the procedures to be followed by the authority following any earthquake event where the magnitude of earthquake losses make it likely that prorated benefits may be paid. The regulations shall be consistent with the requirements of Proposition 103.

(c) The rights provided by Section 1861.10 shall apply to proceedings under this chapter relating to establishing rates and regulations for earthquake insurance sold by the authority.

(d) All materials and documents prepared or used by the authority to determine its rates other than proprietary materials and documents owned or licensed by third parties shall be considered public documents, and copies of the public documents shall be made available to the public for inspection at no charge. Members of the public may purchase public ratemaking related documents from the authority at actual cost.

SEC. 9. Section 10089.13 of the Insurance Code is amended to read:

10089.13. (a) One year following its commencement of operations, and annually thereafter by each January 1, the authority shall report to the Legislature and the commissioner on program operations in a format prescribed by the commissioner. The report shall include, but shall not be limited to, the financial condition of the authority, a description of all rates and rating plans approved for use in the authority, an evaluation of the functioning of the authority in light of its stated purpose of making residential property insurance and residential earthquake insurance more available. The report shall also include an analysis of the growth by market share of residential property insurance of participating insurers compared to nonparticipating insurers, any adverse consequences on the various insurance distribution systems resulting from the operation of the authority or alterations in the growth of the residential property insurance market share between participating insurers and nonparticipating insurers, any adverse consequences of the various insurance distribution systems resulting from the operation of the authority or alterations in the growth of homeowners' insurance market share between participating insurers and nonparticipating insurers, and an analysis of any recommended program changes to permit the authority to better fulfill its stated purpose. In making this determination the board shall be mindful of the competitive nature of the market and how any decision can negatively impact insurers who are currently competing in the marketplace.

(b) The annual report shall include full information describing the following matters relating to the authority's condition and affairs.

(1) The property or assets held by the authority, including the amount of cash on hand and deposited in banks to its credit, the amount of cash in the hands of servicing insurance companies, the amount of any stocks or bonds owned by the authority, specifying the amount, number of shares, and the par and market value of each kind of stock or bond, and all other assets, specifying each.

(2) The liabilities of the authority, including the amount of losses due and unpaid, the amount of claims for losses resisted by the authority and the amount of losses in the process of adjustment or in suspense, including all reported and supposed losses, the amount of revenue bonds or other debt financing issues under Section 10089.29 or Section 10089.50, and all other liabilities.

(3) Income of the authority during the preceding year, specifying premiums received, interest money received, and income from all other sources, specifying the source.

(4) Expenditures of the authority during the preceding year, specifying the amount of losses paid, the amount of expenses paid by category, and the amount of all other payments and expenditures.

(5) The costs and scope of all reinsurance and capital market contracts entered into by the authority under Section 10089.10.

(c) As part of the annual report, the authority shall make a separate, summary report on the financial capacity of the authority to pay claims made against the authority. Copies of this report shall also be made available to the public. The report shall include, but shall not be limited to, the following information, valued as of 30 days prior to the date of the report.

(1) The available capital of the authority.

(2) The liabilities of the authority.

(3) The amount of all assessments previously made and the amount of assessments that may be made in the future under Section 10089.23.

(4) The amount of the reinsurance under contract and actually available to the authority.

(5) The amount of all revenue bonds or other debt financing previously issued or contracted for and the amount of all revenue bonds or other debt financing that may be issued or contracted for in the future under Section 10089.29.

(6) The amount of surcharges previously assessed against policyholders and the amount of surcharges that are currently outstanding against policyholders under Section 10089.29.

(7) The amount of capital committed and actually available by contract from private capital markets that is available to pay claims against the authority.

(8) The amount of all assessments previously made and the amount of all assessments that may be made in the future under Section 10089.30.

(d) In verification of the matters set forth in the annual report provided for in subdivision (a), the Department of Finance shall approve independent qualified auditors selected by the commissioner to examine the books and accounts relating to all matters concerning the financial and program operations of the authority. The commissioner shall file a certified report of the examination with the President pro Tempore of the Senate, the Speaker of the Assembly, the Chairpersons of the Senate and Assembly Insurance Committees, and the Chairperson of the Senate Committee on Judiciary within 10 days of its receipt. Copies of this report shall also be made available to the public. The expense of examining the books and accounts of the authority shall be paid out of the operating funds of the authority.

(e) The authority shall, within 120 days following a seismic event that results in the payment of claims by the authority, and within one year of a major seismic event that results in the payment of claims by the authority, submit to the President pro Tempore of the Senate, the Speaker of the Assembly, the Chairpersons of the Senate and Assembly Insurance Committees, and the Chairperson of the Senate Committee on Judiciary, and the commissioner a concise written report of program operations related to that seismic event. The reports shall include, but not be limited to, progress on payment of claims, claims payments made and anticipated, and the functioning of the authority in response to the seismic event. Copies of this report shall also be made available to the public.

SEC. 10. Section 10089.15 of the Insurance Code, as added by Section 7 of Chapter 1166 of the Statutes of 1990, is amended and renumbered to read:

10089.1. To the extent that the coverage is not already provided in the minimum offer of coverage, every insurer shall offer the following optional coverage as part of the offer of coverage as required by Section 10081 only after the insured has completed and the insurer has verified retrofitting of the residential dwelling as described in subdivision (a) of Section 10089.2:

Coverage in the amount of ten thousand dollars ($10,000) for the purpose of reconstruction costs required to bring the residential dwelling on the residential property up to required current local residential dwelling building code standards as required by the local entity as part of the approval of the reconstruction permit process after an earthquake.

SEC. 11. Section 10089.17 is added to the Insurance Code, to read:

10089.17. Notwithstanding subdivision (h) of Section 10089.7, the authority shall be subject to the provisions of the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code).

SEC. 12. Section 10089.20 of the Insurance Code is amended to read:

10089.20. The authority shall renew any policy of basic residential earthquake insurance, provided the authority receives payment of the applicable renewal premium on or before the expiration date stated in the policy. The authority shall nonrenew, rescind, or cancel a policy if the property is no longer covered by an underlying policy of residential property insurance. The policy issued by the authority shall not provide coverage in the event that there is no underlying policy of property insurance at the time of loss. In that case, any unearned premiums shall be returned to the policyholder on a pro rata basis.

SEC. 13. Section 10089.21 is added to the Insurance Code, to read:

10089.21. The authority is a public instrumentality of the State of California and the exercise of its powers is an essential state governmental function. No provision of law, including, but not

limited to, subdivision (h) of Section 10089.7 and subdivision (e) of Section 10089.22, shall be construed to affect the status of the authority as a public instrumentality of the State of California. Notwithstanding any other provision of law, the authority is not and shall never be authorized to become a debtor in a case under the United States Bankruptcy Code (Title 11 of the United States Code) or to make an assignment for the benefit of creditors or to become the subject of any similar case or proceeding, nor is the authority subject to Article 14 (commencing with Section 1010) and Article 14.3 (commencing with Section 1064.1) of Chapter 1 of Part 2 of Division 1. Notwithstanding any other provision of law, the commissioner shall not, directly or indirectly, when exercising the power and authority contained or referred to in or arising from Section 10089.6, paragraph (5) of subdivision (e) of Section 10089.7, Section 10089.12, subdivision (e) of Section 10089.22, subdivision (b) of Section 10089.35, or any other statute, rule, or regulation, impede or in any manner interfere with, but shall affirmatively take all necessary steps to effect, and no person acting under subdivision (c) of Section 10089.11, or any other provision of law or principle of equity shall be permitted in any way to impede or in any manner interfere with: (a) the full and timely payment of principal, interest, and premiums on revenue bonds of the authority and amounts due those bond insurers and providers of credit support and letters of credit; and (b) any pledge or assignment of revenues as security for those payments or amounts due, and the full and timely application of those pledged or assigned revenues to those payments and amounts due, in each or either case, (a) or (b), as and when due in accordance with and subject to the limitations contained in Section 10089.22 and the terms of the constituent instruments defining the rights of the holders of the bonds and the providers of bond insurance, credit support, and letters of credit.

Division 3.6 (commencing with Section 810) of Title 1 of the Government Code shall not apply to acts of the authority.

SEC. 14. Section 10089.22 is added to the Insurance Code, to read:

10089.22. (a) The authority shall be continued in existence for so long as its bonds are outstanding. Unless and until the authority is terminated pursuant to Section 10089.43, the commissioner and the authority shall execute assignments and contracts and take all necessary steps to assure that all revenue of the authority is paid to a trustee appointed by the Treasurer, which trustee may be the treasurer. The revenue of the authority shall be pledged and assigned to and held in trust by the trustee and invested and disbursed by the trustee, to pay, or to set aside funds to pay, principal, interest, and premiums on bonds and amounts due bond insurers and providers of credit support and letters of credit for those bonds, but only in the manner and in accordance with the terms of the constituent instruments defining the rights of the holders of bonds of the authority and the providers of bond insurance, credit support and

letters of credit for those bonds. Amounts held by the trustee from time to time after provisions for those payments may be disbursed free of trust to the California Earthquake Authority Fund. Notwithstanding the foregoing provisions of this section, (1) debt service payments on bonds of the authority secured by or payable from securities described in Section 16430 of the Government Code shall not be secured by a pledge or assignment of revenue of the authority other than revenue of the authority from (A) the proceeds of sale of such bonds, (B) the securities described in Section 16430 of the Government Code, and (C) principal and interest payments on such securities described in Government Code Section 16430, but debt service payments on such bonds of the authority may also be made payable from revenue of the authority in the California Earthquake Authority Fund, and (2) the constituent instruments defining the rights of the holders of bonds of the authority referred to in paragraph (1) shall specify that payment of a portion of the interest on such bonds is contingent upon payment of policyholder claims for which the bonds are responsible and that the obligation of the authority is to first apply such assigned or pledged revenue to the payment of such policyholder claims instead of paying that contingent interest.

(b) There is hereby created the California Earthquake Authority Fund, which is not a fund in the State Treasury. Notwithstanding Section 13340 of the Government Code, the fund is continuously appropriated without regard to fiscal years for the purposes of this chapter. The fund shall be administered by the commissioner, subject to the direction of the board, to pay all costs arising from this chapter, including, but not limited to, premiums payable by the authority under contracts of reinsurance, claims arising under policies of basic residential earthquake insurance issued by the authority, operating and other expenses of the authority, and to establish reserves. At the discretion of the commissioner, segregated, dedicated accounts within the fund may be established for those payments.

(c) The board may cause moneys in the fund to be invested and reinvested, from time to time, in accordance with paragraph (4) of subdivision (c) of Section 10089.7 and subject to subdivision (b) of Section 10089.6. Moneys in the fund and not so invested may be deposited from time to time in (1) financial institutions authorized by law to receive deposits of public moneys, or (2) with the approval of the Treasurer, the Surplus Money Investment Fund as provided in Article 4 (commencing with Section 16470) of Division 4 of Title 2 of the Government Code.

(d) A national bank shall be custodian of all securities belonging to the fund, except as otherwise provided in this chapter and except as otherwise provided in the constituent instruments that define the rights of the holders of bonds of the authority and the providers of bond insurance, credit support, and letters of credit for those bonds.

(e) The board may, in cooperation with the Treasurer, authorize the establishment of an account or fund in the State Treasury in the name of the authority, but money deposited with the Treasurer in that account or fund is not state money within the intent of Section 16305.2 of the Government Code, and Sections 16305.3 to 16305.7, inclusive, of the Government Code shall not apply to money drawn or collected by the authority.

SEC. 15. Section 10089.23 of the Insurance Code is amended to read:

10089.23. (a) (1) If at any time following the payment of earthquake losses the authority's available capital is reduced to less than three hundred fifty million dollars ($350,000,000), or if at any time the authority's available capital is insufficient to pay benefits and continue operations, the authority shall have the power to assess participating insurance companies subject to the maximum limits as set forth in this section and Section 10089.30. The assessment shall be limited to the amount necessary to pay the outstanding or expected claims of the authority and to return the authority's available capital to three hundred fifty million dollars ($350,000,000), as determined by the board, subject to approval by the commissioner.

(2) Each participating insurer's assessment shall be determined by multiplying its residential earthquake insurance market share, as of December 31 of the immediately preceding year or the most recent year for which premium data not more than one year old are available, by the amount of the total assessment sought by the authority.

(3) Maximum permissible insurer assessments pursuant to this section and Section 10089.30, maximum permissible earthquake policyholder assessments pursuant to Section 10089.29, and maximum permissible bond issuances or other debt financing issued or secured by the Treasurer pursuant to Section 10089.29 shall be reduced uniformly by multiplication of the maximum assessments and other amounts provided in those sections by the percentage of the total residential property insurance market share participation attained by the authority upon its commencement, as described in Section 10089.15. The total amount of all assessments levied on participating insurance companies by the authority pursuant to this section shall not exceed three billion dollars ($3,000,000,000), regardless of the frequency or severity of earthquake losses at any and all times subsequent to the creation of the authority. Once a participating insurer has paid amounts equal to its residential earthquake insurance market share multiplied by three billion dollars ($3,000,000,000) pursuant to this section, the authority's power to assess that insurer under this section shall cease and the authority shall be prohibited from levying additional assessments on that insurer pursuant to this section.

(4) Beginning December 31 of the first year of operations, and each December 31 thereafter, the board shall adjust the maximum

permissible insurer assessments pursuant to this section and Section 10089.30, the maximum permissible authority policyholder assessment pursuant to Section 10089.29, and the maximum permissible bond issuances or other debt financing issued or secured by the Treasurer pursuant to Section 10089.29 to reflect the market share of new insurers entering into the authority as authorized by Sections 10089.15 and 10089.16 and participating insurers withdrawing from the authority as authorized by Section 10089.19. The adjustments shall be made in the same manner as authorized by paragraph (3).

(b) In the case of any insurer assessment, the authority shall cause to be sent to each participating insurer a notice of that insurer's assessment, and full payment shall be due within 30 days and shall be overdue after 30 days. Penalties and interest shall be assessed for late payments in the same manner as provided for late payments of the insurer gross premium tax pursuant to Section 12258 of the Revenue and Taxation Code. The board may waive the penalties and interest for good cause shown. The board shall make every effort to assess insurers only for funds reasonably anticipated to be necessary for claims payments and to return the authority's available capital to three hundred fifty million dollars ($350,000,000).

(c) On the first December 31 after two years following the date of commencement of authority operations, the aggregate assessment authorized under this section shall be subject to reallocation by an amount equal to the amount of available capital in excess of one billion dollars ($1,000,000,000). For each dollar accumulated in available capital in excess of one billion dollars ($1,000,000,000), the board shall reallocate one dollar ($1) of the aggregate assessment liability of participating insurers under this section to make those funds subject to assessment only in the event that the benefits paid by the authority following an earthquake event exhaust the total of (1) the authority's available capital, (2) the maximum amount of all insurer capital contributions pursuant to Section 10089.15, (3) the maximum amount of insurer assessments pursuant to Section 10089.23 which has not been reallocated, (4) all reinsurance actually available and under contract to the authority, (5) the maximum amount of all authority policyholder assessments pursuant to Section 10809.29, (6) all capital committed and actually available by contract to the authority from private capital markets, and (7) the maximum amount of all insurer assessments pursuant to Section 10089.30. Each December 31 thereafter, the board shall further reallocate the aggregate assessment authorized under this section by an amount equal to the net increase in available capital in excess of the previous level of available capital at which a reallocation in the aggregate assessment was made. Any reallocation pursuant to this subdivision shall not exceed 15 percent of the original aggregate assessment in any year of the operation of the authority. In no event shall any

reallocated assessments previously authorized by the board be reinstated.

(d) If the average daily balance of the authority's available capital exceeds four billion dollars ($4,000,000,000) for any 30-day period after the authority has been operative for 10 or more years, the aggregate assessment authorized by this section, including any reallocated amounts, shall be reduced by the board to zero dollars ($0), notwithstanding any other provisions of this section.

(e) Notwithstanding the other provisions of this section, the aggregate assessment authorized by this section, including any reallocated amounts, shall be reduced to zero no later than 12 years following the commencement of authority operations.

SEC. 16. Section 10089.25 of the Insurance Code is amended to read:

10089.25. Beginning December 31, 1997, and annually thereafter on the 31st of December, the board shall notify each participating insurer of the maximum earthquake loss funding assessment level that it may be required to meet.

SEC. 17. Section 10089.26 of the Insurance Code is amended to read:

10089.26. (a) The authority shall issue policies of basic residential earthquake insurance, including earthquake loss assessment policies for individual condominium unit properties, to any owner of a qualifying residential property, as long as the owner has secured a policy of residential property insurance from a participating insurer.

(1) For purposes of this section, earthquake loss assessment coverage shall be issued in a minimum amount of fifty thousand dollars ($50,000) for individual condominium units valued at more than one hundred thirty-five thousand dollars ($135,000). Earthquake loss assessment coverage shall be issued in a minimum amount of twenty-five thousand dollars ($25,000) for individual condominium units of one hundred thirty-five thousand dollars ($135,000) in value or less. The value of the land shall be excluded when determining the value of the condominium, as it relates to the earthquake loss assessment coverage offered by the authority.

(2) The panel shall submit to the board, and the board shall approve, rates for earthquake loss assessment coverage that reasonably balance the earthquake loss assessment coverages offered and the potential exposure to earthquake loss resulting from a earthquake loss assessment policy as compared to the coverages offered and the potential exposure to earthquake loss resulting from residential property other than individual condominium policies.

It is the intent of the Legislature, to the extent practicable, that rates charged by the authority to condominium loss assessment policyholders and residential property owner policyholders are treated equitably, and that a proportionate share of premiums is paid for potential exposure to loss, to the authority.

(b) Nothing in this section shall prohibit a participating or nonparticipating insurer from offering a condominium earthquake loss assessment policy for different amounts of coverage other than those offered by the authority.

SEC. 18. Section 10089.34 of the Insurance Code is amended to read:

10089.34. (a) (1) The policies issued by the authority shall not be subject to assessment for, nor shall any authority policyholder be eligible for benefits from, the California Insurance Guaranty Association.

(2) Policies of residential earthquake insurance written by participating insurers that supplement, augment, or are in excess of the authority's policy of basic earthquake insurance shall be subject to assessment by the California Insurance Guaranty Association and shall be covered to the extent provided in Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1.

(b) (1) Policies of basic residential earthquake insurance written by nonparticipating insurers shall be subject to assessment by the California Insurance Guaranty Association and shall be covered to the extent provided in Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1.

(2) Participating insurers of the authority shall have no obligation to pay assessments to the California Insurance Guaranty Association for covered claims obligation arising from policies of basic residential earthquake insurance written by nonparticipating insurers.

SEC. 19. Section 10089.50 of the Insurance Code is amended to read:

10089.50. The Treasurer may from time to time enter into one or more credit facilities permitting the authority to draw an amount up to one billion dollars ($1,000,000,000) with payment, interest rate, indemnity, compensation, security, default, remedy, and other terms and conditions as determined by the authority. All drawings under these credit facilities shall be available as funding for the authority as provided in Section 10089.29.

SEC. 20. Section 10089.52 is added to the Insurance Code, to read:

10089.52. Nothing in Section 10089.50 or 10089.51 is intended to limit the applicability to the authority of any provision of Section 5450 or subdivision (c) of Section 5922 of the Government Code.

SEC. 21. Section 10089.53 is added to the Insurance Code, to read:

10089.53. (a) Any insurer that withdraws from the authority under Section 10089.19 while bonds or other debt is outstanding shall impose annually a premium surcharge on each policy of residential earthquake insurance written by it equal in percentage amount, calculated as a percentage of the basic residential earthquake insurance premium, to the percentage amount of the surcharge being imposed in that year by the authority pursuant to subdivision (b) of Section 10089.29. That insurer shall remit promptly all those surcharges collected by it to the trustee appointed pursuant to

Section 10089.22. The surcharges shall be used solely to repay the bonded indebtedness or other debt issued pursuant to subdivision (a) of Section 10089.29. If the sum of the surcharges remitted to the trustee pursuant to this section plus the amount of the surcharges imposed by the authority pursuant to subdivision (b) of Section 10089.29 would exceed the amount authorized by that provision, then surcharges of the authority shall be reduced by an amount equal to that excess.

(b) Should the Legislature and Governor approve legislation that causes the authority to cease operation while bonds or other debt are outstanding, participating insurers shall impose annually a premium surcharge on each policy of residential earthquake insurance written by them equal in percentage amount, calculated as a percentage of the basic residential earthquake insurance premium, to the percentage amount of the surcharge being imposed in that year by the authority pursuant to subdivision (b) of Section 10089.29. Those insurers shall remit promptly all these surcharges collected by them to the trustee appointed pursuant to Section 10089.22. The surcharges shall be used solely to repay the bonded indebtedness or other debt issued pursuant to subdivision (a) of Section 10089.29. If the sum of the surcharges remitted to the trustee pursuant to this section plus the amount of the surcharges imposed by the authority pursuant to subdivision (b) of Section 10089.29 would exceed the amount authorized by that provision, then surcharges of the authority shall be reduced by an amount equal to that excess.

SEC. 22. The sum of one million three hundred thousand dollars ($1,300,000) is hereby loaned to the California Earthquake Authority from the California Residential Earthquake Recovery Fund in order to implement this act. This loan shall be repaid within the first 12 months of operation of the authority with interest due at the legal rate on the outstanding balance.

SEC. 23. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 24. This act shall become operative only if Assembly Bill 2086 is also enacted.

SEC. 25. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to promote the restoration of affordable and available homeowners' insurance for all Californians, provide protection from the devastating and catastrophic losses caused by earthquakes, and continue California's economic growth, it is necessary that this act take effect immediately.

CHAPTER 968

An act to amend Sections 10089.7, 10089.14, 10089.15, 10089.16, 10089.28, 10089.29, 10089.30, 10089.35, 10089.36, 10089.40, and 10089.41 of, and to repeal Section 10089.18 of, the Insurance Code, relating to earthquake insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 26, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. This act shall be known and may be cited as the Homeowners' Insurance Availability Act of 1996, or as the Knowles Act.

SEC. 2. Section 10089.7 of the Insurance Code, as added by Section 2 of Chapter 944 of the Statutes of 1995, is amended to read:

10089.7. (a) The authority shall be governed by a three-member governing board consisting of the Governor, the Treasurer, and the Insurance Commissioner, each of whom may name designees to serve as board members in their place. The Speaker of the Assembly and the Chairperson of the Senate Rules Committee shall serve as nonvoting, ex officio members of the board, and may name designees to serve in their place.

(b) The board shall be advised by an advisory panel whose members shall be appointed by the Governor, except as provided in this subdivision. The advisory panel shall consist of four members who represent insurance companies that are licensed to transact fire insurance in the state, two of whom shall be appointed by the commissioner, two licensed insurance agents, one of whom shall be appointed by the commissioner and three members of the public not connected with the insurance industry, at least one of whom shall be a consumer representative. In addition, the Speaker of the Assembly, and the Chairperson of the Senate Rules Committee may each appoint one member of the public not connected with the insurance industry. Panel members shall serve for four-year terms, which may be staggered for administrative convenience, and panel members may be reappointed. The commissioner shall be a nonvoting, ex officio member of the panel and shall be entitled to attend all panel meetings, either in person or by representative.

(c) The board shall have the power to conduct the affairs of the authority and may perform all acts necessary or convenient in the exercise of that power. Without limitation, the board may: (1) employ or contract with officers and employees to administer the authority; (2) retain outside actuarial, geological, and other professionals; (3) enter into other obligations relating to the operation of the authority; (4) invest the moneys in the California

Earthquake Authority Fund; (5) obtain reinsurance and financing for the authority as authorized by this chapter; (6) contract with participating insurers to service the policies of basic residential earthquake insurance issued by the authority; (7) issue bonds payable from and secured by a pledge of the authority of all or any part of the revenues of the authority to finance the activities authorized by this chapter and sell those bonds at public or private sale in the form and on those terms and conditions as the Treasurer shall approve; (8) pledge all or any part of the revenues of the authority to secure bonds and any repayment or reimbursement obligations of the authority to any provider of insurance or a guarantee of liquidity or credit facility entered into to provide for the payment of debt service on any bond of the authority; (9) employ and compensate bond counsel, financial consultants, and other advisers determined necessary by the Treasurer in connection with the issuance and sale of any bonds; (10) issue or obtain from any department or agency of the United States or of this state, or any private company, any insurance or guarantee of liquidity or credit facility determined to be appropriate by the Treasurer to provide for the payment of debt service on any bond of the authority; (11) engage the commissioner to collect revenues of the authority; (12) issue bonds to refund or purchase or otherwise acquire bonds on terms and conditions as the Treasurer shall approve; and (13) perform all acts that relate to the function and purpose of the authority, whether or not specifically designated in this chapter.

(d) The authority shall reimburse board and panel members for their reasonable expenses incurred in attending meetings and conducting the business of the authority.

(e) (1) There shall be a limited civil immunity and no criminal liability in a private capacity, on account of any act performed or omitted or obligation entered into an official capacity, when done or omitted in good faith and without intent to defraud, on the part of the board, the panel, or any member of either, or on the part of any officer, employee, or agent of the authority. This provision shall not eliminate or reduce the responsibility of the authority under the covenant of good faith and fair dealing.

(2) In any claim against the authority based upon an earthquake policy issued by the authority, the authority shall be liable for any damages, including damages under Section 3294 of the Civil Code, for a breach of the covenant of good faith and fair dealing by the authority or its agents.

(3) In any claim based upon an earthquake policy issued by the authority, the participating carrier shall be liable for any damages for a breach of a common law, regulatory or statutory duty as if it were a contracting insurer. The authority shall indemnify the participating carrier from any liability resulting from the authority's actions or directives. The board shall not indemnify a participating carrier for any loss resulting from failure to comply with directives of the

authority or from violating statutory, regulatory, or common law governing claims handling practices.

(4) No licensed insurer, its officers, directors, employees, or agents, shall have any antitrust civil or criminal liability under the Cartwright Act (Part 2 (commencing with Section 16600) of Division 7 of the Business and Professions Code) by reason of its activities conducted in compliance with this chapter. Further, the California Earthquake Authority shall be deemed a joint arrangement established by statute to ensure the availability of insurance pursuant to subdivision (b) of Section 1861.03.

(5) Subject to the provisions of Section 10089.21, nothing in this chapter shall be construed to limit any exercise of the commissioner's power, including enforcement and disciplinary actions, or the imposition of fines and orders to ensure compliance with this chapter, the rules and guidelines of the authority, or any other law or rule applicable to the business of insurance.

(6) Except as provided in paragraph (3) and by any other provision of this chapter, there shall be no liability on the part of, and no cause of action shall be permitted in law or equity against, any participating insurer for any earthquake loss to property for which the authority has issued a policy unless the loss is covered by an insurance policy issued by the participating insurer. A policy issued by the authority shall not be deemed to be a policy issued by a participating insurer.

(f) The Attorney General, in his or her discretion, shall provide a representative of his or her office to attend and act as antitrust counsel at all meetings of the panel. The Attorney General shall be compensated for legal service rendered in the manner specified in Section 11044 of the Government Code.

(g) The authority may sue or be sued and may employ or contract with that staff and those professionals the board deems necessary for its efficient administration.

(h) (1) The authority may contract for the services of a chief executive officer, a chief financial officer, and an operations manager, and may contract for the services of reinsurance intermediaries, financial market underwriters, modeling firms, a computer firm, an actuary, an insurance claims consultant, counsel, and private money managers. These contracts shall not be subject to otherwise applicable provisions of the Government Code and the Public Contract Code, and for those purposes, the authority shall not be considered a state agency or other public entity. Other employees of the authority shall be subject to civil service provisions. The total number of authority employees subject to civil service provisions shall not exceed 25.

(2) When the authority hires multiple private money managers to manage the assets of the California Earthquake Authority Fund, other than the primary custodian of the securities, the authority shall consider small California-based firms who are qualified to manage

the money in the fund. The purpose of this provision is to prevent the exclusion of small qualified investment firms solely because of their size.

(i) Members of the board and panel, and their designees, and the chief executive officer, the chief financial officer, and the operations manager of the authority shall be required to file financial disclosure statements with the Fair Political Practices Commission. The appointing authorities for members and designees of the board and panel shall, when making appointments, avoid appointing persons with conflicts of interest. Section 87406 of the Government Code, the Milton Marks Postgovernment Employment Restrictions Act of 1990, shall apply to the authority. Members of the board, the chief financial officer, the chief executive officer, the chief operations manager, the chief counsel, and any other person designated by the authority shall be deemed to be designated employees for the purpose of that act. In addition, no member of the board, nor the chief financial officer, the chief executive officer, the chief operations manager, and the chief counsel, shall, upon leaving the employment of the authority, seek, accept, or enter into employment or a consulting or other contractual arrangement for the period of one year with any employer or entity that entered into a participating agreement, or a reinsurance, bonding, letter of credit, or private capital markets contract with the authority during the time the employee was employed by the authority, which that member or employee had negotiated or approved, or participated in negotiating. A violation of these provisions shall be subject to enforcement pursuant to Chapter 11 (commencing with Section 91000) of Title 9 of the Government Code.

(j) The Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) applies to meetings of the board and the panel.

SEC. 3. Section 10089.14 of the Insurance Code is amended to read:

10089.14. (a) The authority shall not issue any earthquake policy and no insurer shall transfer any earthquake risk to the authority until all of the following conditions have been met:

(1) The Internal Revenue Service has determined that the authority will be or is exempt from federal income tax.

(2) Insurers whose cumulative residential property insurance market share is more than 70 percent of the total residential property insurance market in California, measured as of January 1, 1995, have filed letters of intent, with binding contractual obligation, to participate in the authority.

(3) The authority has obtained letters of intent, with binding contractual obligation, for capital contributions in the amounts set forth in Section 10089.15.

(4) The authority has obtained appropriate risk transfer ability in the form of firm reinsurance commitments in an aggregate amount of not less than 200 percent of the total capital contributions committed by all participating insurers.

(b) Except as permitted by subdivision (e) of Section 10089.15 and subdivision (b) of Section 10089.16, insurers shall not be entitled to transfer any earthquake risk to the authority until they have met the capital contribution requirements set forth in Section 10089.15, and no insurer shall be entitled to transfer any earthquake risk to the authority pursuant to Section 10089.27 unless the insurer has signed a contract to participate in the authority, is in compliance with the capital contribution requirements set forth in Section 10089.15, and has complied with any related requirements set by the board.

SEC. 4. Section 10089.15 of the Insurance Code, as added by Section 2 of Chapter 944 of the Statutes of 1995, is amended to read:

10089.15. (a) Initial operating capital shall be contributed by insurance companies admitted to write residential property insurance in the state. Each insurer that elects to participate in the authority shall contribute as its share of operating capital an amount equal to one billion dollars ($1,000,000,000) multiplied by the percentage representing that insurer's residential earthquake insurance market share as of January 1, 1994, as determined by the board. A minimum of seven hundred million dollars ($700,000,000) in commitments shall be required before the authority may become operational.

(b) Until the authority becomes operational, contributions of initial operating capital shall be held by the commissioner in trust for the contributing insurers in the California Earthquake Authority Fund.

(c) Because insurers will retain the risk of earthquake losses on individual earthquake policies until they are renewed into the authority, participating insurers may elect to contribute operating capital in 12 installments payable on the first day of each successive calendar month after the insurer elects to participate. Each insurer shall compute its monthly installment based on the portion of the insurer's earthquake coverage that will be renewed into the authority during the next month. The final installment shall be equal to the excess of the participating insurer's required contribution over the sum of the previous 11 installments. Those insurers that elect to participate in the authority after the beginning operating date of the authority shall make initial capital contributions calculated using their residential earthquake insurance market share as of January 1, 1994, or the date of their election to participate in the authority, whichever contribution amount is greater.

(d) An insurer or insurer group that represents 1.25 percent or less of the residential property insurance market, as measured by premium volume, or that has a surplus of less than one billion dollars ($1,000,000,000), may elect to become a participating insurer with

the full rights and responsibilities of participating insurers of the authority, pursuant to the provisions of this section.

(e) The insurer or insurer groups defined in subdivision (d) may elect to contribute their operating capital, as required by subdivision (a) of Section 10089.15, in 60 equal monthly installments, payable on the first day of each successive calendar month after the insurer elects to participate. In the event that earthquake losses result in the authority's payment of claims while the authority's available funds are inadequate to meet claims liabilities, and insurers participating under this section have operating capital contributions outstanding, the operating capital contributions necessary to meet any unfunded claims liabilities will become due and payable within 30 days of a request for such accelerated payment by the board, not to exceed the maximum contribution owed by each insurer.

(f) No insurer may elect to contribute operating capital pursuant to subdivision (e) unless the aggregate premium or aggregate surplus of all affiliated insurers in its group meets the eligibility standards established by subdivision (d).

SEC. 5. Section 10089.16 of the Insurance Code is amended to read:

10089.16. (a) On application to the board, payment of any assessments and fees calculated by the board, and fulfillment of any additional requirements imposed by the board, nonparticipating insurers may become participants in the authority with all rights and privileges attendant to that participation.

(b) In order to act upon any findings and recommendations reported to the Legislature pursuant to Section 10089.13, or to implement a specific finding by the commissioner or the board that modification of requirements for entry into the authority is necessary to broaden the availability of residential property or residential earthquake insurance, the board is authorized to open the authority to participation by insurers who have not elected to participate in compliance with Section 10089.15. In implementing the authority granted by this section, the board may:

(1) Offer incentives for insurers to participate in the authority.

(2) Allow any insurer or insurer group that has not elected to become a participating insurer to become an associate participating insurer without complying with the capital contribution requirements of Section 10089.15 if it has maintained or exceeded its number of policies of residential property insurance written as of January 1, 1996.

(c) Any action by the board pursuant to subdivision (b) shall be subject to the following conditions and limitations:

(1) Any deliberation and action by the board shall be conducted at a public meeting of the board.

(2) No action may be taken within one year of the date upon which the authority begins writing policies of basic residential earthquake insurance.

(3) The board shall have no authority to modify the requirements of Section 10089.23 or 10089.30, or to provide, in any other manner, for reduction of the liability of an insurer or insurer group to comply with the assessments placed upon participating insurers in the event of a loss.

(4) Notwithstanding Section 10089.11, any action of the board pursuant to subdivision (b) shall be by regulation promulgated by the board. Notwithstanding any other provision of law, there shall be no authority by the board to promulgate emergency regulations to implement subdivision (b). No regulations may be proposed within one year of the date upon which the authority begins writing policies of basic residential earthquake insurance. Notwithstanding any exception provided in Section 11343 of the Government Code, any regulation adopted pursuant to subdivision (b) shall be submitted to the Office of Administrative Law for approval pursuant to the Administrative Procedure Act.

(5) Any action by the board to establish an incentive pursuant to subdivision (b) that is available to a single insurer or insurer group shall be based upon standards adopted by the board that are not arbitrary or discriminatory. Notwithstanding Section 10089.11, these standards shall be established by regulation promulgated by the board.

(6) A finding of necessity pursuant to subdivision (b) shall state the specific facts and conditions that establish the necessity and justify the actions to implement subdivision (b). All materials and documents prepared or used by the authority to determine the necessity to implement subdivision (b), other than proprietary materials and documents owned or licensed by third parties, shall be considered public documents, and copies of the public documents shall be made available to the public for inspection at no charge. Members of the public may purchase copies of these documents from the authority at actual cost.

(d) Associate participating insurers shall place all new policies of residential earthquake insurance, when writing new policies of residential property insurance, into the authority. Insurers placing policies with the authority under this section shall be subject to the assessments provided for in Sections 10089.23 and 10089.30. Notwithstanding subdivision (m) of Section 10089.5, "residential earthquake insurance market share" for purposes of any assessments pursuant to Sections 10089.23 and 10089.30 levied on an associate participating insurer shall mean an individual associate participating insurer's total direct premium received for residential earthquake policies written or renewed by the authority for which the insurer has written or renewed an underlying policy of residential property insurance, divided by the total gross premiums received by all admitted insurers and the authority for their basic residential earthquake insurance in California.

(e) (1) An associate participating insurer shall not cancel or refuse to renew a residential property insurance policy existing on the date it elected to become an associate participating insurer after an offer of earthquake coverage is accepted solely because the insured has accepted that offer of earthquake coverage.

(2) An associate participating insurer shall maintain in force any policy of residential property insurance existing on the date it elected to become an associate participating insurer after an offer of earthquake insurance has been accepted, unless the policy is properly canceled pursuant to Section 676 or the associate participating insurer has grounds for nonrenewal pursuant to subdivision (f).

(f) An associate participating insurer may refuse to renew a policy of residential property insurance after an offer of earthquake coverage has been accepted if one of the following exceptions applies:

(1) The policy is terminated by the named insured.

(2) The policy is refused renewal on the basis of sound underwriting principles that relate to the coverages provided by the underlying policy of residential property insurance and that are consistent with the approved rating plan and related documents filed with the department as required by existing law.

(3) The commissioner finds that the exposure to potential losses will threaten the solvency of the associate participating insurer or place the associate participating insurer in a hazardous condition. "Hazardous condition" has the same meaning as in Section 1065.1 and includes, but is not limited to, a condition in which an associate participating insurer makes claims payments for losses resulting from an earthquake that occurred within the preceding two years and that required a reduction in policyholder surplus of at least 25 percent for payment of those claims.

(4) There is cancellation under Section 676.

(5) The associate participating insurer has lost or experienced a substantial reduction in the availability or scope of reinsurance coverage or a substantial increase in the premium charged for reinsurance coverage for its residential property insurance policies, and the commissioner has approved a plan for the nonrenewals that is fair and equitable, and that is responsive to the changes in the associate participating insurer's reinsurance position.

(6) The named insured is insured based upon membership in a motor club, as defined in Section 12142, and the membership in that organization is terminated as provided in paragraph (2) of subdivision (c) of Section 1861.03.

(g) For associate participating insurers, underwriting standards applicable to residential property insurance shall not be applied in an unfairly discriminatory fashion against any person who accepts or elects to continue earthquake coverage.

(h) Associate participating insurers shall be subject to the following requirements:

(1) Associate participating insurers shall conform to all provisions of the authority's plan of operation applicable to participating insurers.

(2) No property that has previously been covered by a policy of residential earthquake insurance written by the associate participating insurer or associate participating insurer group, absent at least one full policy year with an insurer not affiliated with the associate participating insurer or its group, may be placed into the authority by an associate participating insurer.

(3) Any associate participating insurer or associate participating insurer group defined in paragraph (2) of subdivision (b) that has failed to maintain or exceed the number of policies of residential property insurance in force on January 1, 1996, may become an associate participating insurer by contributing additional capital into the authority at a rate to be established by the board, which shall be a per policy rate comparable to the average cost per policy paid by a participating insurer that joins the authority pursuant to Section 10089.15.

(i) Any associate participating insurer shall be required to establish procedures to verify compliance with this section. The procedures shall require verification that each basic residential earthquake policy written by the authority complies with paragraph (2) of subdivision (h).

(j) Any violation of this section may be enforced as a violation of the Unfair Trade Practices Act (Article 6.5 (commencing with Section 790) of Chapter 1 of Part 2 of Division 1). Each policy of basic residential earthquake insurance written in the authority by an associate participating insurer in violation of this section shall be deemed to be a separate violation of the Unfair Trade Practices Act.

(k) For purposes of this section, no insurer or associate participating insurer may participate in the authority unless all affiliated insurers participate in the authority.

(l) Policies of basic residential earthquake insurance written by associate participating insurers shall be subject to assessment by the California Insurance Guaranty Association and shall be covered to the extent provided in Article 14.2 (commencing with Section 1063) of Chapter 1 of Part 2 of Division 1. Except as provided in Section 10089.34, insurance policies written by participating insurers that are not associate participating insurers shall not be subject to assessment by the California Insurance Guaranty Association if the assessment is imposed to pay claims covered by policies of basic residential earthquake insurance written by an associate participating insurer.

SEC. 6. Section 10089.18 of the Insurance Code is repealed.

SEC. 7. Section 10089.28 of the Insurance Code is amended to read:

10089.28. (a) All policies of residential earthquake insurance provided by the authority shall be written by the authority. Authority policies shall be marketed and policyholders serviced by the participating insurer that writes the underlying policy of residential property insurance, and participating insurers shall be reasonably compensated for the claims and policyholder services they provide on behalf of the authority. Authority services may be performed on behalf of the authority in any reasonable manner by the participating insurer that is in compliance with statutory, regulatory, and case laws regarding claims handling practices; provided, however, where the authority has promulgated specific procedures to govern its operations, the participating insurer shall conform its practices to those procedures. The authority procedures shall comply with statutory, regulatory, and case law governing claims handling practices. Nothing in this provision shall be deemed or construed to affect any duty or liability of the authority or participating carrier as set forth in paragraphs (2) and (3) of subdivision (e) of Section 10089.7.

(b) The participating insurer shall notify each of its insureds that the authority is the provider of earthquake coverage under the policy. The form and method of notice shall meet standards established by the commissioner by regulation. The authority shall provide to participating insurers appropriate applications and forms and shall maintain records of all policies written, moneys received, and claims paid.

(c) The duty of an agent or broker to investigate the financial condition of the authority before placement of insurance shall be the same as the duty of an agent or broker to investigate the financial condition of an admitted insurer before placement of a policy of insurance.

SEC. 8. Section 10089.29 of the Insurance Code is amended to read:

10089.29. (a) If benefits paid by the authority following an earthquake event exhaust the total of (1) the authority's available capital, (2) the maximum amount of all insurer capital contributions and assessments pursuant to Sections 10089.15 and 10089.23, (3) all reinsurance actually available and under contract to the authority, and (4) all capital committed and actually available by contract to the authority from private capital markets, the Treasurer, as agent for sale of bonds for the authority, may sell investment grade revenue bonds or issue or secure other debt financing of the authority or any combination of the revenue bonds or debt financing in an amount up to one billion dollars ($1,000,000,000), in an amount determined by the board pursuant to Section 10089.32. The Treasurer shall make available the net proceeds of the revenue bonds or debt financing as funding for the authority. These funds shall not be used to replenish the fund. Failure of the authority to obtain such funding for any reason shall not obligate the State of California to provide or arrange

replacement funding for the authority. The Treasurer may sell revenue bonds for the purpose of refunding the revenue bonds or other debt financing when authorized to do so by the board, and the surcharge authorized by this section may be used to repay that refunding.

(b) In the event of a revenue bond sale or debt financing arrangement pursuant to this section, the authority shall have the power annually to surcharge all authority policies to secure funds solely to repay the bonded indebtedness or other debt. The net surcharge collected shall not exceed the sum calculated pursuant to paragraph (3) of subdivision (a) of Section 10089.23, and in no event exceed one billion dollars ($1,000,000,000), plus costs of issuance and sale of those revenue bonds or other debt and amounts paid or payable to bond issuers and providers of credit support and letters of credit for and interest on those revenue bonds or other debt. In no event shall the surcharge on any authority policy exceed 20 percent of the annual basic residential earthquake insurance premium in any one year for the policy.

(c) The total amount of indebtedness and policy surcharges authorized under this section shall not exceed the sum calculated pursuant to paragraph (3) of subdivision (a) of Section 10089.23, and in no event exceed one billion dollars ($1,000,000,000) plus costs of issuance and sale of those revenue bonds or other debt and amounts paid or payable to bond issuers and providers of credit support and letters of credit for, and interest on, those revenue bonds or other debt, regardless of the frequency or severity of earthquake losses at any and all times subsequent to the creation of the authority. Once the authority has levied policy surcharges in an amount equal to the sum calculated pursuant to paragraph (3) of subdivision (a) of Section 10089.23, and in no event more than one billion dollars ($1,000,000,000) plus costs of issuance and sale of those revenue bonds or other debt and amounts paid or payable to bond issuers and providers of credit support and letters of credit for, and interest on, those revenue bonds or other debt, the authority's power to surcharge policies shall cease and the authority shall be prohibited from levying additional surcharges pursuant to this section.

(d) Consistent with the provisions of Section 676, the authority shall cancel the policy of basic residential earthquake insurance if the policyholder fails to pay the earthquake policy surcharge authorized by the authority, and the insurer shall cancel the policy of residential property insurance if the policyholder fails to pay the policy surcharge authorized by the authority.

SEC. 9. Section 10089.30 of the Insurance Code is amended to read:

10089.30. If benefits paid by the authority due to earthquake events exhaust the total of (a) the authority's available capital, (b) the maximum amount of all insurer capital contributions and assessments pursuant to Sections 10089.15 and 10089.23, (c) all

reinsurance actually available and under contract to the authority, (d) the maximum amount of all authority policyholder assessments pursuant to Section 10089.29, and (e) all capital committed and actually available from the private capital markets, the board, subject to the approval of the commissioner, shall have the power to assess participating insurance companies subject to the maximum limits in this section. The total amount of all assessments levied against participating insurance companies by the authority pursuant to this section shall not exceed two billion dollars ($2,000,000,000), regardless of the frequency or severity of earthquake losses at any and all times subsequent to the creation of the authority. Once a participating insurer has paid amounts equal to its residential earthquake insurance market share percentage multiplied by two billion dollars ($2,000,000,000) pursuant to this section, the authority's power to assess that insurer under this section shall cease and the authority shall be prohibited from levying additional assessments on that insurer pursuant to this section. The board shall make assessments pursuant to this section by the same method set forth in paragraph (2) of subdivision (a) of Section 10089.23, in proportion to each participating insurer's residential earthquake insurance market share. The assessment shall be limited to the amount necessary to pay the expected claims of the authority and return the authority's available capital to three hundred fifty million dollars ($350,000,000), as determined by the board, subject to approval by the commissioner.

SEC. 10. Section 10089.35 of the Insurance Code is amended to read:

10089.35. (a) If at any time the board determines that all the authority's available capital may be exhausted and no source of additional funds such as assessments, reinsurance, or private capital market moneys will be available to the authority to pay policyholder claims, the board shall draw up and present to the commissioner a plan to pay policyholder claims on a pro rata basis or in installment payments. The board shall maintain sufficient capital to ensure the continued operation of the authority for the purpose of implementing the proration or installment plan. At this point, the commissioner shall adopt a schedule for reinstitution of an insurer's statutory obligation to offer earthquake coverage by a means other than placement in the authority. In no event shall the schedule adopted pursuant to this subdivision be for a period longer than six months.

(b) Upon presentation of that plan to prorate or pay in installments, the commissioner shall order the authority to cease renewing or accepting new earthquake insurance policies and may apply to the superior court for orders or injunctions as the commissioner deems necessary to prevent any event or occurrence adverse to the authority, including, but not limited to, any or all of the following:

(1) Interference with the commissioner's consideration and implementation of a plan for pro rata or installment payment of policyholder claims under this section.

(2) Interference with or attachment of the assets of the authority.

(3) Institution or prosecution of any actions or proceedings against the authority.

(4) The obtaining of preferences, judgments, attachments, or other liens or levies against the authority or its assets.

(5) The withholding by a participating insurer or any other person of any premium, surcharge, assessment, or other amount lawfully due and owing to the authority.

(c) Entry of orders or injunctions obtained by the commissioner upon the application permitted by subdivision (a) shall not vest the superior court with general jurisdiction over the business or assets of the authority or any plan for the pro rata or installment payment of policyholder claims under this section, and the superior court's jurisdiction shall be limited to the entry and enforcement of those orders and injunctions.

(d) The State of California shall have no liability for payment of claims in excess of funds available pursuant to this chapter. The State of California, and any of the funds of the State of California, shall have no obligations whatsoever for payment of claims or costs arising from this act, except as specifically provided in this act.

SEC. 11. Section 10089.36 of the Insurance Code is amended to read:

10089.36. In the event a natural disaster program is enacted by Congress, the panel shall convene and prepare a plan to dissolve the authority or conform this act with the federal program. Following its deliberations, the panel shall recommend a plan of action to the board and the Legislature.

SEC. 12. Section 10089.40 of the Insurance Code is amended to read:

10089.40. (a) Rates established by the authority shall be actuarially sound so as to not be excessive, inadequate, or unfairly discriminatory. Rates shall be established based on the best available scientific information for assessing the risk of earthquake loss. Factors the board shall consider in adopting rates include, but are not limited to, the following:

(1) Location of the insured property and its proximity to earthquake faults and to other geological factors that affect the risk of earthquake or damage from earthquake.

(2) The soil type on which the insured dwelling is built.

(3) Construction type and features of the insured dwelling.

(4) Age of the insured dwelling.

(5) The presence of earthquake hazard reduction factors, including those set forth in subdivision (a) of Section 10089.2.

(b) The classification system established by the board shall not be adjusted or tempered in any way to provide rates lower than are

justified for classifications that present a high risk of loss or higher than are justified for classifications that present a low risk of loss.

(c) Policyholders who have retrofitted their homes to withstand earthquake shake damage according to standards and to the extent set by the board shall enjoy a premium discount or credit of not less than 5 percent on the authority-issued policy of residential earthquake coverage, as long as the discount or credit is determined actuarially sound by the authority.

(d) All rates shall be approved by the commissioner prior to their use.

SEC. 13. Section 10089.41 of the Insurance Code is amended to read:

10089.41. (a) The offer of an authority policy by a participating insurer shall constitute a mode of insurer compliance with Chapter 8.5 (commencing with Section 10081) of Part 1 of Division 2, and as set forth in Section 10084.

(b) If the authority ceases operation for any reason, including, but not limited to, repeal of this chapter or insolvency of the authority, participating carriers shall no longer be able to satisfy the requirement to offer residential earthquake insurance coverage by placement within the authority. The commissioner shall adopt a schedule in accordance with subdivision (a) of Section 10089.35 to establish when participating carriers shall be required to offer coverage by another mode authorized pursuant to Chapter 8.5 (commencing with Section 10081) of Part 1 of Division 2 to those policyholders for whom they write the underlying policies of residential property insurance.

(c) If the authority ceases operation pursuant to a statute enacted by the Legislature, that statute shall determine the duty of participating insurers to provide earthquake insurance pursuant to Chapter 8.5 (commencing with Section 10081). Chapter 8.5 (commencing with Section 10081) shall remain in effect unless specifically repealed by that statute.

SEC. 14. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 15. This act shall become operative only if Senate Bill 1993 is also enacted.

SEC. 16. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to promote the restoration of affordable and available homeowners' insurance for all Californians, provide protection from the devastating and catastrophic losses caused by earthquakes, and

continue California's economic growth, it is necessary that this act take effect immediately.

CHAPTER 969

An act to amend Sections 10089.23, 10089.29, and 10089.40 of, and to add Section 10089.54 to, the Insurance Code, relating to earthquake insurance.

[Approved by Governor September 26, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 10089.23 of the Insurance Code, as amended by Senate Bill 1993 of the 1995–96 Regular Session, as amended July 7, 1996, is amended to read:

10089.23. (a) (1) If at any time following the payment of earthquake losses the authority's available capital is reduced to less than three hundred fifty million dollars ($350,000,000), or if at any time the authority's available capital is insufficient to pay benefits and continue operations, the authority shall have the power to assess participating insurance companies subject to the maximum limits as set forth in this section and Section 10089.30. The assessment shall be limited to the amount necessary to pay the outstanding or expected claims of the authority and to return the authority's available capital to three hundred fifty million dollars ($350,000,000), as determined by the board, subject to approval by the commissioner.

(2) Each participating insurer's assessment shall be determined by multiplying its residential earthquake insurance market share, as of December 31 of the immediately preceding year or the most recent year for which premium data not more than one year old are available, by the amount of the total assessment sought by the authority.

(3) Maximum permissible insurer assessments pursuant to this section and Section 10089.30, maximum permissible earthquake policyholder assessments pursuant to Section 10089.29, and maximum permissible bond issuances or other debt financing issued or secured by the Treasurer pursuant to Section 10089.29 shall be reduced uniformly by multiplication of the maximum assessments and other amounts provided in those sections by the percentage of the total residential property insurance market share participation attained by the authority upon its commencement, as described in Section 10089.15. The total amount of all assessments levied on participating insurance companies by the authority pursuant to this section shall not exceed three billion dollars ($3,000,000,000), regardless of the frequency or severity of earthquake losses at any

and all times subsequent to the creation of the authority. Once a participating insurer has paid amounts equal to its residential earthquake insurance market share multiplied by three billion dollars ($3,000,000,000) pursuant to this section, the authority's power to assess that insurer under this section shall cease and the authority shall be prohibited from levying additional assessments on that insurer pursuant to this section.

(4) Beginning December 31 of the first year of operations, and each December 31 thereafter, the board shall adjust the maximum permissible insurer assessments pursuant to this section and Section 10089.30, the maximum permissible authority policyholder assessment pursuant to Section 10089.29, and the maximum permissible bond issuances or other debt financing issued or secured by the Treasurer pursuant to Section 10089.29 to reflect the market share of new insurers entering into the authority as authorized by Sections 10089.15 and 10089.16 and participating insurers withdrawing from the authority as authorized by Section 10089.19. The adjustments shall be made in the same manner as authorized by paragraph (3).

(b) In the case of any insurer assessment, the authority shall cause to be sent to each participating insurer a notice of that insurer's assessment, and full payment shall be due within 30 days and shall be overdue after 30 days. Penalties and interest shall be assessed for late payments in the same manner as provided for late payments of the insurer gross premium tax pursuant to Section 12258 of the Revenue and Taxation Code. The board may waive the penalties and interest for good cause shown. The board shall make every effort to assess insurers only for funds reasonably anticipated to be necessary for claims payments and to return the authority's available capital to three hundred fifty million dollars ($350,000,000).

(c) Notwithstanding the other provisions of this section, the aggregate assessment authorized by this section shall be reduced to zero 12 years following the commencement of authority operations.

SEC. 2. Section 10089.29 of the Insurance Code, as amended by Assembly Bill 2086 of the 1995–96 Regular Session, as amended July 7, 1996, is amended to read:

10089.29. (a) If benefits paid by the authority following an earthquake event exhaust the total of (1) the authority's available capital, (2) the maximum amount of all insurer capital contributions and assessments pursuant to Sections 10089.15 and 10089.23, (3) all reinsurance actually available and under contract to the authority, and (4) all capital committed and actually available by contract to the authority from private capital markets, the Treasurer, as agent for sale of bonds for the authority, may sell investment grade revenue bonds or issue or secure other debt financing of the authority or any combination of the revenue bonds or debt financing in an amount up to one billion dollars ($1,000,000,000), in an amount determined by the board pursuant to Section 10089.32. The Treasurer shall make

available the net proceeds of the revenue bonds or debt financing as funding for the authority. These funds shall not be used to replenish the fund. Failure of the authority to obtain such funding for any reason shall not obligate the State of California to provide or arrange replacement funding for the authority. The Treasurer may sell revenue bonds for the purpose of refunding the revenue bonds or other debt financing when authorized to do so by the board, and the surcharge authorized by this section may be used to repay that refunding.

(b) (1) In the event of a revenue bond sale or debt financing arrangement pursuant to this section, the authority shall have the power annually to surcharge all authority policies to secure funds solely to repay the bonded indebtedness or other debt. The net surcharge collected shall not exceed the sum calculated pursuant to paragraph (3) of subdivision (a) of Section 10089.23, and in no event exceed one billion dollars ($1,000,000,000), plus costs of issuance and sale of those revenue bonds or other debt and amounts paid or payable to bond issuers and providers of credit support and letters of credit for and interest on those revenue bonds or other debt. In no event shall the surcharge on any authority policy exceed 20 percent of the annual basic residential earthquake insurance premium in any one year for the policy.

(2) If a policy issued by the authority includes a premium surcharge pursuant to this subdivision, the participating insurer shall provide the insured a notice in a stand-alone document stating that the policyholder may cancel or nonrenew the earthquake policy. The notice shall specify that cancellation or nonrenewal of the earthquake policy will not affect the underlying residential property insurance policy. The statement shall be provided with the premium billing and shall include the following statement in 14-point boldface type:

NOTICE OF SURCHARGE ON CEA EARTHQUAKE INSURANCE POLICY AND RIGHT TO CANCEL

A SURCHARGE HAS BEEN INCLUDED IN THE PREMIUM FOR YOUR CEA EARTHQUAKE INSURANCE POLICY. YOU MAY CHOOSE TO RENEW THIS POLICY AT THE NEW RATE OR YOU MAY CANCEL OR NONRENEW YOUR CEA EARTHQUAKE INSURANCE POLICY. CANCELLATION OR NONRENEWAL OF YOUR CEA POLICY WILL HAVE NO AFFECT ON YOUR HOMEOWNERS' OR FIRE INSURANCE POLICY. HOWEVER, IF YOU WANT EARTHQUAKE INSURANCE TO BE PROVIDED BY THE CEA, YOU MUST PAY THE FULL PREMIUM FOR THE CEA POLICY, INCLUDING THE SURCHARGE.

(c) The total amount of indebtedness and policy surcharges authorized under this section shall not exceed the sum calculated pursuant to paragraph (3) of subdivision (a) of Section 10089.23, and in no event exceed one billion dollars ($1,000,000,000) plus costs of issuance and sale of those revenue bonds or other debt and amounts paid or payable to bond issuers and providers of credit support and letters of credit for, and interest on, those revenue bonds or other debt, regardless of the frequency or severity of earthquake losses at any and all times subsequent to the creation of the authority. Once the authority has levied policy surcharges in an amount equal to the sum calculated pursuant to paragraph (3) of subdivision (a) of Section 10089.23, and in no event more than one billion dollars ($1,000,000,000) plus costs of issuance and sale of those revenue bonds or other debt and amounts paid or payable to bond issuers and providers of credit support and letters of credit for, and interest on, those revenue bonds or other debt, the authority's power to surcharge policies shall cease and the authority shall be prohibited from levying additional surcharges pursuant to this section.

(d) Consistent with the provisions of Section 676, the authority shall cancel the policy of basic residential earthquake insurance if the policyholder fails to pay the earthquake policy surcharge authorized by the authority, and the insurer shall cancel the policy of residential property insurance if the policyholder fails to pay the policy surcharge authorized by the authority.

SEC. 3. Section 10089.40 of the Insurance Code, as amended by AB 2086 of the 1995–96 Regular Session, as amended July 7, 1996, is amended to read:

10089.40. (a) Rates established by the authority shall be actuarially sound so as to not be excessive, inadequate, or unfairly discriminatory. Rates shall be established based on the best available scientific information for assessing the risk of earthquake frequency, severity, and loss. Rates shall be equivalent for equivalent risks.

Factors the board shall consider in adopting rates include, but are not limited to, the following:

(1) Location of the insured property and its proximity to earthquake faults and to other geological factors that affect the risk of earthquake or damage from earthquake.

(2) The soil type on which the insured dwelling is built.

(3) Construction type and features of the insured dwelling.

(4) Age of the insured dwelling.

(5) The presence of earthquake hazard reduction factors, including those set forth in subdivision (a) of Section 10089.2.

(b) (1) If scientific information from geologists, seismologists, or similar experts that assesses the frequency or severity of risk of earthquake is considered in setting rates or in arriving at the modeling assumptions upon which those rates are based, the information may be used to establish differentials among risks only if the information, assumptions, and methodology used are consistent with the available geophysical data and the state of the art of scientific knowledge within the scientific community.

(2) Scientific information from geologists, seismologists, or similar experts shall not be conclusive to support the establishment of different rates between the most populous rating territories in the northern and southern regions of the state unless that information, as analyzed by experts such as the United States Geological Survey, the California Division of Mines and Geology, and experts in the scientific or academic community, clearly shows a higher risk of earthquake frequency, severity, or loss between those most populous rating territories to support those differences.

(3) It is not the intent of the Legislature in adopting this subdivision to mandate a uniform statewide flat rate for California Earthquake Authority policies.

(c) The classification system established by the board shall not be adjusted or tempered in any way to provide rates lower than are justified for classifications that present a high risk of loss or higher than are justified for classifications that present a low risk of loss.

(d) Policyholders who have retrofitted their homes to withstand earthquake shake damage according to standards and to the extent set by the board shall enjoy a premium discount or credit of not less than 5 percent on the authority-issued policy of residential earthquake coverage, as long as the discount or credit is determined actuarially sound by the authority.

(e) All rates shall be approved by the commissioner prior to their use.

SEC. 4. Section 10089.54 is added to the Insurance Code, to read:

10089.54. (a) Unless authorized by a statute enacted subsequent to the effective date of this section, the authority shall cease writing new earthquake insurance policies 180 days after implementation by both the Federal National Mortgage Association (“Fannie Mae”) and the Federal Home Loan Mortgage Association (“Freddie Mac”) of

policies to require earthquake insurance for any single-family residential structure, other than a condominium unit or townhome, as a condition of purchasing a mortgage or trust deed secured by that structure. Notwithstanding this restriction, the authority shall continue to renew its existing earthquake insurance policies and shall accept applications for earthquake insurance from residential property insurance policyholders of participating insurers in accordance with subdivision (b) of Section 10086.

(b) In the event that both the Federal National Mortgage Association ("Fannie Mae") and the Federal Home Loan Mortgage Association ("Freddie Mac") have proposed to implement policies to require earthquake insurance for any single-family residential structure, other than a condominium unit or townhome, as a condition of purchasing a mortgage or trust deed secured by that structure, it is the intent of the Legislature that the Legislature should convene to consider whether the authority should continue to write new earthquake insurance policies, with or without modification, or to cease writing new earthquake insurance policies.

SEC. 5. This act shall not become operative unless Assembly Bill 2086 and Senate Bill 1993 of the 1995–96 Regular Session are also enacted and become operative.

SEC. 6. It is the intent of the Legislature that Sections 10089.23 and 10089.40 of the Insurance Code, as amended by this act, shall supersede and prevail over any conflicting provisions in Assembly Bill 2086 and Senate Bill 1993 of the 1995–96 Regular Session, if either or both of those bills are enacted after this act.

CHAPTER 970

An act to add and repeal Section 7550.5 of the Government Code, relating to legislative oversight, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 7550.5 is added to the Government Code, to read:

7550.5. (a) Notwithstanding any other provision of law, until October 1, 1999, no state or local agency shall be required to prepare or to submit any written report to the Legislature or the Governor unless the report is specified in subdivision (b) or any of the following circumstances exist:

(1) The report is required either in whole or in part by a court, federal law, or regulation.

(2) The report is required in the Budget Act.

(3) The Legislature expressly provides that, notwithstanding this section, a written report shall be prepared and submitted.

(4) The report is necessary for preparation of the Budget Act or implementation of the Budget Act, as determined by the Department of Finance.

(b) Pursuant to subdivision (a), the reports specified in the following provisions of law shall be prepared and submitted:

(1) Section 29 of the Business and Professions Code.
(1.5) Section 116 of the Business and Professions Code.
(2) Section 312 of the Business and Professions Code.
(3) Section 327 of the Business and Professions Code.
(4) Section 472.4 of the Business and Professions Code.
(4.5) Section 473.2 of the Business and Professions Code.
(5) Section 806 of the Business and Professions Code.
(6) Section 1620 of the Business and Professions Code.
(7) Section 1724 of the Business and Professions Code.
(8) Section 2075 of the Business and Professions Code.
(9) Section 2313 of the Business and Professions Code.
(10) Section 2392 of the Business and Professions Code.
(11) Section 2435 of the Business and Professions Code.
(11.5) Section 2688.5 of the Business and Professions Code.
(12) Section 2815.7 of the Business and Professions Code.
(13) Section 3151 of the Business and Professions Code.
(14) Section 3152 of the Business and Professions Code.
(15) Section 3521.5 of the Business and Professions Code.
(16) Section 4946 of the Business and Professions Code.
(16.1) Section 4980.54 of the Business and Professions Code.
(16.2) Section 4996.22 of the Business and Professions Code.
(16.3) Section 5025.1 of the Business and Professions Code.
(18) Section 5681 of the Business and Professions Code.
(18.5) Section 7011.8 of the Business and Professions Code.
(19) Section 7017 of the Business and Professions Code.
(20) Section 7139.7 of the Business and Professions Code.
(21) Section 7215.5 of the Business and Professions Code.
(21.5) Section 7215.6 of the Business and Professions Code.
(22) Section 10239.34 of the Business and Professions Code.
(23) Section 10264 of the Business and Professions Code.
(24) Section 12102 of the Business and Professions Code.
(25) Section 18618 of the Business and Professions Code.
(26) Section 1920 of the Civil Code.
(27) Section 8007 of the Education Code.
(28) Section 8179 of the Education Code.
(28.3) Section 8182 of the Education Code.
(28.5) Section 8280 of the Education Code.
(29) Section 12141 of the Education Code.
(30) Section 15750 of the Education Code.
(31) Section 16098 of the Education Code.

(32) Section 17330 of the Education Code.
(32.5) Section 32242 of the Education Code.
(33) Section 33053 of the Education Code.
(34) Section 42263 of the Education Code.
(35) Section 45355 of the Education Code.
(36) Section 45357 of the Education Code.
(39) Section 66742 of the Education Code.
(40) Section 66743 of the Education Code.
(41) Section 66903 of the Education Code.
(42) Section 69615.4 of the Education Code.
(43) Section 69944 of the Education Code.
(44) Section 99105 of the Education Code.
(44.5) Section 99155 of the Education Code.
(45) Section 99181 of the Education Code.
(46) Section 99182 of the Education Code.
(47) Section 2079 of the Fish and Game Code.
(48) Section 3409 of the Fish and Game Code.
(48.1) Section 2281 of the Food and Agricultural Code.
(48.2) Section 2282 of the Food and Agricultural Code.
(49) Section 3333 of the Food and Agricultural Code.
(49.1) Section 12794.5 of the Food and Agricultural Code.
(49.2) Section 13127 of the Food and Agricultural Code.
(49.3) Section 13127.93 of the Food and Agricultural Code.
(49.4) Section 13135 of the Food and Agricultural Code.
(50) Section 13144 of the Food and Agricultural Code.
(51) Section 13152 of the Food and Agricultural Code.
(52) Section 14104 of the Food and Agricultural Code.
(52.1) Section 42814 of the Food and Agricultural Code.
(52.2) Section 58591 of the Food and Agricultural Code.
(53) Section 965.4 of the Government Code.
(54) Section 965.65 of the Government Code.
(55) Section 7078 of the Government Code.
(56) Section 7086 of the Government Code.
(57) Section 7563 of the Government Code.
(58) Section 7585 of the Government Code.
(59) Section 8523 of the Government Code.
(60) Section 8574.8 of the Government Code.
(62) Section 8878.97 of the Government Code.
(62.1) Section 9148.4 of the Government Code.
(62.2) Section 11371 of the Government Code.
(63) Section 12010.6 of the Government Code.
(64) Section 12017 of the Government Code.
(65) Section 12020 of the Government Code.
(66) Section 12021 of the Government Code.
(67) Section 12080.2 of the Government Code.
(68) Section 12170 of the Government Code.
(69) Section 12329 of the Government Code.
(70) Section 12439 of the Government Code.

(71) Section 12460 of the Government Code.
(72) Section 12461 of the Government Code.
(73) Section 12522 of the Government Code.
(74) Section 12805.5 of the Government Code.
(74.5) Section 12812.5 of the Government Code.
(75) Section 13305 of the Government Code.
(76) Section 13308 of the Government Code.
(77) Section 13332.04 of the Government Code.
(78) Section 13332.10 of the Government Code.
(79) Section 13336.5 of the Government Code.
(80) Section 13337 of the Government Code.
(82) Section 14523 of the Government Code.
(83) Section 14524.15 of the Government Code.
(84) Section 14525.6 of the Government Code.
(85) Section 14535 of the Government Code.
(85.5) Section 14660.1 of the Government Code.
(86) Section 14840 of the Government Code.
(87) Section 15323.5 of the Government Code.
(87.5) Section 15335.11 of the Government Code.
(88) Section 15355.3 of the Government Code.
(88.5) Section 15363.10 of the Government Code.
(90) Section 15364.54 of the Government Code.
(91) Section 15378 of the Government Code.
(92) Section 15616 of the Government Code.
(93) Section 15646 of the Government Code.
(94) Section 15901 of the Government Code.
(95) Section 16725 of the Government Code.
(96) Section 16759 of the Government Code.
(97) Section 16855 of the Government Code.
(98) Section 17570 of the Government Code.
(98.5) Section 19405 of the Government Code.
(99) Subdivision (c) of Section 19702.5 of the Government Code.
(100) Section 19705 of the Government Code.
(101) Section 19792.5 of the Government Code.
(102) Section 19793 of the Government Code.
(103) Section 19826 of the Government Code.
(104) Section 19827.2 of the Government Code.
(105) Section 19994.20 of the Government Code.
(106) Section 19996.21 of the Government Code.
(107) Section 19996.40 of the Government Code.
(109) Section 20138 of the Government Code.
(110) Section 20139 of the Government Code.
(113) Section 20233 of the Government Code.
(114) Section 22840.1 of the Government Code.
(115) Section 22840.3 of the Government Code.
(115.1) Section 65044 of the Government Code.
(115.2) Section 65048 of the Government Code.
(115.3) Section 65073 of the Government Code.

(115.5) Section 429.84 of the Health and Safety Code.
(116) Section 1266.1 of the Health and Safety Code.
(117) Section 1596.872b of the Health and Safety Code.
(118) Section 11605 of the Health and Safety Code.
(118.5) Section 25133.5 of the Health and Safety Code.
(119) Section 25161 of the Health and Safety Code.
(129) Section 25178 of the Health and Safety Code.
(129.05) Section 25178.1 of the Health and Safety Code.
(129.1) Section 25200.14.1 of the Health and Safety Code.
(129.2) Section 25200.17 of the Health and Safety Code.
(129.3) Section 25204.6 of the Health and Safety Code.
(130) Section 25249.8 of the Health and Safety Code.
(130.5) Section 25404.6 of the Health and Safety Code.
(131) Section 39604 of the Health and Safety Code.
(132) Section 41712 of the Health and Safety Code.
(133) Section 41865 of the Health and Safety Code.
(134) Section 42311.1 of the Health and Safety Code.
(135) Section 43101 of the Health and Safety Code.
(136) Section 43101.5 of the Health and Safety Code.
(137) Section 43206 of the Health and Safety Code.
(138) Section 43701 of the Health and Safety Code.
(139) Section 44011.6 of the Health and Safety Code.
(140) Section 44021 of the Health and Safety Code.
(140.1) Section 44361 of the Health and Safety Code.
(140.2) Section 57000 of the Health and Safety Code.
(140.3) Section 59019 of the Health and Safety Code.
(140.4) Section 100340 of the Health and Safety Code.
(140.5) Section 104375 of the Health and Safety Code.
(140.6) Section 105195 of the Health and Safety Code.
(140.7) Section 105335 of the Health and Safety Code.
(140.8) Section 108875 of the Health and Safety Code.
(140.9) Section 120475 of the Health and Safety Code.
(141) Section 120910 of the Health and Safety Code.
(141.05) Section 124105 of the Health and Safety Code.
(141.1) Section 124160 of the Health and Safety Code.
(141.2) Section 124485 of the Health and Safety Code.
(141.3) Section 128195 of the Health and Safety Code.
(141.4) Section 129455 of the Health and Safety Code.
(141.5) Section 62.9 of the Labor Code.
(141.6) Section 77 of the Labor Code.
(141.7) Section 90.5 of the Labor Code.
(142) Section 98.75 of the Labor Code.
(143) Section 111 of the Labor Code.
(144) Section 139.4 of the Labor Code.
(145) Section 139.43 of the Labor Code.
(146) Section 147.2 of the Labor Code.
(147) Section 156 of the Labor Code.
(148) Section 1143 of the Labor Code.

(149) Section 3073.5 of the Labor Code.
(150) Section 3201.5 of the Labor Code.
(151) Section 3716.5 of the Labor Code.
(152) Section 5502 of the Labor Code.
(154) Section 6330 of the Labor Code.
(155) Section 6511 of the Labor Code.
(156) Section 6712 of the Labor Code.
(157) Section 7316 of the Labor Code.
(158) Section 7384 of the Labor Code.
(159) Section 7722 of the Labor Code.
(159.1) Section 989.7 of the Military and Veterans Code.
(159.2) Section 996.979 of the Military and Veterans Code.
(159.3) Section 996.993 of the Military and Veterans Code.
(159.4) Section 997.009 of the Military and Veterans Code.
(159.5) Section 998.009 of the Military and Veterans Code.
(159.6) Section 998.029 of the Military and Veterans Code.
(159.7) Section 998.049 of the Military and Veterans Code.
(159.8) Section 998.060 of the Military and Veterans Code.
(159.9) Section 998.071 of the Military and Veterans Code.
(160) Section 998.082 of the Military and Veterans Code.
(160.1) Section 998.094 of the Military and Veterans Code.
(160.2) Section 998.107 of the Military and Veterans Code.
(160.3) Section 999.7 of the Military and Veterans Code.
(160.4) Section 1011.5 of the Military and Veterans Code.
(160.5) Section 1314.5 of the Military and Veterans Code.
(160.6) Section 628.2 of the Penal Code.
(161) Section 629.12 of the Penal Code.
(162) Section 999y of the Penal Code.
(163) Section 2057 of the Penal Code.
(164) Section 2807 of the Penal Code.
(165) Section 2808 of the Penal Code.
(166) Section 4807 of the Penal Code.
(166.5) Section 6242.6 of the Penal Code.
(167) Section 7003.5 of the Penal Code.
(168) Section 7012 of the Penal Code.
(169) Section 7433 of the Penal Code.
(169.5) Section 8061 of the Penal Code.
(170) Section 11107.5 of the Penal Code.
(171) Section 13730 of the Penal Code.
(172) Section 13847 of the Penal Code.
(173) Section 10359 of the Public Contract Code.
(174) Section 10115.5 of the Public Contract Code.
(175) Section 5005.6 of the Public Resources Code.
(176) Section 14542 of the Public Resources Code.
(177) Section 14592 of the Public Resources Code.
(177.3) Section 25306 of the Public Resources Code.
(177.5) Section 71035.10 of the Public Resources Code.
(177.7) Section 316 of the Public Utilities Code.

(177.8) Section 321.6 of the Public Utilities Code.
(178) Section 322 of the Public Utilities Code.
(178.1) Section 765.5 of the Public Utilities Code.
(178.2) Section 873 of the Public Utilities Code.
(178.3) Section 7711 of the Public Utilities Code.
(178.4) Section 8283 of the Public Utilities Code.
(178.5) Section 9502 of the Public Utilities Code.
(179) Section 99243.5 of the Public Utilities Code.
(181) Section 2246 of the Revenue and Taxation Code.
(182) Section 6377 of the Revenue and Taxation Code.
(183) Section 8352.6 of the Revenue and Taxation Code.
(184) Section 8352.7 of the Revenue and Taxation Code.
(185) Section 8352.8 of the Revenue and Taxation Code.
(186) Section 17053.49 of the Revenue and Taxation Code.
(187) Section 21006 of the Revenue and Taxation Code.
(188) Section 23649 of the Revenue and Taxation Code.
(188.5) Section 30461.6 of the Revenue and Taxation Code.
(189) Section 165 of the Streets and Highways Code.
(190) Section 199 of the Streets and Highways Code.
(191) Section 2154 of the Streets and Highways Code.
(192) Section 2602 of the Streets and Highways Code.
(193) Section 329 of the Unemployment Insurance Code.
(194) Section 832 of the Unemployment Insurance Code.
(195) Section 995 of the Unemployment Insurance Code.
(196) Section 1267.5 of the Unemployment Insurance Code.
(197) Section 1562 of the Unemployment Insurance Code.
(198) Section 2614 of the Unemployment Insurance Code.
(199) Section 4901 of the Unemployment Insurance Code.
(200) Section 5007 of the Unemployment Insurance Code.
(201) Section 5202 of the Unemployment Insurance Code.
(202) Section 9600 of the Unemployment Insurance Code.
(203) Section 9614 of the Unemployment Insurance Code.
(204) Section 9616 of the Unemployment Insurance Code.
(205) Section 10205 of the Unemployment Insurance Code.
(206) Section 10522 of the Unemployment Insurance Code.
(207) Section 10532 of the Unemployment Insurance Code.
(208) Section 12141 of the Unemployment Insurance Code.
(209) Section 15037 of the Unemployment Insurance Code.
(210) Section 15064 of the Unemployment Insurance Code.
(211) Section 15076.5 of the Unemployment Insurance Code.
(212) Section 15076.7 of the Unemployment Insurance Code.
(213) Section 15079 of the Unemployment Insurance Code.
(214) Section 162 of the Water Code.
(215) Section 229 of the Water Code.
(216) Section 230 of the Water Code.
(217) Section 232 of the Water Code.
(218) Section 10004 of the Water Code.
(219) Section 10010 of the Water Code.

(220) Section 12875 of the Water Code.
(221) Section 12879.5 of the Water Code.
(222) Section 12890.4 of the Water Code.
(223) Section 12928.5 of the Water Code.
(224) Section 12929.47 of the Water Code.
(225) Section 13467 of the Water Code.
(225.5) Section 366.28 of the Welfare and Institutions Code.
(226) Section 5613 of the Welfare and Institutions Code.
(226.5) Section 5673 of the Welfare and Institutions Code.
(227) Section 10612 of the Welfare and Institutions Code.
(228) Section 10822 of the Welfare and Institutions Code.
(228.1) Section 11215 of the Welfare and Institutions Code.
(228.2) Section 11329 of the Welfare and Institutions Code.
(228.3) Section 11462 of the Welfare and Institutions Code.
(228.4) Section 11462.05 of the Welfare and Institutions Code.
(228.5) Section 11465.5 of the Welfare and Institutions Code.
(228.6) Section 11467 of the Welfare and Institutions Code.
(228.8) Section 14094.3 of the Welfare and Institutions Code.
(229) Section 14100.5 of the Welfare and Institutions Code.
(230) Section 14105.42 of the Welfare and Institutions Code.
(231) Section 14120 of the Welfare and Institutions Code.
(232) Section 14161 of the Welfare and Institutions Code.
(232.5) Section 16522.6 of the Welfare and Institutions Code.
(233) Section 19106 of the Welfare and Institutions Code.
(234) Section 2 of Chapter 1495 of the Statutes of 1988.
(235) Section 9 of Chapter 803 of the Statutes of 1989.
(236) Section 27.001.50 of Chapter 467 of the Statutes of 1990.
(237) Section 2 of Chapter 469 of the Statutes of 1990.
(238) Sections 11 and 12 of Chapter 1672 of the Statutes of 1990.
(239) Section 16 of Chapter 747 of the Statutes of 1993.
(240) Section 17 of Chapter 747 of the Statutes of 1993.
(241) Section 24 of Chapter 1172 of the Statutes of 1991.
(242) Section 5 of Chapter 1299 of the Statutes of 1992.
(243) Section 6 of Chapter 419 of the Statutes of 1993.
(244) Section 1 of Chapter 510 of the Statutes of 1995.
(245) Section 24 of Chapter 638 of the Statutes of 1995.
(246) Resolution Chapter 3 of the Statutes of 1994.

(c) Notwithstanding any other provision of law, resolution, or supplemental language, the University of California, the California State University, and the California Community Colleges shall not be required until October 1, 1999, to prepare or submit any written report to the Legislature or the Governor unless any of the following circumstances exist:

(1) The report is required whether in whole or in part by a court, federal law, or regulation.

(2) The report is required in the Budget Act.

(3) The Legislature expressly provides that, notwithstanding this section, a written report shall be prepared and submitted.

(4) The report is necessary for preparation of the Budget Act or implementation of the Budget Act, as determined by the Department of Finance.

(d) It is the intent of the Legislature that the University of California continue to prepare and submit reports specified in the following provisions of law:

(1) Section 92724 of the Education Code.
(2) Section 554 of the Food and Agricultural Code.
(3) Section 597 of the Food and Agricultural Code.
(4) Section 424.70 of the Health and Safety Code.
(5) Section 10500.5 of the Public Contract Code.
(6) Section 10507.5 of the Public Contract Code.
(7) Section 9 of Chapter 661 of the Statutes of 1993.

(e) It is further the intent of the Legislature that the University of California, the California State University, and the California Community Colleges continue to provide reports requested through the following supplemental language or resolutions, as applicable:

(1) 1989–90 Supplemental Language regarding the report entitled "Five Year Capital Outlay Plan and Seismic Retrofit Schedule."

(2) 1985–86 Supplemental Language regarding the report entitled "Lottery Funds."

(3) 1985–86 Supplemental Language regarding the report entitled "Faculty Workload Policies."

(4) 1980–81 Supplemental Language regarding the report entitled "Post Audit Minor Capital Outlay."

(5) 1973–74 Supplemental Language regarding the report entitled "Summary of Instructional Research Space."

(6) 1970–71 and 1984–85 Supplemental Language regarding the report entitled "Deferred Maintenance."

(7) Senate Concurrent Resolution 51, 1965 and 1978–79 Supplemental Language regarding the report entitled "Faculty Salaries."

(8) 1990–91 Supplemental Language regarding the report entitled "Seismic Safety Sign Posting."

(9) 1990–91 Supplemental Language regarding the report entitled "Weapons Laboratory Regulations."

(10) 1978–79 Supplemental Language regarding the report entitled "Subject A: Report to School Boards."

(11) 1987–88 Supplemental Language regarding the report entitled "Projects Funded From Hospital Reserves."

(12) 1994–95 Supplemental Language regarding the report entitled "UC Medical Residents."

(13) 1994–95 Supplemental Language regarding the report entitled "Advancement to Tenure."

(14) 1994–95 Supplemental Language regarding the report entitled "Legal Expenses for Discrimination Defense."

(15) 1994–95 Supplemental Language regarding the report entitled "Degrees Conferred and Work-Force Needs."

(16) 1994–95 Supplemental Language regarding the report entitled "Four-Year Degree Pledge Program."

(f) "Written report," for purposes of this section, means a document, of which the preparation and distribution to the Legislature, or the Governor, or both is mandated in statute. Any mandate exemption, pursuant to this section, shall not relieve the affected agency of the responsibility to provide available information, either in writing or orally, to the Governor or the Legislature with regard to the status of the report and any findings, if applicable.

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

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

A drastic reduction in state resources needed to prepare and submit reports to the Legislature requires this act to take effect immediately.

CHAPTER 971

An act to amend Sections 80.2, 85.2, and 663.7 of the Harbors and Navigation Code, and to amend Sections 9861 and 9863 of, and to amend, repeal, and add Section 9860 of, the Vehicle Code, relating to vessels, and making an appropriation therefor.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 80.2 of the Harbors and Navigation Code is amended to read:

80.2. The commission shall be composed of seven members appointed by the Governor, with the advice and consent of the Senate. The members shall have experience and background consistent with the functions of the commission. In making appointments to the commission, the Governor shall give primary consideration to geographical location of the residence of members as related to boating activities and harbors. In addition to geographical considerations, the members of the commission shall be appointed with regard to their special interests in recreational

boating. At least one of the members shall be a member of a recognized statewide organization representing recreational boaters. One member of the commission shall be a private small craft harbor owner and operator. One member of the commission shall be an officer or employee of a law enforcement agency responsible for enforcing boating laws. The first vacancy occurring on the commission on and after January 1, 1997, shall be filled by such an officer or employee.

The Governor shall appoint the first seven members of the commission for the following terms to expire on January 15: one member for one year, two members for two years, two members for three years, and two members for four years. Thereafter, appointments shall be for a four-year term. Vacancies occurring prior to the expiration of the term shall be filled by appointment for the unexpired term.

SEC. 2. Section 85.2 of the Harbors and Navigation Code is amended to read:

85.2. All money in the Harbors and Watercraft Revolving Fund shall be available, upon appropriation by the Legislature, for expenditure by the department for boating facilities development, boating safety, and boating regulation programs, and for the purposes of Section 656.4, including refunds, and for expenditure for construction of small craft harbor and boating facilities planned, designed, and constructed by the department, as specified in subdivision (c) of Section 50, at sites owned or under the control of the state. The money in the fund shall also be available, upon appropriation by the Legislature, to the Department of Parks and Recreation for the operation and maintenance of units of the state park system that have boating-related activities. Funds appropriated to the Department of Parks and Recreation may also be used for boating safety and enforcement programs for waters under its jurisdiction. Upon the request of the Legislature, the Department of Parks and Recreation shall provide an annual report detailing expenditures of funds appropriated under this section.

SEC. 2.5. Section 663.7 of the Harbors and Navigation Code is amended to read:

663.7. (a) Each county of the state is entitled to receive state financial aid for boating safety and enforcement programs on waters under its jurisdiction as provided in this section. A boating safety and enforcement program, as used in this section, includes search and rescue operations, recovery of drowned bodies, enforcement of state and local measures for regulation of boating activities, inspection of vessels, and supervision of organized water events.

(b) A public agency within a county and the Department of Parks and Recreation are entitled to receive aid for boating safety and enforcement programs on waters under their jurisdiction through the county in which it lies, and that aid shall be counted as aid to the county; except that aid provided under subdivision (h) for boating

safety and enforcement programs of the Department of Parks and Recreation for waters under its jurisdiction shall not be counted as aid to a county.

(c) (1) Of the funds appropriated for boating safety and enforcement programs pursuant to Section 85.2, the department shall adopt and utilize a formula that first allocates funds to counties so that no county receives less than the amount it was allocated in the 1996–97 fiscal year, unless the county's program is reduced, or the county does not meet the eligibility requirements of this section. If the total amount of money in the Harbors and Watercraft Revolving Fund is less than the amount available for the 1996–97 fiscal year, the funds allocated to each county shall be reduced in proportion to the reduction in the overall fund relative to the 1996–97 fiscal year.

(2) Second, from funds remaining, the department shall allocate funds to eligible counties which have submitted a grant application pursuant to subdivision (i) but which do not receive an allocation pursuant to paragraph (1).

(3) The funds allocated pursuant to paragraph (1) shall not be greater in total amount than 50 percent of the funds appropriated for boating safety programs, unless the department determines that an amount greater than 50 percent is needed to meet the minimum allocation requirements set forth in paragraph (1).

(d) The amount of aid for which a county or a public agency within a county is eligible under this section shall not exceed the total cost of its boating safety and enforcement program. Notwithstanding paragraph (1) of subdivision (c), no county shall receive an amount greater than 20 percent of the total funds appropriated to all counties for boating safety and enforcement programs in any fiscal year. Notwithstanding any other provision of this section, any county that receives a boating safety and enforcement allocation during the 1997–98 fiscal year as a result of a prior appropriation shall not receive an additional allocation for the 1997–98 fiscal year pursuant to this section.

(e) The department shall not allocate funds to any county or a public agency within a county unless the department receives a resolution adopted annually by the board of supervisors authorizing the county to participate in the program and certifying that the county will expend for boating safety programs during that year not less than an amount equal to 100 percent of the amount received by the county from personal property taxes on vessels. The money allocated to a county pursuant to subdivision (a) shall be used only for boating safety and enforcement programs, as specified in subdivision (a), that are conducted in that county.

(f) Any county that receives an allocation of funds pursuant to subdivision (c) shall submit a report to the department on or before 60 days after the end of the fiscal year that provides all of the following:

(1) The purpose for which funds received in the immediately preceding fiscal year were spent.

(2) The total amount expended on boating safety and enforcement programs in the immediately preceding fiscal year.

(3) All pertinent boating safety and enforcement and accident statistics from the immediately preceding fiscal year.

(4) All other data that may be required by the department relating to improved boating safety in California.

(g) The department shall provide in its biennial report to the Legislature a summary of boating safety activities undertaken by the counties receiving financial aid from the department in the immediately preceding two fiscal years along with a summary of the information received pursuant to subdivision (f).

(h) Aid for boating safety and enforcement programs shall be made available to the Department of Parks and Recreation for waters under its jurisdiction in accordance with a boat entry unit cost factor derived by dividing the most recent annual boat entry count into the maximum amount available and appropriated for those programs in the 1969–70 fiscal year. Budgets for those programs shall be estimated for each fiscal year and adjustments shall be made thereto for the previous year in accordance with the actual boat entry count as it becomes available multiplied by the boat entry unit cost factor. The amount thus determined shall be available to the Department of Parks and Recreation from the Harbors and Watercraft Revolving Fund.

(i) Entities or agencies desiring aid under this section shall submit grant applications to the department at least six months prior to the period for which aid is required. Grant applications shall be in the form and contain the information that the department may require.

(j) Within 60 days after the close of any period for which aid is received, the entity or agency shall submit to the department a statement of the expenditures actually incurred, in the form and containing the information that the department may require.

(k) The department shall be responsible for the administration of this section, and may adopt rules and regulations that may be necessary to carry out its provisions. The department shall make periodic evaluations of the effectiveness of programs receiving aid under this section.

SEC. 3. Section 9860 of the Vehicle Code is amended to read:

9860. (a) Certificates of number shall be renewed before midnight of the expiration date every year by presentation of the certificate of number last issued for the vessel or by presentation of a potential registration card issued by the department. The fee for renewal shall be five dollars ($5) per year and shall accompany the request for renewal. If the certificate of number and potential registration card are unavailable, a fee as specified in Section 9867 shall not be paid.

(b) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 1998, deletes or extends that date.

SEC. 4. Section 9860 is added to the Vehicle Code, to read:

9860. (a) Certificates of number shall be renewed before midnight of the expiration date every second year by presentation of the certificate of number last issued for the vessel or by presentation of a potential registration card issued by the department. The fee for renewal shall be ten dollars ($10) for each two-year period and shall accompany the request for renewal. If the certificate of number and potential registration card are unavailable, a fee as specified in Section 9867 shall not be paid.

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

SEC. 5. Section 9861 of the Vehicle Code is amended to read:

9861. All certificates of number expire on December 31, 1997, and thereafter on December 31 of every odd-numbered year.

SEC. 6. Section 9863 of the Vehicle Code is amended to read:

9863. All fees received, except moneys collected under Section 9875, pursuant to this chapter shall be deposited in the Harbors and Watercraft Revolving Fund and, notwithstanding Section 13340 of the Government Code, are continuously appropriated, without regard to fiscal years, for the administration of this chapter. Any funds in the Harbors and Watercraft Revolving Fund in excess of the amount determined by the Director of Finance, from time to time, to be necessary for expenditure for the administration of this chapter, notwithstanding Section 13340 of the Government Code, are continuously appropriated to the department, without regard to fiscal years, for expenditure in accordance with Section 663.7 of the Harbors and Navigation Code.

SEC. 7. It is the intent of the Legislature that if both this bill and Senate Bill 1968 are enacted, both bills amend Section 85.2 of the Harbors and Navigation Code, and this bill is enacted last, that Section 85.2 of the Harbors and Navigation Code as amended by Senate Bill 1968 prevail over and supersede that section as amended by this bill, in which case Section 2 of this bill shall not become operative.

CHAPTER 972

An act to add Sections 2099 and 2100 to the Fish and Game Code, relating to endangered and threatened species, and making an appropriation therefor.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 2099 is added to the Fish and Game Code, to read:

2099. (a) On or before July 1, 1997, the Governor shall establish a commission as specified in Section 2100 to study the economic impact of protecting candidate, threatened, and endangered species under this chapter.

(b) The study conducted pursuant to subdivision (a) shall include, but not be limited to, an examination of the cost of regulatory activities, the cost of providing just compensation for any actual or potential taking of private property, and the cost of species and habitat decline or loss. The cost shall include both public and private costs.

(c) The assessment of economic impact shall include the added value and economic benefit or cost of species protection and the effect of that economic impact on tourism, recreational, scientific, biomedical, and agricultural revenues.

(d) The commission shall seek counsel from a wide range of economists, environmentalists, ecologists, and other persons who are developing economic and other models that calculate the cost of environmental regulations, including the benefits of environmental protection and the cost of environmental degradation.

(e) The commission shall attempt to identify areas of agreement among the members of the commission and shall clearly identify any areas of disagreement.

(f) The commission shall prepare a majority report and, if necessary, a dissenting or minority report of the study conducted pursuant to subdivision (a), which shall be submitted to the Legislature by December 31, 1997.

SEC. 2. Section 2100 is added to the Fish and Game Code, to read:

2100. (a) The commission established pursuant to Section 2099 shall represent the full range of opinions and viewpoints regarding the protection of candidate, endangered, and threatened species and the regulatory taking of private property. The membership of the commission shall consist of equal numbers of persons meeting each of the following criteria:

(1) Persons who advocate the primacy of the market. This group shall include advocates of the free market philosophy and representatives of regulated industries and landowners, including the extractive industries.

(2) Persons who advocate that natural resources and endangered species are public trust resources, the protection of which should be regulated. This group shall include conservation biologists, environmental economists, historic preservationists, and others who advocate that the market should take full account of the claims of public trust values associated with protection of the public's natural heritage and the cost of environmental degradation.

(b) The California Research Bureau shall provide staffing for the commission.

CHAPTER 973

An act to add Sections 51012.4 and 51017 to the Government Code, relating to pipeline safety.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

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

(a) In the past several years, pipeline spills in California have posed safety hazards to local populations and seriously impacted the environment.

(b) The State Fire Marshal's Hazardous Liquid Pipeline Risk Assessment report published in 1993 found that the leading cause of hazardous liquid pipeline leaks during the period January 1981 through December 1990 was external corrosion, causing 58.8 percent of all leaks. The State Fire Marshal's report also found a significant correlation between the age of a pipeline and the degree to which it experiences external corrosion and leaks.

(c) According to the State Fire Marshal's report, pipelines constructed before 1940 leaked at a rate nearly 20 times that of pipelines constructed in the 1980's. Two factors that contribute to the high-leak incidence rate in older pipes, especially those constructed before 1940, are the older coatings on the pipelines and the higher operating temperatures. For example, pre-1940 pipelines operated at an average temperature of 125°F, higher than the average operating temperature for pipelines constructed during any other period.

(d) The State Fire Marshal's report also found all of the following:

(1) Pipelines within standard metropolitan statistical areas (SMSA) had a higher external corrosion incident rate than pipelines in non-SMSAs.

(2) Pipelines without cathodic protection, or with inadequate, older coatings, had a drastically higher frequency of external corrosion-caused leaks than protected leaks.

(3) Somewhere between 13 and 29 incidents caused by seismic activity are anticipated on regulated California hazardous liquid pipelines during a future 30-year period.

(e) Existing statutory requirements for hydrostatic pressure testing on some pipelines are helpful in locating leaks, but inadequate as a preventative measure to detect external corrosion that will eventually cause leakage.

(f) A recent investigation of pipeline regulatory programs by the Department of Fish and Game and the Office of Oil Spill Prevention and Response found that the lack of complete and easily accessible pipeline information frustrated oil spill response efforts.

(g) Therefore, it is essential for the protection of public health and safety and the environment to develop a statewide inspection, maintenance, improvement, or replacement assessment of older pipelines that are more susceptible to corrosion and leakage, and to centralize information on pipelines to aid in spill prevention planning and response efforts.

SEC. 2. Section 51012.4 is added to the Government Code, to read:

51012.4. (a) Notwithstanding any other provision of this chapter, including, but not limited to, Section 51012.3, each pipeline operator shall file with the State Fire Marshal, on or before July 1, 2000, an inspection, maintenance, improvement, or replacement assessment for the following:

(1) Any pipeline or pipeline segments built before January 1, 1960.

(2) Any pipeline installed on or after January 1, 1960, for which regular internal inspections cannot be conducted, or which shows diminished integrity due to corrosion or inadequate cathodic protection.

(b) When preparing any assessment required by subdivision (a), the operator shall give priority to older pipelines located in densely populated areas, pipelines with a high-leak history, pipelines located near existing seismic fault lines, or, pipelines in areas with identified ground formations.

(c) On or before January 1, 1998, the State Fire Marshal, in consultation with the Pipeline Safety Advisory Committee and pipeline operators, shall establish evaluation criteria for use by a pipeline operator when conducting any assessment required by subdivision (a).

(d) A pipeline inspection, maintenance, improvement, or replacement assessment developed pursuant to this section may incorporate any information on regulatory requirements or existing public policies that could act as barriers to the inspection, maintenance, improvement, or replacement of pipelines, including, but not limited to, findings from the studies required pursuant to Section 51015.05.

(e) Nothing in this section is intended to require the replacement of a pipeline.

SEC. 3. Section 51017 is added to the Government Code, to read:

51017. (a) The State Fire Marshal, in coordination with the State Lands Commission, the Division of Oil, Gas, and Geothermal Resources of the Department of Conservation, the State Water Resources Control Board, the Office of Oil Spill Prevention and Response, and the Office of Emergency Services, shall develop a plan for developing a comprehensive data base of pipeline information

that would be available on compatible, interactive computer formats, and for centralizing that data base in the Office of the State Fire Marshal for emergency response purposes. The data base shall include information on pipeline locations, age, reported leak incidences, and inspection history, and shall have the capability of mapping pipeline locations throughout the state. The data base shall be available for use by federal, state, and local government agencies, as well as the public.

(b) On or before September 1, 1997, the State Fire Marshal shall report to the Legislature on projected costs and potential funding sources for implementation of the plan for a centralized computer data base for pipeline information developed pursuant to subdivision (a).

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

SEC. 5. This act shall become operative only if Assembly Bill 1487 of the 1995–96 Regular Session is enacted and becomes effective on or before January 1, 1997.

CHAPTER 974

An act to add and repeal Article 7 (commencing with Section 2105) of Chapter 1.5 of Division 3 of the Fish and Game Code, relating to endangered and threatened species.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Article 7 (commencing with Section 2105) is added to Chapter 1.5 of Division 3 of the Fish and Game Code, to read:

Article 7. Recovery Strategy Pilot Program

2105. The department shall develop and implement a recovery strategy pilot program. The objective of this pilot program is the

development of recovery strategies with the goal that the regulations or other protections for species listed pursuant to this chapter are no longer necessary.

2106. On or before January 1, 1997, the commission, based on recommendations from the department, shall identify five species that are listed as either threatened species or endangered species for which recovery strategies shall be developed and implemented. The commission may also identify one or more species for inclusion in the recovery strategy pilot program that are added after January 1, 1995, to the list of threatened species or the list of endangered species pursuant to Section 2075.5.

2106.5. In determining the species to be identified in the recovery strategy pilot program pursuant to Section 2106, the commission shall consider the following factors:

(a) The intensity and immediacy of the threat facing the species.

(b) Whether recovery strategy planning for the species would provide benefits for multiple species.

(c) The extent to which landowners and other persons affected by the regulation of the species are willing to participate in the recovery strategy planning.

(d) Whether the species is already the subject of a recovery plan prepared by the federal government.

(e) The public and private costs of achieving recovery.

(f) The need to use recovery strategy planning for different types of species under different circumstances and in different regions of the state.

2107. (a) For each species identified by the commission for the recovery strategy pilot program pursuant to Section 2106, the department shall assemble a recovery strategy team consisting of, but not limited to, department personnel, other state agency personnel if found by the department to be appropriate, federal agency personnel to the extent permitted by federal law if found by the department to be appropriate, representatives of affected local governments, representatives of affected landowners, and representatives of environmental groups, as well as persons who possess scientific expertise.

(b) Each recovery team shall work collaboratively to aid the department in developing the recovery strategy for that species for which the recovery team is assembled.

(c) The department shall consider information from all persons likely to be affected by the implementation of a recovery strategy and from persons knowledgeable in those subject areas pertinent to the species' recovery in developing the recovery strategy for each species.

2109. (a) After identification of the five species to be included in the recovery strategy pilot program pursuant to Section 2105, the department shall promptly commence preparation of a recovery strategy for each of those species.

(b) Within 12 months of the identification of a species included in the recovery strategy pilot program, the department shall submit a recovery strategy for that species to the commission for review and approval.

(c) A recovery strategy for a species shall contain all of the following information:

(1) An explanation of scientific knowledge and assumptions regarding the biology, habitat requirements, and threats to the existence of the species.

(2) An explanation of interim and long-term recovery goals. The interim goals shall be specifically stated. The long-term goals may be specifically stated if the department determines that adequate information exists to reasonably identify long-term goals; if not, the strategy may contain general long-term goals that will be clarified as the recovery strategy is updated pursuant to paragraph (7).

(3) A range of alternative interim and long-term conservation and management goals and activities. The department shall report why it prefers the activities it recommends.

(4) An estimate of the time and costs required to meet the interim recovery goals for the species, including available or anticipated funding sources, and an initial projection of the time and costs associated with meeting final recovery goals. These costs shall include direct and indirect costs and public and private costs.

(5) A description of actions and recommendations, including voluntary incentives and objective criteria for delisting and deregulation, that will be needed to minimize the adverse social and economic impacts of implementation of the recovery strategy and a discussion of the range of recovery alternatives considered in the strategy.

(6) A description of the following elements necessary to achieve the goals of the recovery strategy:

(A) The availability and use of public lands for the conservation, protection, restoration, and enhancement of the species.

(B) Methods of private and public cooperation.

(C) Procedures and programs for notice, education, research, monitoring, and strategy modification.

(7) The expected time necessary to meet the interim recovery goals and provisions and triggers for review and amendment of the strategy. If final recovery goals are not specifically stated, the strategy shall contain a timetable for an update of the plan to clarify the long-term goals.

(8) Objective measurable criteria by which to determine whether the goals and objectives of the recovery strategy are being met and procedures for recognition of successful recovery and downlisting or delisting.

(9) An implementation schedule.

2110. If the department determines, based on the best scientific evidence available, that the recovery strategy should also contain

specifications regarding allowable taking of the species and guidelines for consultation, the recommended recovery strategy shall also contain general policies to guide the department's issuance of memoranda of understanding pursuant to Section 2081, permits pursuant to Section 2081.4, and the department's consultation procedures to be followed pursuant to Section 2090. The general policies shall be consistent with the recommended recovery strategy.

2111. After the department submits the recovery strategy to the commission, the commission shall hold a public hearing to consider approval of the recovery strategy. The commission shall approve the recovery strategy if, considering all relevant evidence, the commission finds that the recovery strategy meets all of the following criteria:

(a) The recovery strategy would conserve, protect, restore, and enhance the species.

(b) The recovery strategy and implementation schedule are capable of being carried out in a scientifically, technologically, and economically reasonable manner.

(c) The recovery strategy is supported by the best available scientific data.

(d) The recovery strategy represents an equitable apportionment of both public and private and regulatory and nonregulatory obligations.

2111.5. If the commission does not approve the recovery strategy pursuant to Section 2111 because it could not make all of the necessary findings, it shall specify why the required finding could not be made. If the commission determines that the strategy could be amended to address the issues identified by the commission, it may direct the department to revise the recovery strategy within six months and resubmit it to the commission.

2112. If a recovery strategy for one of the species identified pursuant to Section 2106 includes policies to guide the department's issuance of memoranda of understanding pursuant to Section 2081, permits pursuant to Section 2081.4, and the department's consultation procedures pursuant to Section 2090, the department shall develop and adopt rules and guidelines to implement those policies. The rules and guidelines shall be based upon the best available scientific evidence and shall be consistent with the recovery strategy adopted. The rules and guidelines may clearly specify conditions and circumstances under which the taking of a species listed as a threatened species or endangered species would be prohibited by the department, or, conversely, when it would not require a permit pursuant to Section 2081.4 or a memorandum of understanding pursuant to Section 2081.

2113. After approval of a recovery strategy by the commission, the department shall consult with the recovery strategy team assembled for that species pursuant to Section 2107 and report to the commission on an annual basis on the status and progress of the

implementation of the recovery strategy. The strategy shall be the basis for the species reviews pursuant to Section 2077.

2114. If the commission elects to authorize the preparation of a recovery strategy prior to or in conjunction with a decision to add a species to a list pursuant to Section 2075.5, the required rulemaking pursuant to subdivision (b) of that section shall be delayed not more than one year, which the commission may extend for not more than an additional six months, until a final determination is made on the recovery strategy. The rulemaking proceedings shall include all policies, rules, or guidelines adopted pursuant to Sections 2111 and 2112 and shall consider the recovery strategy and information received in its development and adoption. The recovery strategy itself shall have no regulatory significance, shall not be considered to be a regulation for any purpose, including the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code, and is not a regulatory action or document.

2115. This article shall become operative only if funds are appropriated in the annual Budget Bill or another statute to fund the cost of implementing this article. Section 2098 does not apply to any costs relating to this article.

2116. This article shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2004, deletes or extends that date. However, this section does not apply to a recovery strategy that is approved or implemented pursuant to this article on or before January 1, 2004, and those recovery strategies, and any permits or memoranda of understanding relating thereto, shall remain effective as if this article had not been repealed.

SEC. 2. For purposes of implementing subdivision (c) of Section 2107 of the Fish and Game Code, it is the intent of the Legislature that, for example, if the species addressed in the recovery strategy exist on land used for agriculture or if agricultural practices affect the species, the Department of Fish and Game consult with the county agricultural commissioner where the land is located and other agricultural experts to ensure that the recovery strategy, to the extent possible, will permit routine agricultural activities to be carried out with as little direct regulatory control as possible.

CHAPTER 975

An act relating to fire safety, and making an appropriation therefor.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. (a) There is hereby established in the State Treasury the Fire Behavior and Fire Spread Study Matching Fund. The fund shall be used to provide to the State Fire Marshal a sum, not to exceed two hundred fifty thousand dollars ($250,000), consisting of the amount of all grants received by the State Fire Marshal for the purpose of conducting studies and tests to redefine elements of fire behavior and fire spread in residential and commercial occupancies, and the matching funds described in subdivision (b). Not later than 60 days after completion of the study or test, the Fire Marshal shall report the results to the Legislature.

(b) A sum, not to exceed one hundred twenty-five thousand dollars ($125,000), equal to the amount of grant moneys deposited into the Fire Behavior and Fire Spread Study Matching Fund under subdivision (a) is hereby appropriated from the General Fund to the Fire Behavior and Fire Spread Study Matching Fund, for purposes of this section.

CHAPTER 976

An act to amend Section 14312 of the Public Resources Code, relating to the California Conservation Corps, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 14312 of the Public Resources Code is amended to read:

14312. (a) The Collins-Dugan California Conservation Corps Reimbursement Account is hereby created in the General Fund in the State Treasury, for support of the corps.

(b) Funds received in payment for reimbursable work projects, excluding General Fund money, may be deposited in the Collins-Dugan California Conservation Corps Reimbursement Account.

(c) Notwithstanding Section 13340 of the Government Code, the money in the Collins-Dugan California Conservation Corps Reimbursement Account is hereby continuously appropriated to the corps for the following program activities:

(1) Program expansion to hire more corpsmembers.

(2) Enhancement of corpsmember education and educational support services.

(3) Enhancement of equipment used by corpsmembers in projects meeting the corps' mission.

(4) Program support when legislatively directed reimbursement targets are unmet in a given fiscal year.

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

In order that California Conservation Corps projects, including projects pertaining to fire protection and suppression and youth development can be implemented as soon as possible, thereby providing needed public improvements and service and additional experience, training, and educational opportunities for the youth in this state, it is necessary that this act take effect immediately.

CHAPTER 977

An act to amend Sections 35031, 35032, 35033, and 35034 of the Public Resources Code, relating to ocean resources.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 35031 of the Public Resources Code is amended to read:

35031. Any funds appropriated in accordance with this chapter and not expended as described in Section 35030, may be awarded by the secretary for technical and financial assistance to coastal counties and cities with approved local coastal programs to help them exercise effectively their responsibility for improving the management of the state's coastal resources. Technical and financial assistance shall be made available to coastal counties and cities to do any of the following:

(a) Protect wetlands, flood plains, estuaries, beaches, dunes, and fish and wildlife and their habitat within coastal areas.

(b) Minimize the loss of life and property in coastal flood-prone, storm surge, geologic hazard, and erosion-prone areas.

(c) Provide public access to the coast for recreational purposes, to acquire coastal view sheds, and to preserve, maintain, and restore historic, cultural, and aesthetic coastal sites.

(d) Facilitate the process for siting major facilities along the coast related to fisheries, recreation, and ports and other coastal dependent commercial uses, giving full consideration to environmental concerns as well as the need for economic development.

(e) Promote other coastal management improvements determined by the secretary to be consistent with the state's coastal management program.

SEC. 2. Section 35032 of the Public Resources Code is amended to read:

35032. On or before April 15, 1997, the secretary, in cooperation with the California Coastal Commission, shall develop and implement a competitive application process to award coastal counties and cities financial and technical assistance pursuant to this chapter. Thereafter, the secretary shall review that process by April 15 of each year that funds are appropriated pursuant to this chapter.

SEC. 3. Section 35033 of the Public Resources Code is amended to read:

35033. Any financial assistance provided to local governments under this chapter may not exceed 90 percent of the cost of carrying out the project. Commencing in the 1997 calendar year and in each

calendar year thereafter, 50 percent of the amount of funds received by the state pursuant to Section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. Sec. 1337(g)) over the amount of funds so received in the 1996 calendar year shall be available, on an annual basis, for appropriation to the secretary for grants to coastal counties and cities pursuant to this chapter.

SEC. 4. Section 35034 of the Public Resources Code is amended to read:

35034. On an annual basis, the secretary shall review and assess county and city expenditures under this program. Not more than one hundred thousand dollars ($100,000) of the funds appropriated annually pursuant to this chapter may be used by the secretary to defray administrative costs and, of that amount, not more than fifty thousand dollars ($50,000) may be used to cover costs incurred by the California Coastal Commission in the review of grant applications pursuant to this chapter.

CHAPTER 978

An act to amend Sections 41780 and 41780.1 of, and to add Sections 40124 and 41781.3 to, the Public Resources Code, relating to solid waste.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. (a) The Legislature hereby finds and declares all of the following:

(1) The diversion of solid waste from disposal at solid waste landfills and the application of landfill cover materials are matters of statewide concern and provisions governing those activities must be applied in a uniform and consistent manner throughout the state.

(2) On January 25, 1995, the California Integrated Waste Management Board adopted a policy regarding the use of alternative daily cover at solid waste landfills and subsequently adopted implementing regulations that were approved by the Office of Administrative Law.

(3) In Natural Resources Defense Council vs. California Integrated Waste Management Board, the trial court's opinion interpreted the meaning of various provisions of the California Integrated Waste Management Act of 1989 and, in its construction of provisions pertaining to alternative daily cover and diversion at solid waste landfills, misinterpreted legislative intent.

(4) The board's policy, as adopted on January 25, 1995, and the implementing regulations, regarding the use of alternative daily cover at solid waste landfills are consistent with applicable statutes.

(5) It is necessary to amend applicable provisions of the act of 1989 to clarify existing law so as to clearly express the legislative intent and to remove any uncertainty as to the authority of the board to adopt the implementing regulations specified in paragraph (4).

(6) It is necessary to amend provisions of the act of 1989 to clarify the intent of existing law that the diversion of solid waste from solid waste disposal is diversion under the act of 1989 for purposes of meeting the requirements of Sections 41780, 41780.1, 41780.2, and 41781 of the Public Resources Code, as distinguished from diversion of solid waste from a solid waste disposal facility.

(b) (1) The Legislature further finds and declares that, at the present time, the amount of green materials generated in California is in excess of the quantity that existing markets can absorb. It is thus in the interests of the state to encourage the expansion of markets for green materials.

(2) It is the intent of the Legislature that the California Integrated Waste Management Board, and other state agencies, continue their efforts to promote the expansion of compost and other markets for green materials, including, but not limited to, the compost market program activities specified in Chapter 5 (commencing with Section 42230) of Part 3 of Division 30 of the Public Resources Code.

SEC. 2. Section 40124 is added to the Public Resources Code, to read:

40124. "Diversion" means activities which reduce or eliminate the amount of solid waste from solid waste disposal for purposes of this division, including Article 1 (commencing with Section 41780) of Chapter 6.

SEC. 3. Section 41780 of the Public Resources Code is amended to read:

41780. (a) Each city or county source reduction and recycling element shall include an implementation schedule which shows both of the following:

(1) For the initial element, the city or county shall divert 25 percent of all solid waste from landfill disposal or transformation by January 1, 1995, through source reduction, recycling, and composting activities.

(2) Except as provided in Sections 41783, 41784, and 41785, for the first revision of the element, the city or county shall divert 50 percent of all solid waste by January 1, 2000, through source reduction, recycling, and composting activities.

(b) Nothing in this part prohibits a city or county from implementing source reduction, recycling, and composting activities designed to exceed these goals.

SEC. 4. Section 41780.1 of the Public Resources Code is amended to read:

41780.1. (a) Notwithstanding any other requirement of this part, for the purposes of determining the amount of solid waste that a regional agency is required to divert from disposal or transformation through source reduction, recycling, and composting to meet the diversion requirements of Section 41780, the regional agency shall use the solid waste disposal projections in the source reduction and recycling elements of the regional agency's member agencies. The method prescribed in Section 41780.2 shall be used to determine the maximum amount of disposal allowable to meet the diversion requirements of Section 41780.

(b) Notwithstanding any other requirement of this part, for the purposes of determining the amount of solid waste that a city or county is required to divert from disposal or transformation through source reduction, recycling, and composting to meet the diversion requirements of Section 41780, the city or county shall use the solid waste disposal projections in the source reduction and recycling elements of the city or county. The method prescribed in Section 41780.2 shall be used to determine the maximum amount of disposal allowable to meet the diversion requirements of Section 41780.

(c) To determine achievement of the diversion requirements of Section 41780 in 1995 and in the year 2000, projections of disposal amounts from the source reduction and recycling elements shall be adjusted to reflect annual increases or decreases in population and other factors affecting the waste stream, as determined by the board. By January 1, 1994, the board shall study the factors which affect the generation and disposal of solid waste and shall develop a standard methodology and guidelines to be used by cities, counties, and regional agencies in adjusting disposal projections as required by this section.

(d) The amount of additional diversion required to be achieved by a regional agency to meet the diversion requirements of Section 41780 shall be equal to the sum of the diversion requirements of its member agencies. To determine the maximum amount of disposal allowable for the regional agency to meet the diversion requirements of Section 41780, the maximum amount of disposal allowable for each member agency shall be added together to yield the agency disposable maximum.

SEC. 5. Section 41781.3 is added to the Public Resources Code, to read:

41781.3. (a) The use of solid waste for beneficial reuse in the construction and operation of a solid waste landfill, including use of alternative daily cover, which reduces or eliminates the amount of solid waste being disposed pursuant to Section 40124, shall constitute diversion through recycling and shall not be considered disposal for the purposes of this division.

(b) Prior to December 31, 1997, pursuant to the board's authority to adopt rules and regulations pursuant to Section 40502, the board shall, by regulation, establish conditions for the use of alternative

daily cover that are consistent with this division. In adopting the regulations, the board shall consider, but is not limited to, all of the following criteria:

(1) Those conditions established in past policies adopted by the board affecting the use of alternative daily cover.

(2) Those conditions necessary to provide for the continued economic development, economic viability, and employment opportunities provided by the composting industry in the state.

(3) Those performance standards and limitations on maximum functional thickness necessary to ensure protection of public health and safety consistent with state minimum standards.

(c) Until the adoption of additional regulations, the use of alternative daily cover shall be governed by the conditions established by the board in its existing regulations set forth in paragraph (3) of subdivision (b) of, and paragraph (3) of subdivision (c) of, Section 18813 of Title 14 of the California Code of Regulations, as those sections read on the effective date of this section, and by the conditions established in the board's policy adopted on January 25, 1995.

(d) In adopting rules and regulations pursuant to this section, Section 40124, and this division, including, but not limited to, Part 2 (commencing with Section 40900), the board shall provide guidance to local enforcement agencies on any conditions and restrictions on the utilization of alternative daily cover so as to ensure proper enforcement of those rules and regulations.

CHAPTER 979

An act to add Section 1370.4 to the Health and Safety Code, and to add Section 10145.3 to the Insurance Code, relating to health insurance.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. This act shall be known as the Friedman-Knowles Experimental Treatment Act of 1996.

SEC. 2. (a) It is the intent of the Legislature that health care service plans and disability insurers be required to provide an external, independent review by qualified experts when a patient who has a terminal condition is denied coverage for a drug, device, procedure, or other therapy generally considered experimental or investigational. It is further the intent of the Legislature to provide for external, independent review of such a drug, device, procedure,

or other therapy to determine if it is medically appropriate for the particular patient.

(b) The Legislature finds and declares that nothing in this act is intended to preclude a health care service plan or disability insurer from covering, at its discretion, treatments that are provided within clinical trials, or from providing the independent review required by this act to enrollees or insureds who do not necessarily meet all of the eligibility requirements of subdivision (a) of Section 1370.4 of the Health and Safety Code or subdivision (a) of Section 10145.3 of the Insurance Code.

SEC. 3. Section 1370.4 is added to the Health and Safety Code, to read:

1370.4. (a) Every health care service plan shall provide an external, independent review process to examine the plan's coverage decisions regarding experimental or investigational therapies for individual enrollees who meet all of the following criteria:

(1) The enrollee has a terminal condition that, according to the enrollee's physician's current diagnosis, has a high probability of causing death within two years from the date of the request for an independent review; and

(2) The enrollee's physician certifies that the enrollee has a condition, as defined in paragraph (1), for which standard therapies have not been effective in improving the condition of the enrollee, or for which standard therapies would not be medically appropriate for the enrollee, or for which there is no more beneficial standard therapy covered by the plan than the therapy proposed pursuant to paragraph (3); and

(3) Either (A) the enrollee's physician, who is under contract with or employed by the plan, has recommended a drug, device, procedure or other therapy that the physician certifies in writing is likely to be more beneficial to the enrollee than any available standard therapies, or (B) the enrollee, or the enrollee's physician who is a licensed, board-certified or board-eligible physician qualified to practice in the area of practice appropriate to treat the enrollee's condition, has requested a therapy that, based on two documents from the medical and scientific evidence, as defined in subdivision (d), is likely to be more beneficial for the enrollee than any available standard therapy. The physician certification pursuant to this subdivision shall include a statement of the evidence relied upon by the physician in certifying his or her recommendation. Nothing in this subdivision shall be construed to require the plan to pay for the services of a nonparticipating physician provided pursuant to this subdivision, that are not otherwise covered pursuant to the plan contract; and

(4) The enrollee has been denied coverage by the plan for a drug, device, procedure or other therapy recommended or requested pursuant to paragraph (3); and

(5) The specific drug, device, procedure or other therapy recommended pursuant to paragraph (3) would be a covered service, except for the plan's determination that the therapy is experimental or investigational; and

(6) This section shall not apply to any Medi-Cal beneficiary enrolled in a health care service plan under the plan's contract with the Medi-Cal program.

(b) The plan's external, independent review shall meet the following criteria:

(1) The plan shall offer all enrollees who meet the criteria in subdivision (a) the opportunity to have the requested therapy reviewed under the external, independent review process. The plan shall notify eligible enrollees in writing of the opportunity to request the external independent review within five business days of the decision to deny coverage.

(2) The plan shall contract with one or more impartial, independent entities that are accredited pursuant to subdivision (c). The entity shall arrange for review of the coverage decision by selecting an independent panel of at least three physicians or other providers who are experts in the treatment of the enrollee's medical condition and knowledgeable about the recommended therapy. If the entity is an academic medical center accredited in accordance with subdivision (e), the independent panel may include experts affiliated with or employed by the entity. A panel of two experts may be arranged at the plan's request, provided the enrollee consents in writing. The independent entity may arrange for a panel of one expert only if the independent entity certifies in writing that there is only one expert qualified and able to review the recommended therapy. Neither the plan nor the enrollee shall choose or control the choice of the physician or other provider experts.

(3) Neither the expert, nor the independent entity, nor any officer, director, or management employee of the independent entity shall have any material professional, familial, or financial affiliation, as defined in paragraph (4), with any of the following:

(A) The plan.

(B) Any officer, director, or management employee of the plan.

(C) The physician, the physician's medical group, or the independent practice association (IPA) proposing the therapy.

(D) The institution at which the therapy would be provided.

(E) The development or manufacture of the principal drug, device, procedure, or other therapy proposed for the enrollee whose treatment is under review.

(4) For purposes of this section, the following terms shall have the following meanings:

(A) "Material familial affiliation" shall mean any relationship as a spouse, child, parent, sibling, spouse's parent, or child's spouse.

(B) "Material professional affiliation" shall mean any physician-patient relationship, any partnership or employment

relationship, a shareholder or similar ownership interest in a professional corporation, or any independent contractor arrangement that constitutes a material financial affiliation with any expert or any officer or director of the independent entity. The term "material professional affiliation" shall not include affiliations which are limited to staff privileges at a health facility.

(C) "Material financial affiliation" shall mean any financial interest of more than 5 percent of total annual revenue or total annual income of an entity or individual to which this subdivision applies. "Material financial affiliation" shall not include payment by the plan to the independent entity for the services required by this section, nor shall "material financial affiliation" include an expert's participation as a contracting plan provider where the expert is affiliated with an academic medical center or a National Cancer Institute-designated clinical cancer research center.

(5) The enrollee shall not be required to pay for the external, independent review. The costs of the review shall be borne by the plan.

(6) The plan shall provide to the independent entity arranging for the panel of experts a copy of the following documents within five business days of the plan's receipt of a request by an enrollee or enrollee's physician for an external, independent review:

(A) The medical records relevant to the patient's condition for which the proposed therapy has been recommended, provided the documents are within the plan's possession. Any medical records provided to the plan after the initial documents are provided to the independent entity shall be forwarded by the plan to the independent entity within five business days. The confidentiality of the medical records shall be maintained pursuant to Section 56.10 of the Civil Code.

(B) A copy of any relevant documents used by the plan in determining whether the proposed therapy should be covered, and any statement by the plan explaining the reasons for the plan's decision not to provide coverage for the proposed therapy. The plan shall provide, upon request, a copy of the documents required by this paragraph, except for the documents described in subparagraphs (A) and (C), to the enrollee and the enrollee's physician.

(C) Any information submitted by the enrollee or the enrollee's physician to the plan in support of the enrollee's request for coverage of the proposed drug, device, procedure, or other therapy.

(7) The experts on the panel shall render their analyses and recommendations within 30 days of the receipt of the enrollee's request for review. If the enrollee's physician determines that the proposed therapy would be significantly less effective if not promptly initiated, the analyses and recommendations of the experts on the panel shall be rendered within seven days of the request for expedited review. At the request of the expert, the deadline shall be

extended by up to three days for a delay in providing the documents required by paragraph (6) of subdivision (b).

(8) Each expert's analysis and recommendation shall be in written form and states the reasons the requested therapy is or is not likely to be more beneficial for the enrollee than any available standard therapy, and the reasons that the expert recommends that the therapy should or should not be provided by the plan, citing the enrollee's specific medical condition, the relevant documents provided pursuant to paragraph (6), and the relevant medical and scientific evidence, including, but not limited to, the medical and scientific evidence as defined in subdivision (d), to support the expert's recommendation.

(9) The independent entity shall provide the plan and the enrollee's physician with the experts' analyses and recommendations, a description of the qualifications of each expert, and any other information that it chooses to provide to the plan and the enrollee's physician, including, but not limited to, the names of the expert reviewers. The independent entity shall not be required to disclose the names of the expert reviewers to the plan or the enrollee's physician, except pursuant to a properly made request for discovery. If the independent entity chooses to disclose the names of the experts on the panel to the plan, the independent entity must also disclose the names of the experts to the enrollee's physician. The enrollee's physician may provide these documents and information to the enrollee.

(10) If the majority of experts on the panel recommend providing the proposed therapy, pursuant to paragraph (8), the recommendation shall be binding on the plan. If the recommendations of the experts on the panel are evenly divided as to whether the therapy should be provided, then the panel's decision shall be deemed to be in favor of coverage. If less than a majority of the experts on the panel recommend providing the therapy, the plan is not required to provide the therapy. Coverage for the services required under this section shall be provided subject to the terms and conditions generally applicable to other benefits under the plan contract.

(11) The plan shall have written policies describing the external, independent review process. The plan shall disclose the availability of the external, independent review process and how enrollees may access the review process in the plan's evidence of coverage and disclosure forms.

(c) The Commissioner of Corporations, in consultation with the Insurance Commissioner, shall, by January 1, 1998, contract with a private, nonprofit accrediting organization to accredit the independent review entities specified in subdivision (b). The accrediting organization shall have the power to grant and revoke accreditation, and shall develop, apply, and enforce accreditation standards, including those required in subdivision (e), that ensure

the independence of the independent review entity, the confidentiality of the medical records, and the qualifications and independence of the health care professionals providing the analyses and recommendations requested of them. The accrediting organization shall demonstrate the ability to objectively evaluate the performance of independent entities and shall demonstrate that it has no conflict of interest, including any material professional, familial, or financial affiliation as defined in paragraph (4) of subdivision (b) with any independent entity or plan, in accrediting entities for the purpose of reviewing medical treatments, treatment recommendations, and coverage decisions by health care service plans.

(d) For the purposes of paragraph (3) of subdivision (a), "medical and scientific evidence" means the following sources:

(1) Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff.

(2) Peer-reviewed literature, biomedical compendia, and other medical literature that meet the criteria of the National Institute of Health's National Library of Medicine for indexing in Index Medicus, Excerpta Medicus (EMBASE), Medline, and MEDLARS database Health Services Technology Assessment Research (HSTAR).

(3) Medical journals recognized by the Secretary of Health and Human Services, under Section 1861(t)(2) of the Social Security Act.

(4) The following standard reference compendia: The American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluation, the American Dental Association Accepted Dental Therapeutics, and the United States Pharmacopoeia-Drug Information.

(5) Findings, studies, or research conducted by or under the auspices of federal government agencies and nationally recognized federal research institutes including the Federal Agency for Health Care Policy and Research, National Institutes of Health, National Cancer Institute, National Academy of Sciences, Health Care Financing Administration, Congressional Office of Technology Assessment, and any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health services.

(6) Peer-reviewed abstracts accepted for presentation at major medical association meetings.

(e) In order to receive accreditation for the purposes of this section, an independent entity shall meet all of the following requirements:

(1) The independent entity must be an organization that has as its primary function to provide expert reviews and related services and receives a majority of its revenues from these services, except that an

academic medical center may qualify as an independent entity for purposes of this act without having as its primary function providing expert reviews and related services and without receiving a majority of its revenues from these services. An independent entity may not be a subsidiary of, nor in any way owned or controlled by, a health plan, a trade association of health plans, or a professional association of health care providers.

(2) The independent entity must submit to the accrediting organization and to the Department of Corporations the following information upon initial application for accreditation and annually thereafter upon any change to any of the following information:

(A) The names of all stockholders and owners of more than 5 percent of any stock or options, if a publicly held organization.

(B) The names of all holders of bonds or notes in excess of one hundred thousand dollars ($100,000), if any.

(C) The names of all corporations and organizations that the independent entity controls or is affiliated with, and the nature and extent of any ownership or control, including the affiliated organization's type of business.

(D) The names and biographical sketches of all directors, officers, and executives of the independent entity, as well as a statement regarding any relationships the directors, officers, and executives may have with any health care service plan, disability insurer, managed care organization, provider group or board or committee.

(E) The percentage of revenue the independent entity receives from expert reviews.

(F) A description of the review process, including, but limited not to, the method of selecting expert reviewers and matching the expert reviewers to specific cases.

(G) A description of the system the independent entity uses to identify and recruit expert reviewers, the number of expert reviewers credentialed and the types of cases the experts are credentialed to review.

(H) Documentation regarding the medical institutions from which the independent entity has selected the experts during the previous 12 months, and the percentage of opinions obtained from each institution.

(I) A description of the areas of expertise available from expert reviewers retained by the independent entity.

(J) A description of how the independent entity ensures compliance with the conflict-of-interest provisions of this section.

(3) The independent entity must demonstrate that it has a quality assurance mechanism in place that does the following:

(A) Ensures that the experts retained are appropriately credentialed and privileged.

(B) Ensures that the reviews provided by the experts are timely, clear and credible, and that reviews are monitored for quality on an ongoing basis.

(C) Ensures that the method of selecting expert reviewers for individual cases achieves a fair and impartial panel of experts who are qualified to render recommendations regarding the clinical conditions and therapies in question.

(D) Ensures the confidentiality of medical records and the review materials, consistent with the requirements of this section.

(E) Ensures the independence of the experts retained to perform the reviews through conflict-of-interest policies and prohibitions and adequate screening for conflicts of interest, pursuant to paragraph (3) of subdivision (b).

(f) (1) The Department of Corporations shall receive the information filed by independent entities pursuant to paragraph (2) of subdivision (e) for the purpose of creating a file of public records. The Department of Corporations shall not be responsible for accrediting independent entities.

(2) The accrediting organization shall provide, upon the request of any interested person, a copy of all nonproprietary information filed with it by the independent entity under paragraph (2) of subdivision (e). The accrediting organization may charge a reasonable fee to the interested person for photocopying the requested information.

(g) The independent review process established by this section shall be required on and after July 1, 1998.

SEC. 4. Section 10145.3 is added to the Insurance Code, to read:

10145.3. (a) Every disability insurer that covers hospital, medical, or surgical benefits shall provide an external, independent review process to examine the insurer's coverage decisions regarding experimental or investigational therapies for individual insureds who meet all of the following criteria:

(1) The insured has a terminal condition that, according to the insured's physician's current diagnosis, has a high probability of causing death within two years from the date of the request for an independent medical review; and

(2) The insured's physician certifies that the insured has a condition, as defined in paragraph (1), for which standard therapies have not been effective in improving the condition of the insured, or for which standard therapies would not be medically appropriate for the insured, or for which there is no more beneficial standard therapy covered by the insurer than the therapy proposed pursuant to paragraph (3); and

(3) Either (A) the insured's contracting physician has recommended a drug, device, procedure, or other therapy that the physician certifies in writing is likely to be more beneficial to the insured than any available standard therapies, or (B) the insured, or the insured's physician who is a licensed, board-certified or board-eligible physician qualified to practice in the area of practice appropriate to treat the insured's condition, has requested a therapy that, based on two documents from the medical and scientific

evidence, as defined in subdivision (d), is likely to be more beneficial for the insured than any available standard therapy. The physician certification pursuant to this subdivision shall include a statement of the evidence relied upon by the physician in certifying his or her recommendation. Nothing in this subdivision shall be construed to require the insurer to pay for the services of a noncontracting physician, provided pursuant to this subdivision, that are not otherwise covered pursuant to the contract; and

(4) The insured has been denied coverage by the insurer for a drug, device, procedure, or other therapy recommended or requested pursuant to paragraph (3), unless coverage for the specific therapy has been excluded by the plan contract; and

(5) This section shall not apply to any Medi-Cal beneficiary enrolled with an insurer under the insurer's contract with the Medi-Cal program; and

(6) The specific drug, device, procedure, or other therapy recommended pursuant to paragraph (3) would be a covered service, except for the plan's determination that the therapy is experimental or under investigation.

(b) The insurer's external, independent review shall meet the following criteria:

(1) The insurer shall offer all insureds who meet the criteria in subdivision (a) the opportunity to have the requested therapy reviewed under the external, independent review process. The insurer shall notify eligible insureds in writing of the opportunity to request the external independent review within five business days of the decision to deny coverage.

(2) The insurer shall contract with one or more impartial, independent entities that are accredited pursuant to subdivision (c). The entity shall arrange for review of the coverage decision by selecting an independent panel of at least three physicians or other providers who are experts in the treatment of the insured's medical condition and knowledgeable about the recommended therapy. If the entity is an academic medical center accredited in accordance with subdivision (e), the independent panel may include experts affiliated with or employed by the entity. A panel of two experts may be arranged at the insurer's request, provided the insured consents in writing. The independent entity may arrange for a panel of one expert only if the independent entity certifies in writing that there is only one expert qualified and able to review the recommended therapy. Neither the insurer nor the insured shall choose or control the choice of the physician or other provider experts.

(3) Neither the expert, nor the independent entity, nor any officer, director, or management employee of the independent entity shall have any material professional, familial, or financial affiliation, as defined in paragraph (4), with any of the following:

(A) The insurer.

(B) Any officer, director, or management employee of the insurer.

(C) The physician, the physician's medical group, or the independent practice association (IPA) proposing the therapy.

(D) The institution at which the therapy would be provided.

(E) The development or manufacture of the principal drug, device, procedure, or other therapy proposed for the insured whose treatment is under review.

(4) For purposes of this section, the following terms shall have the following meanings:

(A) "Material familial affiliation" shall mean any relationship as a spouse, child, parent, sibling, spouse's parent, or child's spouse.

(B) "Material professional affiliation" shall mean any physician-patient relationship, any partnership or employment relationship, a shareholder or similar ownership interest in a professional corporation, or any independent contractor arrangement that constitutes a material financial affiliation with any expert or any officer or director of the independent entity. The term "material professional affiliation" shall not include affiliations which are limited to staff privileges at a health facility.

(C) "Material financial affiliation" shall mean any financial interest of more than 5 percent of total annual revenue or total annual income of an entity or individual to which this subdivision applies. "Material financial affiliation" shall not include payment by the insurer to the independent entity for the services required by this section, nor shall "material financial affiliation" include an expert's participation as a contracting provider for the insurer where the expert is affiliated with an academic medical center or a National Cancer Institute-designated clinical cancer research center.

(5) The insured shall not be required to pay for the external independent review. The costs of the review shall be borne by the insurer.

(6) The insurer shall provide to the independent entity arranging for the panel of experts a copy of the following documents within five business days of the insurer's receipt of a request by an insured or insured's physician for an external independent review.

(A) The medical records relevant to the patient's condition for which the proposed therapy has been recommended, provided the documents are within the insurer's possession. Any medical records provided to the insurer after the initial documents are provided to the independent entity shall be forwarded by the insurer to the independent entity within five business days. The confidentiality of the medical records shall be maintained pursuant to Section 56.10 of the Civil Code.

(B) A copy of any relevant documents used by the insurer in determining whether the proposed therapy should be covered, and any statement by the insurer explaining the reasons for the insurer's decision not to provide coverage for the proposed therapy. The

insurer shall provide, upon request, a copy of the documents required by this paragraph, except for the documents described in paragraphs (A) and (C), to the insured and the insured's physician.

(C) Any information submitted by the insured or the insured's physician to the insurer in support of the insured's request for coverage of the proposed drug, device, procedure, or other therapy.

(7) The experts on the panel shall render their analyses and recommendations within 30 days of the receipt of the insured's request for review. If the insured's physician determines that the proposed therapy would be significantly less effective if not promptly initiated, the analyses and recommendations of the experts on the panel shall be rendered within seven days of the request for expedited review. At the request of the expert, the deadline shall be extended by up to three days for a delay in providing the documents required by paragraph (6) of subdivision (b).

(8) Each expert's analysis and recommendation shall be in written form and states the reasons the requested therapy is or is not likely to be more beneficial for the insured than any available standard therapy, and the reasons that the expert recommends that the therapy should or should not be covered by the insurer, citing the insured's specific medical condition, the relevant documents provided pursuant to paragraph (6), and the relevant medical and scientific evidence, including, but not limited to, the medical and scientific evidence as defined in subdivision (d), to support the expert's recommendation.

(9) The independent entity shall provide the insurer and the insured's physician with the expert's analyses and recommendations, a description of the qualifications of each expert, and any other information that it chooses to provide to the insurer and the insured's physician, including, but not limited to, the names of the expert reviewers. The independent entity shall not be required to disclose the names of the expert reviewers to the insurer or to the insured's physician, except pursuant to a properly made request for discovery. If the independent entity chooses to disclose the names of the experts on the panel to the insurer, the independent entity must also disclose the names of the experts to the insured's physician. The insured's physician may provide these documents and information to the enrollee.

(10) If the majority of experts on the panel recommend providing the proposed therapy, pursuant to paragraph (8), the recommendation shall be binding on the insurer. If the recommendations of the experts on the panel are evenly divided as to whether the therapy should be provided, then the panel's decision shall be deemed to be in favor of coverage. If less than a majority of the experts on the panel recommend providing the therapy, the insurer is not required to provide the therapy. Coverage for the services required under this section shall be provided subject to the

terms and conditions generally applicable to other benefits under the contract.

(11) The insurer shall have written policies describing the external, independent review process. The insurer shall disclose the availability of the external, independent review process and how insureds may access the review process in the insurer's evidence of coverage and disclosure forms.

(c) The Commissioner of Corporations, in consultation with the Insurance Commissioner, shall, by January 1, 1998, contract with a private, nonprofit accrediting organization to accredit the independent review entities specified in subdivision (b). The accrediting organization shall have the power to grant and revoke accreditation, and shall develop, apply, and enforce accreditation standards, including those required in subdivision (e), that ensure the independence of the independent review entity, the confidentiality of the medical records, and the qualifications and independence of the health care professionals providing the analyses and recommendations requested of them. The accrediting organization shall demonstrate the ability to objectively evaluate the performance of independent entities and shall demonstrate that it has no conflict of interest, including any material professional, familial, or financial affiliation as defined in paragraph (4) of subdivision (b) with any independent entity or disability insurer, in accrediting entities for the purpose of reviewing medical treatments, treatment recommendations, and coverage decisions by disability insurers.

(d) For the purposes of paragraph (3) of subdivision (a), "medical and scientific evidence" means the following sources:

(1) Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff.

(2) Peer-reviewed literature, biomedical compendia and other medical literature that meet the criteria of the National Institute of Health's National Library of Medicine for indexing in Index Medicus, Excerpta Medicus (EMBASE), Medline and MEDLARS database Health Services Technology Assessment Research (HSTAR).

(3) Medical journals recognized by the Secretary of Health and Human Services, under Section 1861(t)(2) of the Social Security Act.

(4) The following standard reference compendia: The American Hospital Formulary Service-Drug Information, the American Medical Association Drug Evaluation, the American Dental Association Accepted Dental Therapeutics and The United States Pharmacopoeia-Drug Information.

(5) Findings, studies or research conducted by or under the auspices of federal government agencies and nationally recognize federal research institutes including the Federal Agency for Health

Care Policy and Research, National Institutes of Health, National Cancer Institute, National Academy of Sciences, Health Care Financing Administration, Congressional Office of Technology Assessment, and any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health services.

(6) Peer-reviewed abstracts accepted for presentation at major medical association meetings.

(e) In order to receive accreditation for the purposes of this section, an independent entity shall meet all of the following requirements:

(1) The independent entity must be an organization that has as its primary function to provide expert reviews and related services and receives a majority of its revenues from these services, except that an academic medical center may qualify as an independent entity for purposes of this act without having as its primary function providing expert reviews and related services and without receiving a majority of its revenues from these services. An independent entity may not be a subsidiary of, nor in any way owned or controlled by, a health plan, a trade association of health plans, or a professional association of health care providers.

(2) The independent entity must submit to the accrediting organization and to the Department of Corporations the following information upon initial application for accreditation and annually thereafter upon any change to any of the following information:

(A) The names of all stockholders and owners of more than 5 percent of any stock or options, if a publicly held organization.

(B) The names of all holders of bonds or notes in excess of one hundred thousand dollars ($100,000), if any.

(C) The names of all corporations and organizations that the independent entity controls or is affiliated with, and the nature and extent of any ownership or control, including the affiliated organization's type of business.

(D) The names and biographical sketches of all directors, officers, and executives of the independent entity, as well as a statement regarding any relationships the directors, officers, and executives may have with any health care service plan, disability insurer, managed care organization, provider group or board or committee.

(E) The percentage of revenue the independent entity receives from expert reviews.

(F) A description of the review process, including, but limited not to, the method of selecting expert reviewers and matching the expert reviewers to specific cases.

(G) A description of the system the independent entity uses to identify and recruit expert reviewers, the number of expert reviewers credentialed and the types of cases the experts are credentialed to review.

(H) Documentation regarding the medical institutions from which the independent entity has selected the experts during the previous 12 months, and the percentage of opinions obtained from each institution.

(I) A description of the areas of expertise available from expert reviewers retained by the independent entity.

(J) A description of how the independent entity ensures compliance with the conflict-of-interest provisions of this section.

(3) The independent entity must demonstrate that it has a quality assurance mechanism in place that does the following:

(A) Ensures that the experts retained are appropriately credentialed and privileged.

(B) Ensures that the reviews provided by the experts are timely, clear and credible, and that reviews are monitored for quality on an ongoing basis.

(C) Ensures that the method of selecting expert reviewers for individual cases achieves a fair and impartial panel of experts who are qualified to render recommendations regarding the clinical conditions and therapies in question.

(D) Ensures the confidentiality of medical records and the review materials, consistent with the requirements of this section.

(E) Ensures the independence of the experts retained to perform the reviews through conflict-of-interest policies and prohibitions and adequate screening for conflicts of interest, pursuant to paragraph (3) of subdivision (b).

(f) (1) The Department of Corporations shall receive the information filed by independent entities pursuant to paragraph (2) of subdivision (e) for the purpose of creating a file of public records. The Department of Corporations shall not be responsible for accrediting independent entities.

(2) The accrediting organization shall provide, upon the request of any interested person, a copy of all nonproprietary information filed with it by the independent entity under paragraph (2) of subdivision (e). The accrediting organization may charge a reasonable fee to the interested person for photocopying the requested information.

(g) The independent review process established by this section shall be required on and after July 1, 1998.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative

on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 980

An act to add Chapter 6.12 (commencing with Section 25405) to Division 20 of the Health and Safety Code, relating to hazardous materials.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Chapter 6.12 (commencing with Section 25405) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 6.12. LOCAL AGENCY ACUTELY HAZARDOUS MATERIALS REGULATION

25405. (a) For purposes of this chapter, "acutely hazardous material" means any chemical designated as an extremely hazardous substance which is listed in Appendix A of Part 355 of Subchapter J of Chapter I of Title 40 of the Code of Federal Regulations.

(b) A city or county which adopts or amends an ordinance related to acutely hazardous materials shall do so at a public meeting for which notice has been given in a newspaper of general circulation that is published and circulated in the affected city or county, and the city or county shall state the reasons for adopting or amending the ordinance in the ordinance.

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

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

CHAPTER 981

An act to amend Sections 290.4, 4852.01, 4852.03, 4852.05, 4852.06, and 4852.13 of the Penal Code, relating to criminal offenders.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. It is the intent of the Legislature that the Department of Justice continuously review for accuracy the information required to be compiled by Section 290.4 of the Penal Code according to the requirements set forth in that section.

SEC. 2. Section 4852.01 of the Penal Code is amended to read:

4852.01. (a) Any person convicted of a felony who has been released from a state prison or other state penal institution or agency in California, whether discharged on completion of the term for which he or she was sentenced or released on parole prior to May 13, 1943, who has not been incarcerated in a state prison or other state penal institution or agency since his or her release and who presents satisfactory evidence of a three-year residence in this state immediately prior to the filing of the petition for a certificate of rehabilitation and pardon provided for by this chapter, may file the petition pursuant to the provisions of this chapter.

(b) Any person convicted of a felony who, on May 13, 1943, was confined in a state prison or other institution or agency to which he or she was committed and any person convicted of a felony after that date who is committed to a state prison or other institution or agency may file a petition for a certificate of rehabilitation and pardon pursuant to the provisions of this chapter.

(c) Any person convicted of a felony or any person who is convicted of a misdemeanor violation of any sex offense specified in Section 290, the accusatory pleading of which has been dismissed pursuant to Section 1203.4, may file a petition for certificate of rehabilitation and pardon pursuant to the provisions of this chapter if the petitioner has not been incarcerated in any prison, jail, detention facility, or other penal institution or agency since the dismissal of the accusatory pleading and is not on probation for the commission of any other felony, and the petitioner presents satisfactory evidence of five years residence in this state prior to the filing of the petition.

(d) This chapter shall not apply to persons serving a mandatory life parole, persons committed under death sentences, or persons in the military service.

SEC. 3. Section 4852.03 of the Penal Code is amended to read:

4852.03. (a) The period of rehabilitation shall begin to run upon the discharge of the petitioner from custody due to his or her

completion of the term to which he or she was sentenced or upon his or her release on parole or probation, whichever is sooner. For purposes of this chapter, the period of rehabilitation shall constitute five years' residence in this state, plus a period of time determined by the following rules:

(1) To the five years there shall be added four years in the case of any person convicted of violating Section 187, 209, 219, 4500 or 12310 of this code, or subdivision (a) of Section 1672 of the Military and Veterans Code, or of committing any other offense which carries a life sentence.

(2) To the five years there shall be added two years in the case of any person convicted of committing any offense which is not listed in paragraph (1) and which does not carry a life sentence.

(3) The trial court hearing the application for the certificate of rehabilitation may, if the defendant was ordered to serve consecutive sentences, order that his or her statutory period of rehabilitation be extended for an additional period of time which when combined with the time already served will not exceed the period prescribed by statute for the sum of the maximum penalties for all the crimes.

(4) Any person who was discharged after completion of his or her term or was released on parole before May 13, 1943, is not subject to the periods of rehabilitation set forth in these rules.

(b) Unless and until the period of rehabilitation, as stipulated in this section, has passed, the petitioner shall be ineligible to file his or her petition for a certificate of rehabilitation with the court. Any certificate of rehabilitation which is issued and under which the petitioner has not fulfilled the requirements of this chapter shall be void.

(c) A change of residence within this state does not interrupt the period of rehabilitation prescribed by this section.

SEC. 4. Section 4852.05 of the Penal Code is amended to read:

4852.05. The person shall live an honest and upright life, shall conduct himself or herself with sobriety and industry, shall exhibit a good moral character, and shall conform to and obey the laws of the land.

SEC. 5. Section 4852.06 of the Penal Code is amended to read:

4852.06. Except as provided in subdivision (a) of Section 4852.01, after the expiration of the minimum period of rehabilitation applicable to him or her (and, in the case of persons released upon parole or probation, after the termination of parole or probation), each person who has complied with the requirements of Section 4852.05 may file in the superior court of the county in which he or she then resides a petition for ascertainment and declaration of the fact of his or her rehabilitation and of matters incident thereto, and for a certificate of rehabilitation under this chapter. No petition shall be filed until and unless the petitioner has continuously resided in this state, after leaving prison, for a period of not less than five years immediately preceding the date of filing the petition.

SEC. 6. Section 4852.13 of the Penal Code, as amended by Chapter 129 of the Statutes of 1996, is amended to read:

4852.13. (a) Except as otherwise provided in subdivision (b), if after hearing, the court finds that the petitioner has demonstrated by his or her course of conduct his or her rehabilitation and his or her fitness to exercise all of the civil and political rights of citizenship, the court may make an order declaring that the petitioner has been rehabilitated, and recommending that the Governor grant a full pardon to the petitioner. This order shall be filed with the clerk of the court, and shall be known as a certificate of rehabilitation.

(b) No certificate of rehabilitation shall be granted to a person convicted of any offense specified in Section 290 if the court determines that the petitioner presents a continuing threat to minors of committing any of the offenses specified in Section 290.

(c) A district attorney in either the county where the conviction was obtained or the county of residence of the recipient of the certificate of rehabilitation may petition the superior court to rescind a certificate if it was granted for any offense specified in Section 290. The petition shall be filed in either the county in which the person who has received the certificate of rehabilitation resides or the county in which the conviction was obtained. If the superior court finds that petitioner has demonstrated by a preponderance of the evidence that the person who has received the certificate presents a continuing threat to minors of committing any of the offenses specified in Section 290, the court shall rescind the certificate.

CHAPTER 982

An act to amend Section 186.22 of, and to repeal Section 186.27 of, the Penal Code, relating to street terrorism.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 186.22 of the Penal Code is amended to read:

186.22. (a) Any person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b) (1) Except as provided in paragraph (4), any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific

intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished by an additional term of one, two, or three years at the court's discretion.

(2) If the underlying felony described in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school related programs or when minors are using the facility, the additional term shall be two, three, or four years, at the court's discretion.

(3) The court shall order the imposition of the middle term of the sentence enhancement, unless there are circumstances in aggravation or mitigation. The court shall state the reasons for its choice of sentence enhancements on the record at the time of the sentencing.

(4) Any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(e) As used in this chapter, "pattern of criminal gang activity" means the commission of, attempted commission of, or solicitation of, sustained juvenile petition for, or conviction of two or more of the following offenses, provided at least one of these offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in Section 245.

(2) Robbery, as defined in Chapter 4 (commencing with Section 211) of Title 8 of Part 1.

(3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with Section 187) of Title 8 of Part 1.

(4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code.

(5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in Section 246.

(6) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in subdivisions (a) and (b) of Section 12034.

(7) Arson, as defined in Chapter 1 (commencing with Section 450) of Title 13.

(8) The intimidation of witnesses and victims, as defined in Section 136.1.

(9) Grand theft, as defined in Section 487, when the value of the money, labor, or real or personal property taken exceeds ten thousand dollars ($10,000).

(10) Grand theft of any vehicle, trailer, or vessel, as described in Section 487h.

(11) Burglary, as defined in Section 459.

(12) Rape, as defined in Section 261.

(13) Looting, as defined in Section 463.

(14) Moneylaundering, as defined in Section 186.10.

(15) Kidnapping, as defined in Section 207.

(16) Mayhem, as defined in Section 203.

(17) Aggravated mayhem, as defined in Section 205.

(18) Torture, as defined in Section 206.

(19) Felony extortion, as defined in Sections 518 and 520.

(20) Felony vandalism, as defined in paragraph (1) of subdivision (b) of Section 594.

(21) Carjacking, as defined in Section 215.

(22) The sale, delivery, or transfer of a firearm, as defined in Section 12072.

(23) Possession of a pistol, revolver, or other firearm capable of being concealed upon the person in violation of paragraph (1) of subdivision (a) of Section 12101.

(f) As used in this chapter, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (23), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

SEC. 2. Section 186.27 of the Penal Code is repealed.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime

or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 983

An act to add Section 3053.2 to the Penal Code, relating to domestic violence.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. The Legislature finds and declares the following:

(a) Providing the maximum protection possible for victims of domestic violence and their families is of the highest priority.

(b) Domestic violence is a serious and widespread crime.

(c) Domestic violence has long-term effects that are disastrous for social policy and threatens the stability of the family and negatively impacts all family members, especially children who may erroneously learn that violence is an acceptable way to cope with stress or problems.

(d) Those convicted of domestic violence offenses can benefit from participation in a structured batterer's program.

SEC. 2. Section 3053.2 is added to the Penal Code, to read:

3053.2. (a) Upon the request of the victim, or the victim's parent or legal guardian if the victim is a minor, the parole authority shall impose the following condition on the parole of a person released from prison for an offense involving threatening, stalking, sexually abusing, harassing, or violent acts in which the victim is a person specified in Section 6211 of the Family Code:

Compliance with a protective order enjoining the parolee from threatening, stalking, sexually abusing, harassing, or taking further violent acts against the victim and, if appropriate, compliance with any or all of the following:

(1) An order prohibiting the parolee from having personal, telephonic, electronic, media, or written contact with the victim.

(2) An order prohibiting the parolee from coming within at least 100 yards of the victim or the victim's residence or workplace.

(3) An order excluding the parolee from the victim's residence.

(b) The parole authority may impose the following condition on the parole of a person released from prison for an offense involving

threatening, stalking, sexually abusing, harassing, or violent acts in which the victim is a person specified in Section 6211 of the Family Code:

For persons who committed the offense prior to January 1, 1997, participation in a batterer's program, as specified in this section, for the entire period of parole. For persons who committed the offense after January 1, 1997, successful completion of a batterer's program, which shall be a condition of release from parole. If no batterer's program is available, another appropriate counseling program designated by the parole agent or officer, for a period of not less than one year, with weekly sessions of a minimum of two hours of classroom time. The program director shall give periodic progress reports to the parole agent or officer at least every three months.

(c) The parole agent or officer shall refer the parolee only to a batterer's program that follows the standards outlined in Section 1203.097 and immediately following sections.

(d) The parolee shall file proof of enrollment in a batterer's program with the parole agent or officer within 30 days after the first meeting with his or her parole agent or officer, if he or she committed the offense after January 1, 1997, or within 30 days of receiving notice of this parole condition, if he or she committed the offense prior to January 1, 1997.

(e) The parole agent or officer shall conduct an initial assessment of the parolee, which information shall be provided to the batterer's program. The assessment shall include, but not be limited to, all of the following:

(1) Social, economic, and family background.

(2) Education.

(3) Vocational achievements.

(4) Criminal history, prior incidents of violence, and arrest reports.

(5) Medical history.

(6) Substance abuse history.

(7) Consultation with the probation officer.

(8) Verbal consultation with the victim, only if the victim desires to participate.

(f) Upon request of the victim, the victim shall be notified of the release of the parolee and the parolee's location and parole agent or officer. If the victim requests notification, he or she shall also be informed that attendance in any program does not guarantee that an abuser will not be violent.

(g) The parole agent or officer shall advise the parolee that the failure to enroll in a specified program, as directed, may be considered a parole violation that would result in possible further incarceration.

(h) The director of the batterer's program shall immediately report any violation of the terms of the protective order issued pursuant to paragraph (3) of subdivision (a), including any new acts

of violence or failure to comply with the program requirements, to the parolee's parole agent or officer.

(i) Upon recommendation of the director of the batterer's program, a parole agent or officer may require a parolee to participate in additional sessions throughout the parole period, unless he or she finds that it is not in the interests of justice to do so. In deciding whether the parolee would benefit from more sessions, the parole agent or officer shall consider whether any of the following conditions exist:

(1) The parolee has been violence-free for a minimum of six months.

(2) The parolee has cooperated and participated in the batterer's program.

(3) The parolee demonstrates an understanding of, and practices, positive conflict resolution skills.

(4) The parolee blames, degrades, or has committed acts that dehumanize the victim or puts the victim's safety at risk, including, but not limited to, molesting, stalking, striking, attacking, threatening, sexually assaulting, or battering the victim.

(5) The parolee demonstrates an understanding that the use of coercion or violent behavior to maintain dominance is unacceptable in an intimate relationship.

(6) The parolee has made threats to harm another person in any manner.

(7) The parolee demonstrates acceptance of responsibility for the abusive behavior perpetrated against the victim.

(j) The Department of Corrections, with collaboration as appropriate from the Board of Prison Terms, shall (1) submit a report to the Legislature on or before February 1, 1998, on the implementation of this section which shall include, but not be limited to, the crimes used to identify parolees subject to this section, the method of notifying victims that compliance with a protective order may be made a condition of parole, efforts made to ensure that victims inform the parole authority of the request for, or issuance of, those orders and that a request for conditioning parole may be submitted, problems encountered in implementing this section, and progress made in that implementation, and (2) submit a report to the Legislature on or before July 1, 1999, which shall include, but not be limited to, the subjects discussed in the first report required by this section, the identification of the number of parolees eligible for such programs and protective orders which may be made a condition of parole; number of parolees required to participate in batterers programs; space available by county and number of spaces filled in such programs; the number of parolees who recidivate during the parole period or who do not complete the programs; and the criteria used to determine which parolees have been required to complete the programs or who have had parole conditioned on compliance with a protective order.

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

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

CHAPTER 984

An act to amend Section 42301.12 of the Health and Safety Code, relating to air pollution, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. It is the intent of the Legislature that, in implementing Title V of the federal Clean Air Act, (42 U.S.C.A. Sec. 7661 et seq.), the state avoid the situation where permit terms and conditions imposed to ensure compliance with nonfederal requirements are made federally enforceable solely as a result of being included as part of a Title V application and permit, except where the source requests that those terms and conditions be made federally enforceable. It is also the intent of the Legislature that, as the state implements Title V, sources be able to take full advantage of flexibility provided by the Environmental Protection Agency in that agency's regulations, its White Paper for Streamlined Development of the Part 70 Permit Applications (July 10, 1995), its White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program (March 5, 1996), other such guidance documents, and further permitting and operational flexibility available under Title V. Those flexibility provisions include, but are not limited to, streamlining applicable requirements on the same emissions units and the development of applications and permits so that outdated State Implementation Plan requirements are addressed.

SEC. 2. Section 42301.12 of the Health and Safety Code is amended to read:

42301.12. (a) Any district permit system or permit provision established by a district board to meet the requirements of Title V shall, consistent with federal law, minimize the regulatory burden on Title V sources and the district and shall meet all of the following criteria:

(1) Apply only to Title V sources.

(2) Issue permits pursuant to Title V only after the Environmental Protection Agency has approved the district's Title V permit program.

(3) Identify in the permit, to the greatest extent feasible, permit terms and conditions which are federally enforceable and those which are not federally enforceable. A district shall make that identification by either of the following means:

(A) Identifying in the permit the terms and conditions that are federally enforceable because they are imposed pursuant to a federal requirement or because the source has requested the terms and conditions and federal enforceability thereof and the permitting district has not determined that the request does not meet all applicable federal requirements and guidelines.

(B) Identifying in the permit the terms and conditions which are imposed pursuant to state law or district rules and are not federally enforceable. Districts may further identify those terms and conditions of the permit which are not federally enforceable, but which have been included in the permit to enforce district rules adopted by the district to meet federal requirements.

(4) Utilize, to the extent reasonably feasible, general permits and similar methods to reduce source and district permitting burdens for Title V sources.

(5) Establish clear and simple application completeness criteria.

(6) To the extent feasible, minimize the burden of federally mandated paperwork such as recordkeeping and reporting documents.

(7) Allow sources maximum flexibility in selecting cost-effective, reliable, and representative monitoring methods consistent with applicable state and federal requirements.

(8) If a permit is required to be reopened to comply with Title V requirements, base the reopening upon the federal criteria for reopening and limit the reopening to only the federal component of the Title V permit. This paragraph is not intended to limit in any way the authority under state law to reopen permits.

(9) Authorize administrative permit amendments and minor permit modifications as required by federal law.

(10) Provide that, unless the district determines that a Title V application is not complete within 60 days of receipt of the application, the application shall be deemed to be complete.

(11) Authorize, to the extent consistent with existing state law, mandatory operational flexibility provisions required pursuant to Part 70 (commencing with Section 70.1) of Title 40 of the Code of

Federal Regulations, and consider optional operational flexibility provisions established pursuant to Part 70 (commencing with Section 70.1) of Title 40 of the Code of Federal Regulations. Nothing in this paragraph is intended to affect whatsoever any pending litigation.

(12) Make every reasonable effort, in partnership with Title V sources and the state board, to evaluate and respond to the substance of any objection to a proposed permit and to obtain expeditious approval of Title V permits submitted to the Environmental Protection Agency.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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

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

Pursuant to federal law, Title V permit applications are, or will soon be, required to be submitted to air pollution control districts and air quality management districts. In order to require the districts, before the submittal deadlines, to identify those terms and conditions of a permit that are federally enforceable because the terms and conditions, and their federal enforceability, have been requested by a source, thereby helping to prevent requirements imposed only by the state from becoming federally enforceable without the express request of the source, it is necessary that this act take effect immediately.

CHAPTER 985

An act to amend Section 7159 of the Business and Professions Code, relating to contractors.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 7159 of the Business and Professions Code is amended to read:

7159. This section shall apply only to home improvement contracts, as defined in Section 7151.2, between a contractor, whether a general contractor or a specialty contractor, who is licensed or subject to be licensed pursuant to this chapter with regard to the transaction and who contracts with an owner or tenant for work upon a residential building or structure, or upon land adjacent thereto, for proposed repairing, remodeling, altering, converting, modernizing, or adding to the residential building or structure or land adjacent thereto, and where the aggregate contract price specified in one or more improvement contracts, including all labor, services, and materials to be furnished by the contractor, exceeds five hundred dollars ($500).

Every home improvement contract and every contract, the primary purpose of which is the construction of a swimming pool, shall be subject to the provisions of this section. Every contract and any changes in the contract subject to the provisions of this section shall be evidenced by a writing and shall be signed by all the parties to the contract thereto. The writing shall contain all of the following:

(a) The name, address, and license number of the contractor, and the name and registration number of any salesperson who solicited or negotiated the contract.

(b) The approximate dates when the work will begin and on which all construction is to be completed.

(c) A plan and scale drawing showing the shape, size, dimensions, and construction and equipment specifications for a swimming pool and for other home improvements, a description of the work to be done and description of the materials to be used and the equipment to be used or installed, and the agreed consideration for the work.

(d) If the payment schedule contained in the contract provides for a downpayment to be paid to the contractor by the owner or the tenant before the commencement of work, the downpayment shall not exceed two hundred dollars ($200) or 2 percent of the contract price for swimming pools, or one thousand dollars ($1,000) or 10 percent of the contract price for other home improvements, excluding finance charges, whichever is the lesser.

(e) A schedule of payments showing the amount of each payment as a sum in dollars and cents. In no event shall the payment schedule provide for the contractor to receive, nor shall the contractor actually receive, payments in excess of 100 percent of the value of the work performed on the project at any time, excluding finance charges, except that the contractor may receive an initial downpayment authorized by subdivision (d). With respect to a swimming pool contract, the final payment may be made at the completion of the final plastering phase of construction, provided that any installation or construction of equipment, decking, or fencing required by the contract is also completed. A failure by the contractor without lawful excuse to substantially commence work within 20 days of the approximate date specified in the contract when work will begin

shall postpone the next succeeding payment to the contractor for that period of time equivalent to the time between when substantial commencement was to have occurred and when it did occur. The schedule of payments shall be stated in dollars and cents, and shall be specifically referenced to the amount of work or services to be performed and to any materials and equipment to be supplied. With respect to a contract that provides for a schedule of monthly payments to be made by the owner or tenant and for a schedule of payments to be disbursed to the contractor by a person or entity to whom the contractor intends to assign the right to receive the owner's or tenant's monthly payments, the payments referred to in this subdivision mean the payments to be disbursed by the assignee and not those payments to be made by the owner or tenant.

(f) A statement that, upon satisfactory payment being made for any portion of the work performed, the contractor shall, prior to any further payment being made, furnish to the person contracting for the home improvement or swimming pool a full and unconditional release from any claim or mechanic's lien pursuant to Section 3114 of the Civil Code for that portion of the work for which payment has been made.

(g) The requirements set forth in subdivisions (d), (e), and (f) shall not apply when the contract provides for the contractor to furnish a performance and payment bond, lien and completion bond, bond equivalent, or joint control approved by the Registrar of Contractors covering full performance and completion of the contract and the bonds or joint control is or are furnished by the contractor, or when the parties agree for full payment to be made upon or for a schedule of payments to commence after satisfactory completion of the project. The contract shall contain, in close proximity to the signatures of the owner and contractor, a notice in at least 10-point type stating that the owner or tenant has the right to require the contractor to have a performance and payment bond.

(h) No extra or change-order work shall be required to be performed without prior written authorization of the person contracting for the construction of the home improvement or swimming pool. No change-order shall be enforceable against the person contracting for home improvement work or swimming pool construction unless it clearly sets forth the scope of work encompassed by the change-order and the price to be charged for the changes. Any change-order forms for changes or extra work shall be incorporated in, and become a part of, the contract. Failure to comply with the requirements of this subdivision shall not preclude the recovery of compensation for work performed based upon quasi-contract, quantum meruit, restitution, or other similar legal or equitable remedies designed to prevent unjust enrichment.

(i) If the contract provides for a payment of a salesperson's commission out of the contract price, that payment shall be made on a pro rata basis in proportion to the schedule of payments made to

the contractor by the disbursing party in accordance with subdivision (e).

(j) The language of the notice required pursuant to Section 7018.5.

(k) What constitutes substantial commencement of work pursuant to the contract.

(*l*) A notice that failure by the contractor without lawful excuse to substantially commence work within 20 days from the approximate date specified in the contract when work will begin is a violation of the Contractors' State License Law.

(m) If the contract provides for a contractor to furnish joint control, the contractor shall not have any financial or other interest in the joint control.

A failure by the contractor without lawful excuse to substantially commence work within 20 days from the approximate date specified in the contract when work will begin is a violation of this section.

This section shall not be construed to prohibit the parties to a home improvement contract from agreeing to a contract or account subject to Chapter 1 (commencing with Section 1801) of Title 2 of Part 4 of Division 3 of the Civil Code.

The writing may also contain other matters agreed to by the parties to the contract.

The writing shall be legible and shall be in a form that clearly describes any other document that is to be incorporated into the contract. Before any work is done, the owner shall be furnished a copy of the written agreement, signed by the contractor.

For purposes of this section, the board shall, by regulation, determine what constitutes "without lawful excuse."

The provisions of this section are not exclusive and do not relieve the contractor or any contract subject to it from compliance with all other applicable provisions of law.

A violation of this section by a licensee, or a person subject to be licensed, under this chapter, or by his or her agent or salesperson, is a misdemeanor punishable by a fine of not less than one hundred dollars ($100) nor more than five thousand dollars ($5,000), or by imprisonment in the county jail not exceeding one year, or by both that fine and imprisonment.

(n) Any person who violates this section as part of a plan or scheme to defraud an owner of a residential or nonresidential structure, including a mobilehome or manufactured home, in connection with the offer or performance of repairs to the structure for damage caused by a natural disaster, shall be ordered by the court to make full restitution to the victim based on the person's ability to pay, as defined in subdivision (e) of Section 1203.1b of the Penal Code. In addition to full restitution, and imprisonment authorized by this section, the court may impose a fine of not less than five hundred dollars ($500) nor more than twenty-five thousand dollars ($25,000), based upon the defendant's ability to pay. This subdivision applies to natural disasters for which a state of emergency is proclaimed by the

Governor pursuant to Section 8625 of the Government Code or for which an emergency or major disaster is declared by the President of the United States.

CHAPTER 986

An act to amend Sections 14036, 14037, 14038, 14041, and 14070 of the Corporations Code, relating to business development, and making an appropriation therefor.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 14036 of the Corporations Code is amended to read:

14036. The loan account is created solely for the purpose of receiving state, federal, or local government money, and other public or private money, for subsequent allocation by the office, with the approval of the Department of Finance, to the small business development corporate loan guarantee fund.

SEC. 2. Section 14037 of the Corporations Code is amended to read:

14037. (a) All money deposited in the loan account is hereby appropriated, without regard to fiscal years for the purposes of this chapter. The state shall not be liable or obligated in any way beyond the state money which is allocated and deposited in the loan account from state money which is appropriated for these purposes.

(b) On and after January 1, 1997, accounts within the expansion fund for loan guarantees and surety bond guarantees, including loan loss reserves established for the purpose of paying loan defaults, shall be transferred to the small business development loan guarantee fund in the corporate fund of those corporations previously using those funds in the expansion fund to guarantee loans and surety bonds.

(c) The office may reallocate funds held within a corporation's small business development loan guarantee fund. The office shall reallocate funds based on which corporation is most effectively using its guarantee funds. If funds are withdrawn from a less effective corporation as part of a reallocation, the office shall make that withdrawal only after giving consideration to that corporation's fiscal solvency, its ability to honor loan guarantee defaults, and its ability to maintain a viable presence within the region it serves. Reallocation of funds shall not occur more frequently than annually commencing January 1, 1997. Any decision made by the office pursuant to this

subdivision may be appealed to the board. The board has authority to repeal or modify any decision to reallocate funds.

SEC. 3. Section 14038 of the Corporations Code is amended to read:

14038. (a) The funds in the loan account shall be paid out to a small business development corporation loan guarantee fund by the Treasurer on warrants drawn by the Controller and requisitioned by the office, pursuant to the purposes of this chapter. The office may transfer funds allocated to the corporate fund to accounts, established solely to receive the funds, in lending institutions designated by that corporation. The lending institutions so designated shall be approved by the state for the receipt of state deposits. Interest earned on the accounts in lending institutions may be utilized by the corporations pursuant to the purposes of this chapter.

(b) The office shall reallocate and transfer money to corporate trust accounts based on performance-based criteria. The criteria shall include, but not be limited to, the following:

(1) The default record of the corporation.

(2) The number and amount of loans guaranteed by a corporation.

(3) The number and amount of loans made by a corporation if state funds were used to make those loans.

(4) The number and amount of surety bonds guaranteed by a corporation.

Any decision made by the office pursuant to this subdivision may be appealed to the board within 15 days of notice of the proposed action. The board may repeal or modify any reallocation and transfer decisions made by the office.

SEC. 4. Section 14041 of the Corporations Code is amended to read:

14041. (a) Except as provided in subdivisions (c) and (d) of Section 14070, the loan guarantee account, shall be used solely to make loans, guarantee bonds, and guarantee loans, approved by the corporation, that meet the California Small Business Development Corporation Law loan criteria. The state shall not be liable or obligated in any way as a result of the allocation of state money to a corporate fund beyond the state money that is allocated and deposited in the fund pursuant to this chapter, and that is not otherwise withdrawn by the state pursuant to this chapter.

(b) A summary of all loans and bonds to which a state guarantee is attached shall be submitted to the director upon execution of the loan agreement and periodically thereafter.

(c) A summary of all loans made by a corporation shall be submitted to the director upon execution of the loan agreement and periodically thereafter.

SEC. 5. Section 14070 of the Corporations Code is amended to read:

14070. (a) The corporate guarantee shall be backed by funds on deposit in the corporation's corporate fund.

(b) Loan guarantees shall be secured by a reserve of at least 25 percent to be determined by the director.

(c) The expansion fund and corporate accounts shall be used exclusively to guarantee obligations and pay the administrative costs of the corporations. A corporation located in a rural area may utilize the funds for direct lending to farmers as long as at least 90 percent of the corporate fund farm loans, calculated by dollar amount, and all expansion fund farm loans are guaranteed by the United States Farmers Home Administration. The amount of funds available for direct farm lending shall be determined by the executive director. In its capacity as a direct lender, the corporation may sell in the secondary market the guaranteed portion of each loan so as to raise additional funds for direct lending. The agency shall issue regulations governing these direct loans, including the maximum amount of these loans.

(d) In furtherance of the purposes of this part, up to one-half of the corporate funds may be used to guarantee loans utilized to establish a Business and Industrial Development Corporation (BIDCO) under Division 15 (commencing with Section 33000) of the Financial Code.

(e) To execute the direct loan programs established in this chapter, the office may loan trust funds to a corporation located in a rural area for the express purpose of lending those funds to an identified borrower. The loan by the office to the corporation shall be on terms similar to the loan between the corporation and the borrower. The amount of the loan may be in excess of the amount of a loan to any individual farm borrower, but actual disbursements pursuant to the office loan agreement shall be required to be supported by a loan agreement between the farm borrower and the corporation in an amount at least equal to the requested disbursement. The loan between the office and the corporation shall be evidenced by a credit agreement. In the event that any loan between the corporation and borrower is not guaranteed by a governmental agency, the portion of the credit agreement attributable to that loan shall be secured by assignment of any note, executed in favor of the corporation by the borrower to the office. The terms and conditions of the credit agreement shall be similar to the loan agreement between the corporation and the borrower, which shall be collateralized by the note between the corporation and the borrower. In the absence of fraud on the part of the corporation, the liability of the corporation to repay the loan to the office is limited to the repayment received by the corporation from the borrower except in a case where the Farmers Home Administration requires exposure by the corporation in rule or regulation. The corporation may use trust funds for loan repayment to the office if the corporation has exhausted a loan loss reserve created for this purpose. Interest and principal received by the office

from the corporation shall be deposited into the same account from which the funds were originally borrowed.

(f) Upon the approval of the director, a corporation shall be authorized to borrow trust funds from the office for the purpose of relending those funds to small businesses. A corporation shall demonstrate to the director that it has the capacity to administer a direct loan program, and has procedures in place to limit the default rate for loans to startup businesses. Not more than 25 percent of any trust fund shall be used for the direct lending established pursuant to this subdivision. A loan to a corporation shall not exceed the amount of funds likely to be lent to small businesses within three months following the loan to the corporation. The maximum loan amount to a small business is fifty thousand dollars ($50,000). In the absence of fraud on the part of the corporation, the repayment obligation pursuant to the loan to the corporation shall be limited to the amount of funds received by the corporation for the loan to the small business and any other funds received from the office that are not disbursed. The corporation shall be authorized to charge a fee to the small business borrower, in an amount determined by the office pursuant to regulation. The program provided for in this subdivision shall be available in all geographic areas of the state.

CHAPTER 987

An act to amend Sections 48002, 48004, and 68101 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 48002 of the Food and Agricultural Code is amended to read:

48002. (a) In addition to any other assessment, fees, or charges that may be required pursuant to this code, producers of navel oranges and Valencia oranges that are grown in this state and prepared for fresh market in the counties specified in subdivision (d) shall pay an assessment that shall not exceed 7 mills ($0.007) per carton for navel oranges and $2^1/_2$ mills ($0.0025) per carton for Valencia oranges through the 1996 calendar year. Thereafter, the assessment shall not exceed 9 mills ($0.009) per carton for navel oranges and 4 mills ($0.004) per carton for Valencia oranges. The assessment shall be:

(1) Based on the number of cartons shipped.

(2) Used to reimburse agricultural commissioners, pursuant to a memorandum of understanding between the department and the

commissioners, in the counties specified in subdivision (d) who meet the requirements of the inspection program as determined by the committee and concurred in by the secretary.

(3) Used to establish a reserve to fund the frost inspection program. The reserve amount shall be determined by the advisory committee. However, that amount shall not exceed the average annual expenditure for the program.

(4) Collected from the producer by the first handler. For the purposes of this chapter, "producer" means a grower of navel oranges or Valencia oranges and "handler" means a person or entity who receives navel oranges or Valencia oranges from a producer and who prepares the oranges for fresh market. If a producer prepares the oranges for market, the producer shall be deemed the handler.

(5) Remitted to the department by the first handler, along with an assessment form, at the end of each month during the marketing season.

(6) Deposited in the Department of Food and Agriculture Fund or, upon the recommendation of the committee, deposited in accordance with Section 227 or Article 2.5 (commencing with Section 230) of Chapter 2 of Part 1 of Division 1.

(b) In no case shall:

(1) The total amount reimbursed to all counties exceed the total amount collected from the producers in all counties, unless reserve moneys are required for the frost inspection program. However, the authorized expenditures shall not exceed the combined total of reserve moneys and revenue received in that fiscal year.

(2) The reimbursement to any county exceed the amount approved by the committee and concurred in by the secretary.

(c) If the inspection program is terminated and there are insufficient funds to cover the cost of terminating the inspection program, the assessment shall continue until all those costs are recovered.

(d) Assessments collected pursuant to this chapter are for the purpose of conducting an inspection program in the Counties of Fresno, Kern, Madera, Orange, Riverside, San Bernardino, Santa Clara, Tulare, and Ventura. The county agricultural commissioners of those counties shall provide an inspection program if the expenses of the program are reimbursed pursuant to paragraph (2) of subdivision (a). A producer shall not be required to pay assessments unless the county agricultural commissioners of those counties provide an inspection program in accordance with this chapter, unless otherwise recommended by the committee and approved by the secretary.

SEC. 2. Section 48004 of the Food and Agricultural Code is amended to read:

48004. This chapter shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2003, deletes or extends that date.

SEC. 3. Section 68101 of the Food and Agricultural Code is amended to read:

68101. (a) The commission shall, not later than October 1 of each year, establish the assessment for the marketing year beginning October 1 and ending September 30.

(b) The combined assessment of the commission and any other state or federally authorized kiwifruit production research and market program shall not exceed 5 percent of the average f.o.b. (free on board) gross dollar value of the kiwifruit marketed by or on behalf of producers during the previous three marketing years, or twenty-five cents ($0.25) per seven-pound tray of kiwifruit or the equivalent thereto, whichever is less. The assessment may be computed and assessed on a per tray basis if the commission determines that an assessment on that basis would be reasonably equivalent to the assessment established by the commission pursuant to subdivision (a).

(c) Expenditures for administrative purposes, as defined by the commission, within the maximum assessment shall not exceed $1\frac{1}{2}$ percent of the gross dollar value of kiwifruit marketed by or on behalf of producers during that marketing year.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 988

An act to amend Sections 3411, 6240, 6250, 6251, 6252, and 6253 of, and to add Section 3134.5 to, the Family Code, and to amend Section 868.5 of, and to repeal and add Chapter 4 (commencing with Section 277) of Title 9 of Part 1 of, the Penal Code, relating to child abduction.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. This act shall be known and may be cited as the Parental Kidnapping Prevention Act.

SEC. 1.5. Section 3134.5 is added to the Family Code, to read:

3134.5. (a) Upon request of the district attorney, the court may issue a protective custody warrant to secure the recovery of an unlawfully detained or concealed child. The request by the district attorney shall include a written declaration under penalty of perjury that a warrant for the child is necessary in order for the district attorney to perform the duties described in Sections 3130 and 3131. The protective custody warrant for the child shall contain an order that the arresting agency shall place the child in protective custody, or return the child as directed by the court. The protective custody warrant may be served in any county in the same manner as a warrant of arrest and may be served at any time of the day or night.

(b) Upon a declaration of the district attorney that the child has been recovered or that the warrant is otherwise no longer required, the court may dismiss the warrant without further court proceedings.

SEC. 2. Section 3411 of the Family Code is amended to read:

3411. (a) The court may order any party to the proceeding who is within or without this state to appear personally before the court. If that party has physical custody of the child, the court may order him or her to appear personally with the child. If the party who is ordered to appear with the child cannot be served or fails to obey the order, or it appears the order will be ineffective, the court may issue a warrant of arrest against the party and a protective custody warrant for the child, to secure the party's or the child's appearance or both, before the court. The protective custody warrant for the child shall contain an order that the arresting agency shall place the child in protective custody, or return the child as directed by the court. The protective custody warrant may be served in any county in the same manner as a warrant of arrest and may be served at any time of the day or night.

(b) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child the court may order that the notice given under Section 3405 include a statement directing that party to appear personally with or without the child and stating that failure to appear may result in a decision adverse to that party and the issuance of a warrant pursuant to subdivision (a).

(c) If a party to the proceeding who is outside this state is directed to appear under subdivision (b) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child if this is just and proper under the circumstances.

SEC. 3. Section 6240 of the Family Code is amended to read:

6240. As used in this part:

(a) "Judicial officer" means a judge, commissioner, or referee designated under Section 6241.

(b) "Law enforcement officer" means one of the following officers who requests or enforces an emergency protective order under this part:

(1) A police officer.

(2) A sheriff's officer.

(3) A peace officer of the Department of the California Highway Patrol.

(4) A peace officer of the University of California Police Department.

(5) A peace officer of the California State University and College Police Departments.

(6) A peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2 of the Penal Code.

(7) A housing authority patrol officer, as defined in subdivision (d) of Section 830.31 of the Penal Code.

(8) A peace officer for a district attorney, as defined in Section 830.1 or 830.35 of the Penal Code.

(9) A parole officer, probation officer, or deputy probation officer, as defined in Section 830.5 of the Penal Code.

(c) "Abduct" means take, entice away, keep, withhold, or conceal.

SEC. 4. Section 6250 of the Family Code is amended to read:

6250. A judicial officer may issue an ex parte emergency protective order where a law enforcement officer asserts reasonable grounds to believe any of the following:

(a) That a person is in immediate and present danger of domestic violence, based on the person's allegation of a recent incident of abuse or threat of abuse by the person against whom the order is sought.

(b) That a child is in immediate and present danger of abuse by a family or household member, based on an allegation of a recent incident of abuse or threat of abuse by the family or household member.

(c) That a child is in immediate and present danger of being abducted by a parent or relative, based on a reasonable belief that a person has an intent to abduct the child or flee with the child from the jurisdiction or based on an allegation of a recent threat to abduct the child or flee with the child from the jurisdiction.

SEC. 5. Section 6251 of the Family Code is amended to read:

6251. An emergency protective order may be issued only if the judicial officer finds both of the following:

(a) That reasonable grounds have been asserted to believe that an immediate and present danger of domestic violence exists or that a child is in immediate and present danger of abuse or abduction.

(b) That an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence, child abuse, or child abduction.

SEC. 6. Section 6252 of the Family Code is amended to read:

6252. An emergency protective order may include any of the following specific orders, as appropriate:

(a) A protective order, as defined in Section 6218.

(b) An order determining the temporary care and control of any minor child of the endangered person and the person against whom the order is sought.

(c) An order authorized in Section 213.5 of the Welfare and Institutions Code, including provisions placing the temporary care and control of the endangered child and any other minor children in the family or household with the parent or guardian of the endangered child who is not a restrained party.

(d) An order determining the temporary care and control of any minor child who is in danger of being abducted.

SEC. 7. Section 6253 of the Family Code is amended to read:

6253. An emergency protective order shall include all of the following:

(a) A statement of the grounds asserted for the order.

(b) The date and time the order expires.

(c) The address of the superior court for the district or county in which the endangered person or child in danger of being abducted resides.

(d) The following statements, which shall be printed in English and Spanish:

(1) "To the Protected Person: This order will last only until the date and time noted above. If you wish to seek continuing protection, you will have to apply for an order from the court, at the address noted above. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that the attorney may assist you in making your application."

(2) "To the Restrained Person: This order will last until the date and time noted above. The protected party may, however, obtain a more permanent restraining order from the court. You may seek the advice of an attorney as to any matter connected with the application. The attorney should be consulted promptly so that the attorney may assist you in responding to the application."

(e) In the case of an endangered child, the following statement, which shall be printed in English and Spanish: "This order will last only until the date and time noted above. You may apply for a more permanent restraining order under Section 213.5 of the Welfare and Institutions Code from the court at the address noted above. You may seek the advice of an attorney in connection with the application for a more permanent restraining order."

(f) In the case of a child in danger of being abducted, the following statement, which shall be printed in English and Spanish: "This order will last only until the date and time noted above. You may apply for a child custody order from the court, at the address noted above. You may seek the advice of an attorney as to any matter connected with

the application. The attorney should be consulted promptly so that the attorney may assist you in responding to the application.''

SEC. 8. Chapter 4 (commencing with Section 277) of Title 9 of Part 1 of the Penal Code is repealed.

SEC. 9. Chapter 4 (commencing with Section 277) is added to Title 9 of Part 1 of the Penal Code, to read:

CHAPTER 4. CHILD ABDUCTION

277. The following definitions apply for the purposes of this chapter:

(a) ''Child'' means a person under the age of 18 years.

(b) ''Court order'' or ''custody order'' means a custody determination decree, judgment, or order issued by a court of competent jurisdiction, whether permanent or temporary, initial or modified, that affects the custody or visitation of a child, issued in the context of a custody proceeding. An order, once made, shall continue in effect until it expires, is modified, is rescinded, or terminates by operation of law.

(c) ''Custody proceeding'' means a proceeding in which a custody determination is an issue, including, but not limited to, an action for dissolution or separation, dependency, guardianship, termination of parental rights, adoption, paternity, except actions under Section 11350 or 11350.1 of the Welfare and Institutions Code, or protection from domestic violence proceedings, including an emergency protective order pursuant to Part 3 (commencing with Section 6240) of Division 10 of the Family Code.

(d) ''Lawful custodian'' means a person, guardian, or public agency having a right to custody of a child.

(e) A ''right to custody'' means the right to the physical care, custody, and control of a child pursuant to a custody order as defined in subdivision (b) or, in the absence of a court order, by operation of law, or pursuant to the Uniform Parentage Act contained in Part 3 (commencing with Section 7600) of Division 12 of the Family Code. Whenever a public agency takes protective custody or jurisdiction of the care, custody, control, or conduct of a child by statutory authority or court order, that agency is a lawful custodian of the child and has a right to physical custody of the child. In any subsequent placement of the child, the public agency continues to be a lawful custodian with a right to physical custody of the child until the public agency's right of custody is terminated by an order of a court of competent jurisdiction or by operation of law.

(f) In the absence of a court order to the contrary, a parent loses his or her right to custody of the child to the other parent if the parent having the right to custody is dead, is unable or refuses to take the custody, or has abandoned his or her family. A natural parent whose parental rights have been terminated by court order is no longer a lawful custodian and no longer has a right to physical custody.

(g) "Keeps" or "withholds" means retains physical possession of a child whether or not the child resists or objects.

(h) "Visitation" means the time for access to the child allotted to any person by court order.

(i) "Person" includes, but is not limited to, a parent or an agent of a parent.

(j) "Domestic violence" means domestic violence as defined in Section 6211 of the Family Code.

(k) "Abduct" means take, entice away, keep, withhold, or conceal.

278. Every person, not having a right to custody, who maliciously takes, entices away, keeps, withholds, or conceals any child with the intent to detain or conceal that child from a lawful custodian shall be punished by imprisonment in a county jail not exceeding one year, a fine not exceeding one thousand dollars ($1,000), or both that fine and imprisonment, or by imprisonment in the state prison for two, three, or four years, a fine not exceeding ten thousand dollars ($10,000), or both that fine and imprisonment.

278.5. (a) Every person who takes, entices away, keeps, withholds, or conceals a child and maliciously deprives a lawful custodian of a right to custody, or a person of a right to visitation, shall be punished by imprisonment in a county jail not exceeding one year, a fine not exceeding one thousand dollars ($1,000), or both that fine and imprisonment, or by imprisonment in the state prison for 16 months, or two or three years, a fine not exceeding ten thousand dollars ($10,000), or both that fine and imprisonment.

(b) Nothing contained in this section limits the court's contempt power.

(c) A custody order obtained after the taking, enticing away, keeping, withholding, or concealing of a child does not constitute a defense to a crime charged under this section.

278.6. (a) At the sentencing hearing following a conviction for a violation of Section 278 or 278.5, or both, the court shall consider any relevant factors and circumstances in aggravation, including, but not limited to, all of the following:

(1) The child was exposed to a substantial risk of physical injury or illness.

(2) The defendant inflicted or threatened to inflict physical harm on a parent or lawful custodian of the child or on the child at the time of or during the abduction.

(3) The defendant harmed or abandoned the child during the abduction.

(4) The child was taken, enticed away, kept, withheld, or concealed outside the United States.

(5) The child has not been returned to the lawful custodian.

(6) The defendant previously abducted or threatened to abduct the child.

(7) The defendant substantially altered the appearance or the name of the child.

(8) The defendant denied the child appropriate education during the abduction.

(9) The length of the abduction.

(10) The age of the child.

(b) At the sentencing hearing following a conviction for a violation of Section 278 or 278.5, or both, the court shall consider any relevant factors and circumstances in mitigation, including, but not limited to, both of the following:

(1) The defendant returned the child unharmed and prior to arrest or issuance of a warrant for arrest, whichever is first.

(2) The defendant provided information and assistance leading to the child's safe return.

(c) In addition to any other penalties provided for a violation of Section 278 or 278.5, a court shall order the defendant to pay restitution to the district attorney for any costs incurred in locating and returning the child as provided in Section 3134 of the Family Code, and to the victim for those expenses and costs reasonably incurred by, or on behalf of, the victim in locating and recovering the child. An award made pursuant to this section shall constitute a final judgment and shall be enforceable as such.

278.7. (a) Section 278.5 does not apply to a person with a right to custody of a child who, with a good faith and reasonable belief that the child, if left with the other person, will suffer immediate bodily injury or emotional harm, takes, entices away, keeps, withholds, or conceals that child.

(b) Section 278.5 does not apply to a person with a right to custody of a child who has been a victim of domestic violence who, with a good faith and reasonable belief that the child, if left with the other person, will suffer immediate bodily injury or emotional harm, takes, entices away, keeps, withholds, or conceals that child. "Emotional harm" includes having a parent who has committed domestic violence against the parent who is taking, enticing away, keeping, withholding, or concealing the child.

(c) The person who takes, entices away, keeps, withholds, or conceals a child shall do all of the following:

(1) Within a reasonable time from the taking, enticing away, keeping, withholding, or concealing, make a report to the office of the district attorney of the county where the child resided before the action. The report shall include the name of the person, the current address and telephone number of the child and the person, and the reasons the child was taken, enticed away, kept, withheld, or concealed.

(2) Within a reasonable time from the taking, enticing away, keeping, withholding, or concealing, commence a custody proceeding in a court of competent jurisdiction consistent with the federal Parental Kidnapping Prevention Act (Section 1738A, Title 28, United States Code) or the Uniform Child Custody Jurisdiction Act

(Part 3 (commencing with Section 3400) of Division 8 of the Family Code).

(3) Inform the district attorney's office of any change of address or telephone number of the person and the child.

(d) For the purposes of this article, a reasonable time within which to make a report to the district attorney's office is at least 10 days and a reasonable time to commence a custody proceeding is at least 30 days. This section shall not preclude a person from making a report to the district attorney's office or commencing a custody proceeding earlier than those specified times.

(e) The address and telephone number of the person and the child provided pursuant to this section shall remain confidential unless released pursuant to state law or by a court order that contains appropriate safeguards to ensure the safety of the person and the child.

279. A violation of Section 278 or 278.5 by a person who was not a resident of, or present in, this state at the time of the alleged offense is punishable in this state, whether the intent to commit the offense is formed within or outside of this state, if any of the following apply:

(a) The child was a resident of, or present in, this state at the time the child was taken, enticed away, kept, withheld, or concealed.

(b) The child thereafter is found in this state.

(c) A lawful custodian or a person with a right to visitation is a resident of this state at the time the child was taken, enticed away, kept, withheld, or concealed.

279.1. The offenses enumerated in Sections 278 and 278.5 are continuous in nature, and continue for as long as the minor child is concealed or detained.

279.5. When a person is arrested for an alleged violation of Section 278 or 278.5, the court, in setting bail, shall take into consideration whether the child has been returned to the lawful custodian, and if not, shall consider whether there is an increased risk that the child may not be returned, or the defendant may flee the jurisdiction, or, by flight or concealment, evade the authority of the court.

279.6. (a) A law enforcement officer may take a child into protective custody under any of the following circumstances:

(1) It reasonably appears to the officer that a person is likely to conceal the child, flee the jurisdiction with the child, or, by flight or concealment, evade the authority of the court.

(2) There is no lawful custodian available to take custody of the child.

(3) There are conflicting custody orders or conflicting claims to custody and the parties cannot agree which party should take custody of the child.

(4) The child is an abducted child.

(b) When a law enforcement officer takes a child into protective custody pursuant to this section, the officer shall do one of the following:

(1) Release the child to the lawful custodian of the child, unless it reasonably appears that the release would cause the child to be endangered, abducted, or removed from the jurisdiction.

(2) Obtain an emergency protective order pursuant to Part 3 (commencing with Section 6240) of Division 10 of the Family Code ordering placement of the child with an interim custodian who agrees in writing to accept interim custody.

(3) Release the child to the social services agency responsible for arranging shelter or foster care.

(4) Return the child as ordered by a court of competent jurisdiction.

(c) Upon the arrest of a person for a violation of Section 278 or 278.5, a law enforcement officer shall take possession of an abducted child who is found in the company of, or under the control of, the arrested person and deliver the child as directed in subdivision (b).

(d) Notwithstanding any other law, when a person is arrested for an alleged violation of Section 278 or 278.5, the court shall, at the time of the arraignment or thereafter, order that the child shall be returned to the lawful custodian by or on a specific date, or that the person show cause on that date why the child has not been returned as ordered. If conflicting custodial orders exist within this state, or between this state and a foreign state, the court shall set a hearing within five court days to determine which court has jurisdiction under the laws of this state and determine which state has subject matter jurisdiction to issue a custodial order under the laws of this state, the Uniform Child Custody Jurisdiction Act (Part 3 (commencing with Section 3400) of Division 8 of the Family Code), or federal law, if applicable. At the conclusion of the hearing, or if the child has not been returned as ordered by the court at the time of arraignment, the court shall enter an order as to which custody order is valid and is to be enforced. If the child has not been returned at the conclusion of the hearing, the court shall set a date within a reasonable time by which the child shall be returned to the lawful custodian, and order the defendant to comply by this date, or to show cause on that date why he or she has not returned the child as directed. The court shall only enforce its order, or any subsequent orders for the return of the child, under subdivision (a) of Section 1219 of the Code of Civil Procedure, to ensure that the child is promptly placed with the lawful custodian. An order adverse to either the prosecution or defense is reviewable by a writ of mandate or prohibition addressed to the appropriate court.

280. Every person who willfully causes or permits the removal or concealment of any child in violation of Section 8713, 8803, or 8910 of the Family Code shall be punished as follows:

(a) By imprisonment in a county jail for not more than one year if the child is concealed within the county in which the adoption proceeding is pending or in which the child has been placed for adoption, or is removed from that county to a place within this state.

(b) By imprisonment in the state prison, or by imprisonment in a county jail for not more than one year, if the child is removed from that county to a place outside of this state.

SEC. 10. Section 868.5 of the Penal Code is amended to read:

868.5. (a) Notwithstanding any other law, a prosecuting witness in a case involving a violation of Section 187, 203, 205, 207, 211, 215, 220, 240, 242, 243.4, 245, 261, 262, 273a, 273d, 273.5, 273.6, 278, 278.5, 285, 286, 288, 288a, 288.5, 289, or 647.6, or former Section 277 or 647a, or a violation of subdivision (1) of Section 314, shall be entitled, for support, to the attendance of up to two persons of his or her own choosing, one of whom may be a witness, at the preliminary hearing and at the trial, or at a juvenile court proceeding, during the testimony of the prosecuting witness. Only one of those support persons may accompany the witness to the witness stand, although the other may remain in the courtroom during the witness' testimony. The person or persons so chosen shall not be a person described in Section 1070 of the Evidence Code unless the person or persons are related to the prosecuting witness as a parent, guardian, or sibling and do not make notes during the hearing or proceeding.

(b) If the person or persons so chosen are also prosecuting witnesses, the prosecution shall present evidence that the person's attendance is both desired by the prosecuting witness for support and will be helpful to the prosecuting witness. Upon that showing, the court shall grant the request unless information presented by the defendant or noticed by the court establishes that the support person's attendance during the testimony of the prosecuting witness would pose a substantial risk of influencing or affecting the content of that testimony. In the case of a juvenile court proceeding, the judge shall inform the support person or persons that juvenile court proceedings are confidential and may not be discussed with anyone not in attendance at the proceedings. In all cases, the judge shall admonish the support person or persons to not prompt, sway, or influence the witness in any way. Nothing in this section shall preclude a court from exercising its discretion to remove a person from the courtroom whom it believes is prompting, swaying, or influencing the witness.

(c) The testimony of the person or persons so chosen who are also prosecuting witnesses shall be presented before the testimony of the prosecuting witness. The prosecuting witness shall be excluded from the courtroom during that testimony. Whenever the evidence given by that person or those persons would be subject to exclusion because it has been given before the corpus delicti has been established, the evidence shall be admitted subject to the court's or the defendant's motion to strike that evidence from the record if the corpus delicti is not later established by the testimony of the prosecuting witness.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will

be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 989

An act to amend Section 6404.5 of the Labor Code, relating to employment.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 6404.5 of the Labor Code is amended to read:

6404.5. (a) The Legislature finds and declares that regulation of smoking in the workplace is a matter of statewide interest and concern. It is the intent of the Legislature in enacting this section to prohibit the smoking of tobacco products in all (100 percent of) enclosed places of employment in this state, as covered by this section, thereby eliminating the need of local governments to enact workplace smoking restrictions within their respective jurisdictions. It is further the intent of the Legislature to create a uniform statewide standard to restrict and prohibit the smoking of tobacco products in enclosed places of employment, as specified in this section, in order to reduce employee exposure to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees, and also to eliminate the confusion and hardship that can result from enactment or enforcement of disparate local workplace smoking restrictions. Notwithstanding any other provision of this section, it is the intent of the Legislature that any area not defined as a "place of employment" pursuant to subdivision (d) or in which the smoking of tobacco products is not regulated pursuant to subdivision (e) shall be subject to local regulation of smoking of tobacco products.

(b) No employer shall knowingly or intentionally permit, and no person shall engage in, the smoking of tobacco products in an enclosed space at a place of employment.

(c) For purposes of this section, an employer who permits any nonemployee access to his or her place of employment on a regular

basis has not acted knowingly or intentionally if he or she has taken the following reasonable steps to prevent smoking by a nonemployee:

(1) Posted clear and prominent signs, as follows:

(A) Where smoking is prohibited throughout the building or structure, a sign stating "No smoking" shall be posted at each entrance to the building or structure.

(B) Where smoking is permitted in designated areas of the building or structure, a sign stating "Smoking is prohibited except in designated areas" shall be posted at each entrance to the building or structure.

(2) Has requested, when appropriate, that a nonemployee who is smoking refrain from smoking in the enclosed workplace.

For purposes of this subdivision, "reasonable steps" does not include (A) the physical ejection of a nonemployee from the place of employment or (B) any requirement for making a request to a nonemployee to refrain from smoking, under circumstances involving a risk of physical harm to the employer or any employee.

(d) For purposes of this section, "place of employment" does not include any of the following:

(1) Sixty-five percent of the guest room accommodations in a hotel, motel, or similar transient lodging establishment.

(2) Areas of the lobby in a hotel, motel, or other similar transient lodging establishment designated for smoking by the establishment. Such an establishment may permit smoking in a designated lobby area that does not exceed 25 percent of the total floor area of the lobby or, if the total area of the lobby is 2,000 square feet or less, that does not exceed 50 percent of the total floor area of the lobby. For purposes of this paragraph, "lobby" means the common public area of such an establishment in which registration and other similar or related transactions, or both, are conducted and in which the establishment's guests and members of the public typically congregate.

(3) Meeting and banquet rooms in a hotel, motel, other transient lodging establishment similar to a hotel or motel, restaurant, or public convention center, except while food or beverage functions are taking place, including setup, service, and cleanup activities, or when the room is being used for exhibit purposes. At times when smoking is not permitted in such a meeting or banquet room pursuant to this paragraph, the establishment may permit smoking in corridors and prefunction areas adjacent to and serving the meeting or banquet room if no employee is stationed in that corridor or area on other than a passing basis.

(4) Retail or wholesale tobacco shops and private smokers' lounges. For purposes of this paragraph:

(A) "Private smokers' lounge" means any enclosed area in or attached to a retail or wholesale tobacco shop that is dedicated to the

use of tobacco products, including, but not limited to, cigars and pipes.

(B) "Retail or wholesale tobacco shop" means any business establishment the main purpose of which is the sale of tobacco products, including, but not limited to, cigars, pipe tobacco, and smoking accessories.

(5) Cabs of motortrucks, as defined in Section 410 of the Vehicle Code, or truck tractors, as defined in Section 655 of the Vehicle Code, if no nonsmoking employees are present.

(6) Warehouse facilities. For purposes of this paragraph, "warehouse facility" means a warehouse facility with more than 100,000 square feet of total floor space, and 20 or fewer full-time employees working at the facility, but does not include any area within such a facility that is utilized as office space.

(7) Gaming clubs, in which smoking is permitted by subdivision (f). For purposes of this paragraph, "gaming club" means any gaming club, as defined in Section 19802 of the Business and Professions Code, or bingo facility, as defined in Section 326.5 of the Penal Code, that restricts access to minors under 18 years of age.

(8) Bars and taverns, in which smoking is permitted by subdivision (f). For purposes of this paragraph, "bar" or "tavern" means a facility primarily devoted to the serving of alcoholic beverages for consumption by guests on the premises, in which the serving of food is incidental. "Bar or tavern" includes those facilities located within a hotel, motel, or other similar transient occupancy establishment. However, when located within a building in conjunction with another use, including a restaurant, "bar" or "tavern" includes only those areas used primarily for the sale and service of alcoholic beverages. "Bar" or "tavern" does not include the dining areas of a restaurant, regardless of whether alcoholic beverages are served therein.

(9) Theatrical production sites, if smoking is an integral part of the story in the theatrical production.

(10) Medical research or treatment sites, if smoking is integral to the research and treatment being conducted.

(11) Private residences, except for private residences licensed as family day care homes, during the hours of operation as family day care homes and in those areas where children are present.

(12) Patient smoking areas in long-term health care facilities, as defined in Section 1418 of the Health and Safety Code.

(13) Breakrooms designated by employers for smoking, provided that all of the following conditions are met:

(A) Air from the smoking room shall be exhausted directly to the outside by an exhaust fan. Air from the smoking room shall not be recirculated to other parts of the building.

(B) The employer shall comply with any ventilation standard or other standard utilizing appropriate technology, including, but not limited to, mechanical, electronic, and biotechnical systems, adopted

by the Occupational Safety and Health Standards Board or the federal Environmental Protection Agency. If both adopt inconsistent standards, the ventilation standards of the Occupational Safety and Health Standards Board shall be no less stringent than the standards adopted by the federal Environmental Protection Agency.

(C) The smoking room shall be located in a nonwork area where no one, as part of his or her work responsibilities, is required to enter. For purposes of this paragraph, "work responsibilities" does not include any custodial or maintenance work carried out in the breakroom when it is unoccupied.

(D) There are sufficient nonsmoking breakrooms to accommodate nonsmokers.

(14) Employers with a total of five or fewer employees, either full-time or part-time, may permit smoking where all of the following conditions are met:

(A) The smoking area is not accessible to minors.

(B) All employees who enter the smoking area consent to permit smoking. No one, as part of his or her work responsibilities, shall be required to work in an area where smoking is permitted. An employer who is determined by the division to have used coercion to obtain consent or who has required an employee to work in the smoking area shall be subject to the penalty provisions of Section 6427.

(C) Air from the smoking area shall be exhausted directly to the outside by an exhaust fan. Air from the smoking area shall not be recirculated to other parts of the building.

(D) The employer shall comply with any ventilation standard or other standard utilizing appropriate technology, including, but not limited to, mechanical, electronic, and biotechnical systems, adopted by the Occupational Safety and Health Standards Board or the federal Environmental Protection Agency. If both adopt inconsistent standards, the ventilation standards of the Occupational Safety and Health Standards Board shall be no less stringent than the standards adopted by the federal Environmental Protection Agency.

This paragraph shall not be construed to (i) supersede or render inapplicable any condition or limitation on smoking areas made applicable to specific types of business establishments by any other paragraph of this subdivision or (ii) apply in lieu of any otherwise applicable paragraph of this subdivision that has become inoperative.

(e) Paragraphs (13) and (14) of subdivision (d) shall not be construed to require employers to provide reasonable accommodation to smokers, or to provide breakrooms for smokers or nonsmokers.

(f) (1) Except as otherwise provided in this subdivision, smoking may be permitted in gaming clubs, as defined in paragraph (7) of subdivision (d), and in bars and taverns, as defined in paragraph (8) of subdivision (d), until the earlier of the following:

(A) January 1, 1998.

(B) The date of adoption of a regulation (i) by the Occupational Safety and Health Standards Board reducing the permissible employee exposure level to environmental tobacco smoke to a level that will prevent anything other than insignificantly harmful effects to exposed employees or (ii) by the federal Environmental Protection Agency establishing a standard for reduction of permissible exposure to environmental tobacco smoke to an exposure level that will prevent anything other than insignificantly harmful effects to exposed persons.

(2) If a regulation specified in subparagraph (B) of paragraph (1) is adopted on or before January 1, 1998, smoking may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve compliance with, or conformity to, the regulation within this two-year period shall prohibit smoking in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency.

(3) If a regulation specified in subparagraph (B) of paragraph (1) is not adopted on or before January 1, 1998, the exemptions specified in paragraphs (7) and (8) of subdivision (d) shall be inoperative on and after January 1, 1998, until such a regulation is adopted. Upon adoption of such a regulation on or after January 1, 1998, smoking may thereafter be permitted in gaming clubs and in bars and taverns, subject to full compliance with, or conformity to, the standard in the regulation within two years following the date of adoption of the regulation. An employer failing to achieve compliance with, or conformity to, the regulation within this two-year period shall prohibit smoking in the gaming club, bar, or tavern until compliance or conformity is achieved. If the Occupational Safety and Health Standards Board and the federal Environmental Protection Agency both adopt regulations specified in subparagraph (B) of paragraph (1) that are inconsistent, the regulations of the Occupational Safety and Health Standards Board shall be no less stringent than the regulations of the federal Environmental Protection Agency.

(4) From January 1, 1997, to December 31, 1997, inclusive, smoking may be permitted in gaming clubs, as defined in paragraph (7) of subdivision (d), and in bars and taverns, as defined in paragraph (8) of subdivision (d), subject to both of the following conditions:

(A) If practicable, the gaming club or bar or tavern shall establish a designated nonsmoking area.

(B) If feasible, no employee shall be required, in the performance of ordinary work responsibilities, to enter any area in which smoking is permitted.

(g) The smoking prohibition set forth in this section shall constitute a uniform statewide standard for regulating the smoking of tobacco products in enclosed places of employment and shall supersede and render unnecessary the local enactment or enforcement of local ordinances regulating the smoking of tobacco products in enclosed places of employment. Insofar as the smoking prohibition set forth in this section is applicable to all (100 percent of) places of employment within this state and, therefore, provides the maximum degree of coverage, the practical effect of this section is to eliminate the need of local governments to enact enclosed workplace smoking restrictions within their respective jurisdictions.

(h) Nothing in this section shall prohibit an employer from prohibiting smoking in an enclosed place of employment for any reason.

(i) The enactment of local regulation of smoking of tobacco products in enclosed places of employment by local governments shall be suspended only for as long as, and to the extent that, the (100 percent) smoking prohibition provided for in this section remains in effect. In the event this section is repealed or modified by subsequent legislative or judicial action so that the (100 percent) smoking prohibition is no longer applicable to all enclosed places of employment in California, local governments shall have the full right and authority to enforce previously enacted, and to enact and enforce new, restrictions on the smoking of tobacco products in enclosed places of employment within their jurisdictions, including a complete prohibition of smoking. Notwithstanding any other provision of this section, any area not defined as a "place of employment" or in which the smoking is not regulated pursuant to subdivision (d) or (e), shall be subject to local regulation of smoking of tobacco products.

(j) Any violation of the prohibition set forth in subdivision (b) is an infraction subject to subdivision (d) of Section 17 of the Penal Code and, notwithstanding Section 19.8 of the Penal Code, is punishable by a fine not to exceed one hundred dollars ($100) for a first violation, two hundred dollars ($200) for a second violation within one year, and five hundred dollars ($500) for a third and for each subsequent violation within one year. This subdivision shall be enforced by local law enforcement agencies including, but not limited to, local health departments, as determined by the local governing body.

(k) Notwithstanding Section 6309, the division shall not be required to respond to any complaint regarding the smoking of tobacco products in an enclosed space at a place of employment, unless the employer has been found guilty pursuant to subdivision (j) of a third violation of subdivision (b) within the previous year.

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

CHAPTER 990

An act to repeal Section 113225 of the Health and Safety Code, and to add Chapter 5.6 (commencing with Section 42350) to Part 3 of Division 30 of the Public Resources Code, relating to plastic waste.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 113225 of the Health and Safety Code is repealed.

SEC. 2. Chapter 5.6 (commencing with Section 42350) is added to Part 3 of Division 30 of the Public Resources Code, to read:

CHAPTER 5.6. PLASTIC RING DEVICES

42350. (a) For the purposes of this section, "degradable" means all of the following:

(1) Biodegradation, photodegradation, chemodegradation, or degradation by other natural degrading processes, as defined by the American Society of Testing Materials.

(2) Degradation at a rate that meets the requirements of Part 238 (commencing with Section 238.10) of Subchapter H of Chapter I of Title 40 of the Code of Federal Regulations.

(3) Degradation that, as attested by the manufacturer of the device, will not produce or result in a residue or byproduct that, during or after the process of degrading, would be a hazardous or extremely hazardous waste identified pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(b) Except as provided in subdivision (c), no container shall be sold or offered for sale at retail in this state that is connected to any other container by means of a plastic ring or similar plastic device that is not degradable when disposed of as litter.

(c) This section does not apply to devices that do not contain an enclosed hole or circle of more than one and one-half inches in diameter or that do not contain a hole.

(d) Any person who sells at wholesale or distributes to a retailer for sale at retail in this state containers that are connected to each

other in violation of subdivision (b) is guilty of an infraction and shall be punished by a fine not exceeding one thousand dollars ($1,000). (Added by Stats. 1995, Ch. 415, Sec. 6. Effective January 1, 1996.)

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 991

An act to add and repeal Section 42003 of the Public Resources Code, relating to solid waste.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 42003 is added to the Public Resources Code, to read:

42003. (a) The board shall, on or before December 31, 1998, conduct a feasibility study, in consultation with affected state agencies, on expanding the use of agricultural waste and forest waste in the production of commercial products. The study shall be transmitted to the Governor and to the Legislature pursuant to Section 11095 of the Government Code. The study shall include the following components:

(1) Based on consultation by the board with appropriate state and local regulatory agencies, an analysis of the kinds of technologies that are available and the commercial products that could be reasonably manufactured.

(2) An analysis, to the extent that information is available, of the potential impact that the diversion might have on landfills and, for specified agricultural and forestry-dependent counties, in meeting mandates of this division.

(b) For purposes of this section, "agricultural waste" has the same meaning as in paragraph (4) of subdivision (b) of Section 41781.2.

(c) For purposes of this section, "forest waste" includes forest debris and wood waste from forest wood waste landfills.

(d) To the extent feasible, the board shall secure cooperation and funding for the study from other governmental agencies.

(e) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2000, deletes or extends that date.

CHAPTER 992

An act to amend, repeal, and add Section 1936 of the Civil Code, relating to rental vehicles.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 1936 of the Civil Code is amended to read:

1936. (a) For the purpose of this section, the following definitions shall apply:

(1) "Rental company" means any person or entity in the business of renting passenger vehicles to the public.

(2) "Renter" means any person in any manner obligated under a contract for the lease or hire of a passenger vehicle from a rental company for a period of less than 30 days.

(3) "Authorized driver" means (A) the renter, (B) the renter's spouse if that person is a licensed driver and satisfies the rental company's minimum age requirement, (C) the renter's employer or coworker if they are engaged in business activity with the renter, are licensed drivers, and satisfy the rental company's minimum age requirement, and (D) any person expressly listed by the rental company on the renter's contract as an authorized driver.

(4) "Damage waiver" means a rental company's agreement not to hold a renter liable for all or any portion of any damage or loss related to the rented vehicle, any loss of use of the rented vehicle, or any storage, impound, towing, or administrative charges.

(5) "Estimated time for replacement" means the number of hours of labor, or fraction thereof, needed to replace damaged vehicle parts as set forth in collision damage estimating guides generally used in the vehicle repair business and commonly known as "crash books."

(6) "Estimated time for repair" means a good faith estimate of the reasonable number of hours of labor, or fraction thereof, needed to repair damaged vehicle parts.

(7) "Passenger vehicle" means a passenger vehicle as defined in Section 465 of the Vehicle Code.

(8) "Taxes" mean, and are limited to, the following:

(A) Sales and use taxes imposed directly upon individual rental transactions.

(B) Vehicle license fees as defined in Sections 10751 and 10752 of the Revenue and Taxation Code. The vehicle license fee shall be separately charged, clearly stated on the rental agreement, and prorated at $^{1}/_{365}$th of the annual vehicle license fee actually paid on the particular vehicle being rented for each full or partial 24-hour rental day that the vehicle is rented. The total of all vehicle license fees charged to renters shall not exceed the annual vehicle license fee actually paid for the particular vehicle rented.

(C) Local taxes, however designated, on individual rental transactions imposed directly on the renter or specifically permitted to be charged to the renter.

(D) Nothing in this section shall be construed to authorize the imposition of a new tax or the increase of an existing tax.

(b) Except as limited by subdivision (c), a rental company and a renter may agree that the renter will be responsible for no more than all of the following:

(1) Physical or mechanical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from collision regardless of the cause of the damage.

(2) Loss due to theft of the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, provided that the rental company establishes by clear and convincing evidence that the renter or the authorized driver failed to exercise ordinary care while in possession of the vehicle.

(3) Physical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from vandalism occurring after, or in connection with, the theft of the rented vehicle; however, the renter shall have no liability for any damage due to vandalism if the renter would have no liability for theft pursuant to paragraph (2).

(4) Physical damage to the rented vehicle and loss of use of the rented vehicle as provided in paragraph (5) up to a total of five hundred dollars ($500) resulting from vandalism unrelated to the theft of the rented vehicle.

(5) Loss of use of the rented vehicle if the renter is liable for damage or loss.

(6) Actual charges for towing, storage, and impound fees paid by the rental company if the renter is liable for damage or loss.

(7) An administrative charge which shall include the cost of appraisal and all other costs and expenses incident to the damage, loss, loss of use, repair, or replacement of the rented vehicle.

(c) The total amount of the renter's liability to the rental company resulting from damage to the rented vehicle shall not exceed the sum of the following:

(1) The estimated cost of parts which the rental company would have to pay to replace damaged vehicle parts. All discounts and price reductions or adjustments that are or will be received by the rental

company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(2) The estimated cost of labor to replace damaged vehicle parts which shall not exceed the product of (A) the rate for labor usually paid by the rental company to replace vehicle parts of the type that were damaged and (B) the estimated time for replacement. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(3) (A) The estimated cost of labor to repair damaged vehicle parts which shall not exceed the lesser of the following:

(i) The product of the rate for labor usually paid by the rental company to repair vehicle parts of the type that were damaged and the estimated time for repair.

(ii) The sum of the estimated labor and parts costs determined under paragraphs (1) and (2) to replace the same vehicle parts.

(B) All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(4) Except as provided in paragraph (5), the loss of use of the rented vehicle which shall not exceed the product of (A) the rental rate stated in the renter's contract, excluding all optional charges, and (B) the total of the estimated time for replacement and the estimated time for repair. For the purpose of converting the estimated time for repair into the same unit of time in which the rental rate is expressed, a day shall be deemed to consist of eight hours.

(5) Under any of the circumstances described in subdivision (f), the rental company's loss of use of the rented vehicle shall not exceed the product of (A) the rental rate stated in the renter's contract, excluding all optional charges, and (B) the period from the date of the accident to the date the vehicle is ready to be returned to rental service. This paragraph applies only if the rental company uses its best efforts to effect repairs and return the vehicle to rental service as soon as practicable.

(6) Actual charges for towing, storage, and impound fees paid by the rental company.

(7) The administrative charge described in paragraph (7) of subdivision (b) shall not exceed (A) fifty dollars ($50) if the total estimated cost for parts and labor is more than one hundred dollars ($100) up to and including five hundred dollars ($500), (B) one hundred dollars ($100) if the total estimated cost for parts and labor exceeds five hundred dollars ($500) up to and including one thousand five hundred dollars ($1,500), and (C) one hundred fifty dollars ($150) if the total estimated cost for parts and labor exceeds

one thousand five hundred dollars ($1,500). No administrative charge shall be imposed if the total estimated cost of parts and labor is one hundred dollars ($100) or less.

(d) (1) The total amount of an authorized driver's liability to the rental company, if any, for damage occurring during the authorized driver's operation of the rented vehicle shall not exceed the amount of the renter's liability under subdivision (c).

(2) A rental company shall not recover from the renter and another authorized driver an amount exceeding the renter's liability under subdivision (c).

(3) A rental company shall not recover from the renter or other authorized driver for any item described in subdivision (b) to the extent the rental company obtains recovery from any other person.

(4) This section applies only to the maximum liability of a renter or other authorized driver to the rental company resulting from damage to the rented vehicle and not to the liability of any other person.

(e) (1) Except as provided in subdivisions (f) and (g), every damage waiver shall provide or, if not expressly stated in writing, shall be deemed to provide that the renter has no liability for any damage, loss, loss of use, or any cost or expense incident thereto.

(2) Except as provided in subdivisions (f) and (g), every limitation, exception, or exclusion to any damage waiver is void and unenforceable.

(f) A rental company may provide in the rental contract that a damage waiver does not apply under any of the following circumstances:

(1) Damage or loss results from an authorized driver's (A) intentional, willful, wanton, or reckless conduct, (B) operation of the vehicle under the influence of drugs or alcohol in violation of Section 23152 of the Vehicle Code, (C) towing or pushing anything, or (D) operation of the vehicle on an unpaved road if the damage or loss is a direct result of the road or driving conditions.

(2) Damage or loss occurs while the vehicle is (A) used for commercial hire, (B) used in connection with conduct that could be properly charged as a felony, (C) involved in a speed test or contest or in driver training activity, (D) operated by a person other than an authorized driver, or (E) operated outside of the United States.

(3) Any authorized driver (A) provided fraudulent information to the rental company, or (B) provided false information and the rental company would not have rented the vehicle if it had instead received true information.

(g) No damage waiver shall apply to any loss due to theft of the vehicle.

(h) (1) A rental company which offers or provides a damage waiver for any consideration in addition to the rental rate shall clearly and conspicuously disclose the following information in the rental contract or holder in which the contract is placed and, also, in signs

posted at the place, such as the counter, where the renter signs the rental contract: (A) the nature of the renter's liability, e.g., liability for all collision damage regardless of cause, (B) the extent of the renter's liability, e.g., liability for damage or loss up to a specified amount, (C) the renter's personal insurance policy may provide coverage for all or a portion of the renter's potential liability, (D) the renter should consult with his or her insurer to determine the scope of insurance coverage, (E) the renter may purchase an optional damage waiver to cover all liability, except liability for loss due to theft pursuant to subdivision (g), subject to whatever exceptions the rental company expressly lists that are permitted under subdivision (f), and (F) the charge for the damage waiver.

(2) The following is an example, for purposes of illustration and not limitation, of a notice fulfilling the requirements of paragraph (1) for a rental company that imposes liability on the renter for collision damage to the full value of the vehicle:

NOTICE ABOUT YOUR FINANCIAL RESPONSIBILITY AND OPTIONAL DAMAGE WAIVER

You are responsible for all collision damage to the rented vehicle even if someone else caused it or the cause is unknown. You are responsible for the cost of repair up to the value of the vehicle, loss of use, and towing, storage, and impound fees.

Your own insurance may cover all or part of your financial responsibility for the rented vehicle. You should check with your insurance company to find out about your coverage.

The rental company will not hold you responsible if you buy damage waiver, except with regard to loss due to theft. But, damage waiver will not protect you if (list exceptions).

The cost of optional damage waiver is $_____ for every (day or week).

(i) Notwithstanding any other provision of law, a rental company may sell damage waiver but shall not charge more than nine dollars ($9) per full or partial 24-hour rental day for damage waiver.

(j) A rental company which disseminates in this state an advertisement containing a rental rate shall include in that advertisement a clearly readable statement of the charge for damage waiver and a statement that damage waiver is optional.

(k) (1) A rental company shall not require the purchase of a damage waiver, optional insurance, or any other optional good or service.

(2) A rental company shall not engage in any unfair, deceptive, or coercive conduct to induce a renter to purchase damage waiver, optional insurance, or any other optional good or service, including conduct such as, but not limited to, refusing to honor the renter's reservation, limiting the availability of vehicles, requiring a deposit,

or debiting or blocking the renter's credit card account for a sum equivalent to a deposit if the renter declines to purchase damage waiver, optional insurance, or any other optional good or service.

(*l*) (1) A rental company shall not seek to recover any portion of any claim arising out of damage to, or loss of, the rented vehicle by processing a credit card charge or causing any debit or block to be placed on the renter's credit card account.

(2) A rental company shall not engage in any unfair, deceptive, or coercive tactics in attempting to recover or in recovering on any claim arising out of damage to, or loss of, the rented vehicle.

(m) (1) A rental company shall only advertise, quote, and charge a rental rate that includes the entire amount except taxes, as defined in paragraph (8) of subdivision (a), and a mileage charge, if any, which a renter must pay to hire or lease the vehicle for the period of time to which the rental rate applies. A rental company shall not charge in addition to the rental rate, taxes, and mileage charge, if any, any fee which must be paid by the renter as a condition of hiring or leasing the vehicle, such as, but not limited to, required fuel or airport surcharges, nor any fee for transporting the renter to the location where the rented vehicle will be delivered to the renter.

(2) In addition to the rental rate, taxes, and mileage charge, if any, a rental company may charge for an item or service provided in connection with a particular rental transaction if the renter could have avoided incurring the charge by choosing not to obtain or utilize the optional item or service. Items and services for which the rental company may impose an additional charge, include, but are not limited to, optional insurance and accessories requested by the renter, service charges incident to the renter's optional return of the vehicle to a location other than the location where the vehicle was hired or leased, and charges for refueling the vehicle at the conclusion of the rental transaction in the event the renter did not return the vehicle with as much fuel as was in the fuel tank at the beginning of the rental. A rental company also may impose an additional charge based on reasonable age criteria established by the rental company.

(3) A rental company shall not charge any fee for authorized drivers in addition to the rental charge for an individual renter.

(4) When a rental company states a rental rate in a television, radio, or print advertisement or in a telephonic, in-person, or computer-transmitted quotation, the rental company shall clearly disclose in that advertisement or quotation all of the following: (i) that taxes shall be added; (ii) the average dollar amount or range of dollar amounts of vehicle license fees for each full or partial 24-hour rental day; and (iii) the terms of any mileage conditions relating to the advertised or quoted rental rate, including, but not limited to, to the extent applicable, the amount of mileage and gas charges, the number of miles for which no charges will be imposed, and a

description of geographic driving limitations within the United States and Canada.

(5) If a rental company delivers a vehicle to a renter at a location other than the location where the rental company normally carries on its business, the rental company shall not charge the renter any amount for the rental for the period before the delivery of the vehicle. If a rental company picks up a rented vehicle from a renter at a location other than the location where the rental company normally carries on its business, the rental company shall not charge the renter any amount for the rental for the period after the renter notifies the rental company to pick up the vehicle.

(n) A renter may bring an action against a rental company for the recovery of damages and appropriate equitable relief for a violation of this section. The prevailing party shall be entitled to recover reasonable attorney's fees and costs.

(o) A rental company that brings an action against a renter for loss due to theft of the vehicle shall bring the action in the county in which the renter resides or if the renter is not a resident of this state in the jurisdiction in which the renter resides.

(p) Any waiver of any of the provisions of this section shall be void and unenforceable as contrary to public policy.

(q) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 2. Section 1936 is added to the Civil Code, to read:

1936. (a) For the purpose of this section, the following definitions shall apply:

(1) "Rental company" means any person or entity in the business of renting passenger vehicles to the public.

(2) "Renter" means any person in any manner obligated under a contract for the lease or hire of a passenger vehicle from a rental company for a period of less than 30 days.

(3) "Authorized driver" means (A) the renter, (B) the renter's spouse if that person is a licensed driver and satisfies the rental company's minimum age requirement, (C) the renter's employer or coworker if they are engaged in business activity with the renter, are licensed drivers, and satisfy the rental company's minimum age requirement, and (D) any person expressly listed by the rental company on the renter's contract as an authorized driver.

(4) "Damage waiver" means a rental company's agreement not to hold a renter liable for all or any portion of any damage or loss related to the rented vehicle, any loss of use of the rented vehicle, or any storage, impound, towing, or administrative charges.

(5) "Estimated time for replacement" means the number of hours of labor, or fraction thereof, needed to replace damaged vehicle parts as set forth in collision damage estimating guides generally used in the vehicle repair business and commonly known as "crash books."

(6) "Estimated time for repair" means a good faith estimate of the reasonable number of hours of labor, or fraction thereof, needed to repair damaged vehicle parts.

(7) "Passenger vehicle" means a passenger vehicle as defined in Section 465 of the Vehicle Code.

(b) Except as limited by subdivision (c), a rental company and a renter may agree that the renter will be responsible for no more than all of the following:

(1) Physical or mechanical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from collision regardless of the cause of the damage.

(2) Loss due to theft of the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, provided that the rental company establishes by clear and convincing evidence that the renter or the authorized driver failed to exercise ordinary care while in possession of the vehicle.

(3) Physical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from vandalism occurring after, or in connection with, the theft of the rented vehicle; however, the renter shall have no liability for any damage due to vandalism if the renter would have no liability for theft pursuant to paragraph (2).

(4) Physical damage to the rented vehicle and loss of use of the rented vehicle as provided in paragraph (5) up to a total of five hundred dollars ($500) resulting from vandalism unrelated to the theft of the rented vehicle.

(5) Loss of use of the rented vehicle if the renter is liable for damage or loss.

(6) Actual charges for towing, storage, and impound fees paid by the rental company if the renter is liable for damage or loss.

(7) An administrative charge which shall include the cost of appraisal and all other costs and expenses incident to the damage, loss, loss of use, repair, or replacement of the rented vehicle.

(c) The total amount of the renter's liability to the rental company resulting from damage to the rented vehicle shall not exceed the sum of the following:

(1) The estimated cost of parts which the rental company would have to pay to replace damaged vehicle parts. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(2) The estimated cost of labor to replace damaged vehicle parts which shall not exceed the product of (A) the rate for labor usually paid by the rental company to replace vehicle parts of the type that were damaged and (B) the estimated time for replacement. All discounts and price reductions or adjustments that are or will be

received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(3) (A) The estimated cost of labor to repair damaged vehicle parts which shall not exceed the lesser of the following:

(i) The product of the rate for labor usually paid by the rental company to repair vehicle parts of the type that were damaged and the estimated time for repair.

(ii) The sum of the estimated labor and parts costs determined under paragraphs (1) and (2) to replace the same vehicle parts.

(B) All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(4) Except as provided in paragraph (5), the loss of use of the rented vehicle which shall not exceed the product of (A) the rental rate stated in the renter's contract, excluding all optional charges, and (B) the total of the estimated time for replacement and the estimated time for repair. For the purpose of converting the estimated time for repair into the same unit of time in which the rental rate is expressed, a day shall be deemed to consist of eight hours.

(5) Under any of the circumstances described in subdivision (f), the rental company's loss of use of the rented vehicle shall not exceed the product of (A) the rental rate stated in the renter's contract, excluding all optional charges, and (B) the period from the date of the accident to the date the vehicle is ready to be returned to rental service. This paragraph applies only if the rental company uses its best efforts to effect repairs and return the vehicle to rental service as soon as practicable.

(6) Actual charges for towing, storage, and impound fees paid by the rental company.

(7) The administrative charge described in paragraph (7) of subdivision (b) shall not exceed (A) fifty dollars ($50) if the total estimated cost for parts and labor is more than one hundred dollars ($100) up to and including five hundred dollars ($500), (B) one hundred dollars ($100) if the total estimated cost for parts and labor exceeds five hundred dollars ($500) up to and including one thousand five hundred dollars ($1,500), and (C) one hundred fifty dollars ($150) if the total estimated cost for parts and labor exceeds one thousand five hundred dollars ($1,500). No administrative charge shall be imposed if the total estimated cost of parts and labor is one hundred dollars ($100) or less.

(d) (1) The total amount of an authorized driver's liability to the rental company, if any, for damage occurring during the authorized driver's operation of the rented vehicle shall not exceed the amount of the renter's liability under subdivision (c).

(2) A rental company shall not recover from the renter and another authorized driver an amount exceeding the renter's liability under subdivision (c).

(3) A rental company shall not recover from the renter or other authorized driver for any item described in subdivision (b) to the extent the rental company obtains recovery from any other person.

(4) This section applies only to the maximum liability of a renter or other authorized driver to the rental company resulting from damage to the rented vehicle and not to the liability of any other person.

(e) (1) Except as provided in subdivisions (f) and (g), every damage waiver shall provide or, if not expressly stated in writing, shall be deemed to provide that the renter has no liability for any damage, loss, loss of use, or any cost or expense incident thereto.

(2) Except as provided in subdivisions (f) and (g), every limitation, exception, or exclusion to any damage waiver is void and unenforceable.

(f) A rental company may provide in the rental contract that a damage waiver does not apply under any of the following circumstances:

(1) Damage or loss results from an authorized driver's (A) intentional, willful, wanton, or reckless conduct, (B) operation of the vehicle under the influence of drugs or alcohol in violation of Section 23152 of the Vehicle Code, (C) towing or pushing anything, or (D) operation of the vehicle on an unpaved road if the damage or loss is a direct result of the road or driving conditions.

(2) Damage or loss occurs while the vehicle is (A) used for commercial hire, (B) used in connection with conduct that could be properly charged as a felony, (C) involved in a speed test or contest or in driver training activity, (D) operated by a person other than an authorized driver, or (E) operated outside of the United States.

(3) Any authorized driver (A) provided fraudulent information to the rental company, or (B) provided false information and the rental company would not have rented the vehicle if it had instead received true information.

(g) No damage waiver shall apply to any loss due to theft of the vehicle.

(h) (1) A rental company which offers or provides a damage waiver for any consideration in addition to the rental rate shall clearly and conspicuously disclose the following information in the rental contract or holder in which the contract is placed and, also, in signs posted at the place, such as the counter, where the renter signs the rental contract: (A) the nature of the renter's liability, e.g., liability for all collision damage regardless of cause, (B) the extent of the renter's liability, e.g., liability for damage or loss up to a specified amount, (C) the renter's personal insurance policy may provide coverage for all or a portion of the renter's potential liability, (D) the renter should consult with his or her insurer to determine the scope

of insurance coverage, (E) the renter may purchase an optional damage waiver to cover all liability, except liability for loss due to theft pursuant to subdivision (g), subject to whatever exceptions the rental company expressly lists that are permitted under subdivision (f), and (F) the charge for the damage waiver.

(2) The following is an example, for purposes of illustration and not limitation, of a notice fulfilling the requirements of paragraph (1) for a rental company that imposes liability on the renter for collision damage to the full value of the vehicle:

NOTICE ABOUT YOUR FINANCIAL RESPONSIBILITY AND OPTIONAL DAMAGE WAIVER

You are responsible for all collision damage to the rented vehicle even if someone else caused it or the cause is unknown. You are responsible for the cost of repair up to the value of the vehicle, loss of use, and towing, storage, and impound fees.

Your own insurance may cover all or part of your financial responsibility for the rented vehicle. You should check with your insurance company to find out about your coverage.

The rental company will not hold you responsible if you buy damage waiver, except with regard to loss due to theft. But, damage waiver will not protect you if (list exceptions).

The cost of optional damage waiver is $_____ for every (day or week).

(i) Notwithstanding any other provision of law, a rental company may sell damage waiver but shall not charge more than nine dollars ($9) per full or partial 24-hour rental day for damage waiver.

(j) A rental company which disseminates in this state an advertisement containing a rental rate shall include in that advertisement a clearly readable statement of the charge for damage waiver and a statement that damage waiver is optional.

(k) (1) A rental company shall not require the purchase of a damage waiver, optional insurance, or any other optional good or service.

(2) A rental company shall not engage in any unfair, deceptive, or coercive conduct to induce a renter to purchase damage waiver, optional insurance, or any other optional good or service, including conduct such as, but not limited to, refusing to honor the renter's reservation, limiting the availability of vehicles, requiring a deposit, or debiting or blocking the renter's credit card account for a sum equivalent to a deposit if the renter declines to purchase damage waiver, optional insurance, or any other optional good or service.

(*l*) (1) A rental company shall not seek to recover any portion of any claim arising out of damage to, or loss of, the rented vehicle by processing a credit card charge or causing any debit or block to be placed on the renter's credit card account.

(2) A rental company shall not engage in any unfair, deceptive, or coercive tactics in attempting to recover or in recovering on any claim arising out of damage to, or loss of, the rented vehicle.

(m) (1) A rental company shall only advertise, quote, and charge a rental rate that includes the entire amount except taxes and a mileage charge, if any, which a renter must pay to hire or lease the vehicle for the period of time to which the rental rate applies. A rental company shall not charge in addition to the rental rate, taxes, and mileage charge, if any, any fee which must be paid by the renter as a condition of hiring or leasing the vehicle, such as, but not limited to, required fuel or airport surcharges, nor any fee for transporting the renter to the location where the rented vehicle will be delivered to the renter.

(2) In addition to the rental rate, taxes, and mileage charge, if any, a rental company may charge for an item or service provided in connection with a particular rental transaction if the renter could have avoided incurring the charge by choosing not to obtain or utilize the optional item or service. Items and services for which the rental company may impose an additional charge, include, but are not limited to, optional insurance and accessories requested by the renter, service charges incident to the renter's optional return of the vehicle to a location other than the location where the vehicle was hired or leased, and charges for refueling the vehicle at the conclusion of the rental transaction in the event the renter did not return the vehicle with as much fuel as was in the fuel tank at the beginning of the rental. A rental company also may impose an additional charge based on reasonable age criteria established by the rental company.

(3) A rental company shall not charge any fee for authorized drivers in addition to the rental charge for an individual renter.

(4) If a rental company states a rental rate in print advertisement or in a telephonic, in-person, or computer-transmitted quotation, the rental company shall clearly disclose in that advertisement or quotation the terms of any mileage conditions relating to the advertised or quoted rental rate, including, but not limited to, to the extent applicable, the amount of mileage and gas charges, the number of miles for which no charges will be imposed, and a description of geographic driving limitations within the United States and Canada.

(5) If a rental company delivers a vehicle to a renter at a location other than the location where the rental company normally carries on its business, the rental company shall not charge the renter any amount for the rental for the period before the delivery of the vehicle. If a rental company picks up a rented vehicle from a renter at a location other than the location where the rental company normally carries on its business, the rental company shall not charge the renter any amount for the rental for the period after the renter notifies the rental company to pick up the vehicle.

(n) A renter may bring an action against a rental company for the recovery of damages and appropriate equitable relief for a violation of this section. The prevailing party shall be entitled to recover reasonable attorney's fees and costs.

(o) A rental company that brings an action against a renter for loss due to theft of the vehicle shall bring the action in the county in which the renter resides or if the renter is not a resident of this state in the jurisdiction in which the renter resides.

(p) Any waiver of any of the provisions of this section shall be void and unenforceable as contrary to public policy.

(q) This section shall become operative on January 1, 2002.

CHAPTER 993

An act to add Sections 40458 and 44243.5 to the Health and Safety Code, relating to air pollution.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 40458 is added to the Health and Safety Code, to read:

40458. (a) Rules 1501 and 1501.1 adopted by the south coast district are void.

(b) Rule 2202 adopted by the south coast district shall be amended in the following manner:

(1) The worksite employee threshold shall be raised to 250. On January 1, 1998, the south coast district and the Southern California Association of Governments shall report to the state board on the effectiveness of voluntary rideshare and any other replacement measures instituted in achieving the same level of emissions as the exempted employers in the original rule. If there is a disagreement between the district and the Southern California Association of Governments regarding the emissions reduced by the replacement measures, then, on or before June 1, 1998, the state board shall determine if the replacement measures have fully achieved the emission reductions that would have been achieved by the exempted employers under the original rule. If the emission levels are not met, the south coast district shall restore the 100 employee threshold not later than June 1, 1998. If the emission reductions have been met, the worksite employee threshold shall be raised to 500 on or before June 1, 1998. Prior to raising the threshold, the state board, after a public hearing, shall determine that sufficient funds are available to achieve a reasonable likelihood of success in accomplishing equivalent emission reductions for employers from 250 to 500.

(2) If the worksite threshold is increased to 500 pursuant to paragraph (1), then on June 1, 1999, the south coast district and the Southern California Association of Governments shall report to the state board on the effectiveness of voluntary rideshare and any other replacement measures instituted in achieving the same level of emissions as the exempted employers in the original rule. If there is a disagreement between the district and the Southern California Association of Governments regarding the emissions reduced by the replacement measures, then, on or before January 1, 2000, the state board shall determine if the replacement measures have fully achieved the emission reductions that would have been achieved by the exempted employers under the original rule. If the emission levels are not met, the south coast district shall restore the 250 employee threshold not later than January 1, 2000. If the emission reductions are not sufficient to replace the emission reductions that would have been achieved by employers exempted pursuant to paragraph (1), the district may restore the 100 employee threshold. If the emission reductions have been met, Rule 2202 shall be suspended.

(3) If Rule 2202 is suspended pursuant to paragraph (2), on January 1, 2001, the south coast district and the Southern California Association of Governments shall report to the state board on the effectiveness of voluntary rideshare and any other replacement measures instituted in achieving the same level of emissions as the exempted employers in the original rule. If there is a disagreement between the district and the Southern California Association of Governments regarding the emissions reduced by the replacement measures, then, on or before June 1, 2001, the state board shall determine if the replacement measures have fully achieved the emission reductions that would have been achieved by the exempted employers under the original rule. If the emission levels are not met, the south coast district shall restore the 500 employee threshold not later than June 1, 2001. If the emission reductions are not sufficient to replace the emission reductions that would have been achieved by employers exempted pursuant to paragraph (2), the district may restore the 250 employee threshold. If the emission reductions are not sufficient to replace the emission reductions that would have been achieved by employers exempted pursuant to paragraph (1), the district may restore the 100 employee threshold. If the emission reductions have been met, Rule 2202 shall be repealed and adopted as a backup measure to the alternative measures not later than June 1, 2001.

(4) If Rule 2202 is repealed pursuant to paragraph (3), the Southern California Association of Governments shall annually report to the south coast district on the effectiveness of voluntary rideshare efforts. The south coast district shall, using the data provided by the Southern California Association of Governments, and other sources, determine if the alternative measures are

achieving equivalent emission reductions. If there is a shortfall in emission reductions, the south coast district may implement, only to the extent needed to make up the shortfall, the backup Rule 2202.

(5) Nothing in this section is intended to prevent an early replacement and repeal of Rule 2202. The south coast district shall replace Rule 2202 as soon as possible with alternative direct light-duty mobile source emission reduction measures, other than new vehicle emission standards or reformulated fuel standards.

SEC. 2. Section 44243.5 is added to the Health and Safety Code, to read:

44243.5. (a) The south coast district shall provide one million five hundred thousand dollars ($1,500,000) annually on or before January 15 of each year to the Regional Transportation Agencies Coalition or its successor agency subject to the following conditions:

(1) The south coast district may, until January 1, 1999, utilize revenues from the fund established pursuant to subdivision (b) of Section 40448.7 for the purpose of this section. Notwithstanding paragraph (1) of subdivision (a) of Section 40448.7, the south coast district shall not be required to annually allocate one million dollars ($1,000,000) to the Air Quality Assistance Fund to replace revenues allocated pursuant to this section.

(2) On and after January 1, 1999, the south coast district may utilize revenues received from civil and criminal penalties, out of court settlements, or other sources for the purpose of this section.

(3) On and after January 1, 1999, the south coast district may utilize revenues generated pursuant to Section 44243 for the purposes of this section.

(b) Regional Transportation Agencies Coalition shall fully allocate the revenues pursuant to subdivision (a) as expeditiously as possible to regional or county rideshare agencies for the purpose of providing marketing and client services to maximize voluntary ridesharing, including carpools, vanpools, transit, bicycling, telecommuting, and other alternative methods of commuting by employees at worksites in the South Coast Air Basin who commute during the peak period to worksites not regulated by south coast district Rule 2202. These funds are intended to supplement and not replace existing rideshare program funding.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative

on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 994

An act to amend Section 9354 of, to add Sections 9003 and 9084 to, and to repeal Section 9111 of, the Public Resources Code, relating to resource conservation districts.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 9003 is added to the Public Resources Code, to read:

9003. The Legislature hereby finds and declares that resource conservation districts are legal subdivisions of the state and, as such, are not-for-profit entities. For the purpose of contracting with state agencies only, resource conservation districts shall be considered agencies of the state.

SEC. 2. Section 9084 is added to the Public Resources Code, to read:

9084. (a) Subject to the availability of funds and any limitations imposed by this division, the department may provide grants to resource conservation districts for the purpose of assisting the districts in carrying out any work that they are authorized to undertake, including, but not limited to, grants for watershed projects.

(b) (1) To qualify for a grant under subdivision (a), a resource conservation district may, until January 1, 2000, and shall, on and after January 1, 2000, do all of the following:

(A) Prepare an annual and a long-range work plan pursuant to Section 9413. The long-range work plan shall reflect input from local agencies and organizations regarding land use and resource conservation goals.

(B) Convene regular meetings in accordance with the open meeting requirements of Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code and the requirements of this division.

(C) Secure sources of local support funding, which may include funding from in-kind contributions and services.

(2) A resource conservation district seeking a grant pursuant to this section may, until January 1, 2000, and shall, on and after January 1, 2000, submit to the department a grant proposal that includes, but is not limited to, all of the following information:

(A) A description of the work for which the grant is sought.

(B) An explanation of the public or private need for the work, including, but not limited to, any revelant information demonstrating the urgency of the project.

(C) An itemized summary of the projected cost of the work.

(D) An estimate of the amount of the projected costs of the work that will be covered by local support funding, including funding from in-kind contributions or services.

(3) To qualify for a grant awarded pursuant to this section, a resource conservation district may, until January 1, 2000, and shall, on and after January 1, 2000, be required to provide at least a 25 percent local match of funding, of which 40 percent of that amount shall be provided in cash. The department shall give preference in the awarding of grants to those districts that, among other things, provide a greater percentage of local match funding than the minimum required by this paragraph.

(4) A resource conservation district that receives a grant awarded under this section may, until January 1, 2000, and shall, on and after January 1, 2000, provide the department with an informal accounting summary that describes how the grant money was spent in accordance with the purposes and conditions of the grant.

(5) Prior to January 1, 2000, the department may, in making grants to a district pursuant to subdivision (a), take into consideration whether, and to what extent, the district has chosen to exercise the authority provided in paragraphs (1) to (4), inclusive.

SEC. 3. Section 9111 of the Public Resources Code is repealed.

SEC. 4. Section 9354 of the Public Resources Code is amended to read:

9354. Elected directors shall qualify within 20 days from the date of receipt of their certificates of election by taking the oath.

SEC. 5. It is the intent of the Legislature that the repeal of Section 9111 of the Public Resources Code by Section 3 of this act and the addition of Section 9084 to the Public Resources Code by Section 2 of this act shall cause no disruption in the continuity of the present authority to award resource conservation grants pursuant to Division 9 (commencing with Section 9000) of the Public Resources Code and that this act does not mandate any change in that authority until January 1, 2000. It is further the intent of the Legislature that, in the awarding of resource conservation district grants pursuant to Division 9 (commencing with Section 9000) of the Public Resources Code, consistency with all provisions of that division may be considered, including the provisions of subdivision (b) of Section 9084, as added by Section 2 of this act.

CHAPTER 995

An act to add Section 64.5 to the Harbors and Navigation Code, relating to aquatic weeds, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. The Legislature hereby finds and declares that aquatic weeds, other than water hyacinth in the Sacramento-San Joaquin Delta and Suisun Marsh, can and do cause problems with boating in California's public lakes and reservoirs, sometimes to the point of blocking boating and navigation and impairing other recreational uses of public lakes and reservoirs. Aquatic weeds that limit boating can also have serious effects, not only on the activity of boating itself, but on the economies that depend on boating related activities. California boaters pay fees to own and operate their boats on California's public lakes and reservoirs. Therefore, if aquatic weeds are limiting or preventing boating activity on certain public lakes and reservoirs, the weeds need to be controlled.

SEC. 2. Section 64.5 is added to the Harbors and Navigation Code, to read:

64.5. The department shall make a grant of funds to Lake County to conduct a pilot project until December 31, 1999, of aquatic weed control on Clear Lake in Lake County under the following conditions:

(a) Lake County has met the requirements of the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) and, by mutual agreement with the department, agrees to pay a percentage of the cost of the project not to exceed 25 percent.

(b) The aquatic weeds are negatively impacting recreational boating.

(c) The department has received a request from the county agricultural commissioner of Lake County requesting the grant.

(d) Any chemical treatment of aquatic weeds prescribed for the pilot project on Clear Lake, other than those used for the hydrilla eradication or control program pursuant to Article 9 (commencing with Section 6048) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code by the Department of Food and Agriculture, shall be coordinated with the Department of Fish and Game as trustee for fish and wildlife resources in that ecosystem.

SEC. 3. (a) The sum of one hundred forty-seven thousand dollars ($147,000) is hereby appropriated from the Harbors and Watercraft Revolving Fund for allocation as follows:

(1) To the Department of Boating and Waterways for a grant to Lake County of not more than forty-nine thousand dollars ($49,000) in each of the 1996–97, 1997–98, and 1998–99 fiscal years, less the amount allocated pursuant to paragraph (2) during each of those fiscal years, for the purposes of Section 64.5 of the Harbors and Navigation Code.

(2) To the Department of Fish and Game for expenditure of not more than five thousand dollars ($5,000) in each of the 1996–97, 1997–98, and 1998–99 fiscal years to pay the costs incurred by the department for the pilot project required to be conducted pursuant to Section 64.5 of the Harbors and Navigation Code.

(b) If funds to pay for the aquatic weed control project provided in Section 64.5 of the Harbors and Navigation Code are appropriated for that purpose in the Budget Act of 1996, the appropriation for the 1996–97 fiscal year required by subdivision (a) shall not be made and shall revert to the fund. The intent of this subdivision is to avoid duplicate appropriations for the aquatic weed control project for the 1996–97 fiscal year.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to control aquatic weeds in Clear Lake during this year's growing season, it is necessary for this act to take effect immediately.

CHAPTER 996

An act to amend, repeal, and add Section 1001.65 of the Penal Code, and to amend Sections 19705, 19706, 19717, and 19721 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 1001.65 of the Penal Code is amended to read:

1001.65. (a) A district attorney may collect a fee if his or her office collects and processes a bad check. The amount of the fee shall not exceed thirty-five ($35) for each bad check in addition to the actual amount of any bank charges incurred by the victim as a result of the offense.

(b) Notwithstanding subdivision (a), when a criminal complaint is filed in a bad check case after the maker of the check fails to comply with the terms of the bad check diversion program, the court, after conviction, may impose a bad check collection fee for the collection

and processing efforts by the district attorney of not more than thirty-five ($35) for each bad check in addition to the actual amount of any bank charges incurred by the victim as a result of the offense, not to exceed one thousand dollars ($1,000) in the aggregate. The court also may, as a condition of probation, require a defendant to participate in and successfully complete a check writing education class. If so required, the court shall make inquiry into the financial condition of the defendant and, upon a finding that the defendant is able in whole or part to pay the expense of the education class, the court may order him or her to pay for all or part of that expense.

(c) If the district attorney elects to collect any fee for bank charges incurred by the victim pursuant to this section, that fee shall be paid to the victim for any bank fees that the victim may have been assessed. In no event shall reimbursement of a bank charge to the victim pursuant to subdivision (a) or (b) exceed ten dollars ($10) per check.

(d) On or before January 1, 1998, the Judicial Council shall prepare a report on the effect of the amendments to this section enacted at the 1995–96 Regular Session of the Legislature, and submit that report to the Senate and Assembly Judiciary Committees.

(e) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 1999, deletes or extends that date.

SEC. 1.4. Section 1001.65 is added to the Penal Code, to read:

1001.65. (a) A district attorney may collect a fee if his or her office collects and processes a bad check. The amount of the fee shall not exceed twenty-five dollars ($25) for each bad check in addition to the actual amount of any bank charges incurred by the victim as a result of the offense.

(b) Notwithstanding subdivision (a), if a bad check case is not referred to a diversion program pursuant to this chapter, the court may impose a bad check collection fee for the collection and processing of a bad check by the district attorney of not more than twenty-five dollars ($25) for each bad check in addition to the actual amount of any bank charges incurred by the victim as a result of the offense, not to exceed one thousand dollars ($1,000) in the aggregate. The court also may, as a condition of probation, require a defendant to participate in and successfully complete a check writing education class. If so required, the court shall make inquiry into the financial condition of the defendant and, upon a finding that the defendant is able in whole or part to pay the expense of the education class, the court may order him or her to pay for all or part of that expense.

(c) If the district attorney elects to collect any fee for bank charges incurred by the victim pursuant to this section, that fee shall be paid to the victim for any bank fees that the victim may have been assessed. In no event shall reimbursement of a bank charge to the victim pursuant to subdivision (a) or (b) exceed ten dollars ($10) per check.

(d) This section shall become operative on January 1, 1999.

SEC. 1.5. Section 19705 of the Revenue and Taxation Code is amended to read:

19705. (a) Any person who does any of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars ($50,000) or imprisoned not more than three years, or both, together with the costs of investigation and prosecution:

(1) Willfully makes and subscribes any return, statement, or other document, that contains or is verified by a written declaration that it is made under penalty of perjury, and he or she does not believe to be true and correct as to every material matter.

(2) Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the Personal Income Tax Law or the Bank and Corporation Tax Law, of a return, affidavit, claim, or other document, that is fraudulent or is false as to any material matter, whether or not that falsity or fraud is with the knowledge or consent of the person authorized or required to present that return, affidavit, claim, or document.

(3) Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the Personal Income Tax Law or the Bank and Corporation Tax Law, or by any regulation pursuant to that law, or procures the same to be falsely or fraudulently executed or advises, aids in, or connives at that execution.

(4) Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by Chapter 5 (commencing with Section 19201); or Chapter 8 (commencing with Section 688.010) of Division 1 of, and Chapter 5 (commencing with Section 706.010) of Division 2 of, Title 9 of the Code of Civil Procedure, with intent to evade or defeat the assessment or collection of any tax, additions to tax, penalty, or interest imposed by Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(5) In connection with any settlement under Section 19442, or offer of that settlement, or in connection with any closing agreement under Section 19441 or offer to enter into that agreement, willfully does any of the following:

(A) Conceals from any officer or employee of this state any property belonging to the estate of a taxpayer or other person liable in respect of the tax.

(B) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax.

(b) In the case of a bank or corporation, the fifty thousand dollars ($50,000) limitation specified in subdivision (a) shall be increased to two hundred thousand dollars ($200,000).

(c) The fact that an individual's name is signed to a return, statement, or other document filed, including a return, statement, or other document filed using electronic technology pursuant to Section 18621.5, shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him or her.

(d) For purposes of this section "person" means the taxpayer, any member of the taxpayer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the taxpayer, or any other corporation or entity owned or controlled by the taxpayer, directly or indirectly, or which owns or controls the taxpayer, directly or indirectly.

SEC. 2. Section 19706 of the Revenue and Taxation Code is amended to read:

19706. Any person or any officer or employee of any bank or corporation who, within the time required by or under the provisions of this part, willfully fails to file any return or to supply any information with intent to evade any tax imposed by Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), or who, willfully and with like intent, makes, renders, signs, or verifies any false or fraudulent return or statement or supplies any false or fraudulent information, is punishable by imprisonment in the county jail not to exceed one year, or in the state prison, or by fine of not more than twenty thousand dollars ($20,000), or by both the fine and imprisonment, at the discretion of the court, together with the costs of investigation and prosecution.

SEC. 3. Section 19717 of the Revenue and Taxation Code is amended to read:

19717. (a) In the case of any civil proceeding which is—

(1) Brought by or against the State of California in connection with the determination, collection, or refund of any tax, interest, or penalty under this part, and

(2) Brought in a court of record of this state, the prevailing party may be awarded a judgment for reasonable litigation costs incurred in that proceeding.

(b) (1) A judgment for reasonable litigation costs shall not be awarded under subdivision (a) unless the court determines that the prevailing party has exhausted all administrative remedies available to that party under this part, including the filing of an appeal as provided in Section 19324.

(2) An award under subdivision (a) shall be made only for reasonable litigation costs which are allocable to the State of California and not to any other party to the action or proceeding.

(3) (A) No award for reasonable litigation costs may be made under subdivision (a) with respect to any declaratory judgment proceeding.

(B) Subparagraph (A) shall not apply to any proceeding which involves the revocation of a determination that the organization is described in Section 23701d.

(4) No award for reasonable litigation costs may be made under subdivision (a) with respect to any portion of the civil proceeding during which the prevailing party has unreasonably protracted that proceeding.

(c) For purposes of this section:

(1) "Reasonable litigation costs" includes any of the following:

(A) Reasonable court costs.

(B) Based upon prevailing market rates for the kind or quality of services furnished any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project which is found by the court to be necessary for the preparation of the party's case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars ($75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

(2) (A) "Prevailing party" means any party to any proceeding described in subdivision (a) (other than the State of California or any creditor of the taxpayer involved) that:

(i) Establishes that the position of the State of California in the civil proceeding was not substantially justified, and

(ii) (I) Has substantially prevailed with respect to the amount in controversy, or

(II) Has substantially prevailed with respect to the most significant issue or set of issues presented.

(B) Any determination under subparagraph (A) as to whether a party is a prevailing party shall be made—

(i) By the court, or

(ii) By agreement of the parties.

(3) The term "civil proceeding" includes a civil action.

(d) For purposes of this section, in the case of—

(1) Multiple actions which could have been joined or consolidated, or

(2) A case or cases involving a return or returns of the same taxpayer (including joint returns of married individuals) which could have been joined in a single proceeding in the same court, the actions or cases shall be treated as one civil proceeding regardless of whether the joinder or consolidation actually occurs, unless the court in which the action is brought determines, in its discretion, that it would be

inappropriate to treat the actions or cases as joined or consolidated for purposes of this section.

(e) An order granting or denying an award for reasonable litigation costs under subdivision (a), in whole or in part, shall be incorporated as a part of the decision or judgment in the case and shall be subject to appeal in the same manner as the decision or judgment.

(f) For purposes of this section, "position of the State of California" includes either of the following:

(1) The position taken by the State of California in the civil proceeding.

(2) Any administrative action or inaction by the Franchise Tax Board (and all subsequent administrative action or inaction) upon which that proceeding is based.

SEC. 4. Section 19721 of the Revenue and Taxation Code is amended to read:

19721. (a) Any person who, with intent to defraud, does any of the following is liable for a penalty of not more than ten thousand dollars ($10,000):

(1) Willfully utters, passes, negotiates, or procures a state-issued income tax refund warrant generated through the filing of a return knowing that the recipient is not entitled to the refund.

(2) Willfully aids, abets, advises, encourages, or counsels any individual to utter, pass, negotiate, or procure a state-issued income tax refund warrant generated through the filing of a return knowing the recipient is not entitled to the refund.

(b) The person is also punishable by imprisonment in a county jail not to exceed one year, or in the state prison, or by a fine not to exceed fifty thousand dollars ($50,000), or by both that fine and imprisonment, at the discretion of the court, together with the costs of investigation and prosecution.

(c) The fact that an individual's name is endorsed to a state-issued refund warrant shall be prima facie evidence for all purposes that the refund warrant was actually signed by him or her.

(d) The penalty shall be recovered in the name of the people in any court of competent jurisdiction. Counsel for the Franchise Tax Board may, upon request of the district attorney or other prosecuting attorney, assist the prosecuting attorney in presenting the law or facts to recover the penalty at the trial or a criminal proceeding for violation of this section.

(e) Any individual guilty under this part shall be subject to Section 502.01 of the Penal Code.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government

Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 997

An act to amend Sections 421 and 423 of, and to add Section 423.8 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 421 of the Revenue and Taxation Code is amended to read:

421. For the purposes of this article:

(a) "Agricultural preserve" means an agricultural preserve created pursuant to the California Land Conservation Act of 1965 (Williamson Act) (Chapter 7 (commencing with Section 51200) of Part 1 of Division 1 of Title 5 of the Government Code).

(b) "Contract" means a contract executed pursuant to the California Land Conservation Act.

(c) "Agreement" means an agreement executed pursuant to the California Land Conservation Act prior to the 61st day following the final adjournment of the 1969 Regular Session of the Legislature and that, taken as a whole, provides restrictions, terms and conditions that are substantially similar or more restrictive than those required by statute for a contract.

(d) "Scenic restriction" means any interest or right in real property acquired by a city or county pursuant to Chapter 12 (commencing with Section 6950) of Division 7 of Title 1 of the Government Code, where the deed or other instrument granting such right or interest imposes restrictions that, through limitation of their future use, will effectively preserve for public use and enjoyment, the character of open spaces and areas as defined in Section 6954 of the Government Code.

A scenic restriction shall be for an initial term of 10 years or more, and shall provide for either of the following:

(1) A method whereby the term may be extended by mutual agreement of the parties.

(2) That the initial term shall be subject to annual automatic one-year extensions as provided for contracts in Sections 51244,

51244.5, and 51246 of the Government Code, unless notice of nonrenewal is given as provided in Section 51245 of the Government Code.

A scenic restriction may not be terminated prior to the expiration of the initial term, and any extension thereof, except as provided for cancellation of contracts in Sections 51281, 51282, 51283 and 51283.3 of the Government Code, and subject to the provisions therein for payment of the cancellation fee.

(e) "Open-space easement" means an open-space easement granted to a county or city pursuant to Chapter 6.5 (commencing with Section 51050) of Part 1 of Division 1 of Title 5 of the Government Code if the easement is acquired prior to January 1, 1975, or an open-space easement granted to a county, city, or nonprofit organization pursuant to Chapter 6.6 (commencing with Section 51070) of Part 1 of Division 1 of Title 5 of the Government Code if the easement is acquired after January 1, 1975, or an open-space easement granted to a regional park district, regional park and open-space district, or regional open-space district under Article 3 (commencing with Section 5500) of Chapter 3 of Division 5 of the Public Resources Code.

(f) "Wildlife habitat contract" means any contract or amended contract or covenant involving, except as provided in Section 423.8, 150 acres or more of land entered into by a landowner with any agency or political subdivision of the federal or state government limiting the use of lands for a period of 10 or more years by the landowner to habitat for native or migratory wildlife and native pasture. These lands shall, by contract, be eligible to receive water for waterfowl or waterfowl management purposes from the federal government.

(g) "Open-space land" means any of the following:

(1) Land within an agricultural preserve and subject to a contract or an agreement.

(2) Land subject to a scenic restriction.

(3) Land subject to an open-space easement.

(4) Land that has been restricted by a political subdivision or an entity of the state or federal government, acting within the scope of its regulatory or other legal authority, for the benefit of wildlife, endangered species, or their habitats.

(h) "Typical rotation period" means a period of years during which different crops are grown as part of a plant cultural program. Typical rotation period does not mean the rotation period of timber.

(i) "Wildlife" means waterfowl of every kind and any other undomesticated mammal, fish, or bird, or any reptile, amphibian, insect, or plant.

(j) "Endangered species" means any species or subcategory thereof, as defined in the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code) or the federal Endangered Species Act (16

U.S.C. Sec. 1531 et seq.), that has been classified and protected as an endangered, threatened, rare, or candidate species by any entity of the state or federal government.

SEC. 2. Section 423 of the Revenue and Taxation Code is amended to read:

423. Except as provided in Sections 423.7 and 423.8, when valuing enforceably restricted open-space land, other than land used for the production of timber for commercial purposes, the county assessor shall not consider sales data on lands, whether or not enforceably restricted, but shall value these lands by the capitalization of income method in the following manner:

(a) The annual income to be capitalized shall be determined as follows:

(1) Where sufficient rental information is available the income shall be the fair rent which can be imputed to the land being valued based upon rent actually received for the land by the owner and upon typical rentals received in the area for similar land in similar use, where the owner pays the property tax. Any cash rent or its equivalent considered in determining the fair rent of the land shall be the amount for which comparable lands have been rented, determined by average rents paid to owners as evidenced by typical land leases in the area, giving recognition to the terms and conditions of the leases and the uses permitted within the leases and within the enforceable restrictions imposed.

(2) Where sufficient rental information is not available, the income shall be that which the land being valued reasonably can be expected to yield under prudent management and subject to applicable provisions under which the land is enforceably restricted. There shall be a rebuttable presumption that "prudent management" does not include use of the land for a recreational use, as defined in subdivision (n) of Section 51201 of the Government Code, unless the land is actually devoted to that use.

(3) Notwithstanding any other provision herein, if the parties to an instrument which enforceably restricts the land stipulate therein an amount which constitutes the minimum annual income per acre to be capitalized, then the income to be capitalized shall not be less than the amount so stipulated.

For the purposes of this section, income shall be determined in accordance with rules and regulations issued by the board and with this section and shall be the difference between revenue and expenditures. Revenue shall be the amount of money or money's worth, including any cash rent or its equivalent, which the land can be expected to yield to an owner-operator annually on the average from any use of the land permitted under the terms by which the land is enforceably restricted, including, but not limited to, that from the production of salt and from typical crops grown in the area during a typical rotation period, as evidenced by historic cropping patterns and agricultural commodities grown. When the land is planted to

fruit-bearing or nut-bearing trees, vines, bushes, or perennial plants, the revenue shall not be less than the land would be expected to yield to an owner-operator from other typical crops grown in the area during a typical rotation period, as evidenced by historic cropping patterns and agricultural commodities grown. Proceeds from the sale of the land being valued shall not be included in the revenue from the land.

Expenditures shall be any outlay or average annual allocation of money or money's worth that has been charged against the revenue received during the period used in computing that revenue. Those expenditures to be charged against revenue shall be only those which are ordinary and necessary in the production and maintenance of the revenue for that period. Expenditures shall not include depletion charges, debt retirement, interest on funds invested in the land, interest on funds invested in trees and vines valued as land as provided by Section 429, property taxes, corporation income taxes, or corporation franchise taxes based on income. When the income used is from operating the land being valued or from operating comparable land, amounts shall be excluded from the income to provide a fair return on capital investment in operating assets other than the land, to amortize depreciable property, and to fairly compensate the owner-operator for his operating and managing services.

(b) The capitalization rate to be used in valuing land pursuant to this article shall not be derived from sales data and shall be the sum of the following components:

(1) An interest component, to be determined by the board and announced no later than September 1 of the year preceding the assessment year, which is the arithmetic mean, rounded to the nearest $^1/_4$ percent, of the yield rate for long-term United States government bonds, as most recently published by the Federal Reserve Board, and the corresponding yield rates for those bonds, as most recently published by the Federal Reserve Board as of each September 1 immediately prior to each of the four immediately preceding assessment years. The interest component defined by this paragraph shall be implemented in phases and shall be:

(A) For the 1993–94 assessment year, the yield rate for long-term United States government bonds, as most recently published by the Federal Reserve Board, rounded to the nearest $^1/_4$ percent.

(B) For the 1994–95 assessment year, the arithmetic mean, rounded to the nearest $^1/_4$ percent, of the yield rate for long-term United States government bonds, as most recently published by the Federal Reserve Board, and the corresponding yield rate for those bonds, as most recently published by the Federal Reserve Board as of the September 1 immediately prior to the 1993–94 assessment year.

(C) For the 1995–96 assessment year, the arithmetic mean, rounded to the nearest $^1/_4$ percent, of the yield rate for long-term United States government bonds, as most recently published by the

Federal Reserve Board, and the corresponding yield rates for those bonds, as most recently published by the Federal Reserve Board as of each September 1 immediately prior to the 1993–94 and 1994–95 assessment years.

(D) For the 1996–97 assessment year, the arithmetic mean, rounded to the nearest $^1/_4$ percent, of the yield rate for long-term United States government bonds, as most recently published by the Federal Reserve Board, and the corresponding yield rates for those bonds, as most recently published by the Federal Reserve Board as of each September 1 immediately prior to the 1993–94, 1994–95, and 1995–96 assessment years.

(E) For the 1997–98 assessment year, and each fiscal year thereafter, the arithmetic mean, rounded to the nearest $^1/_4$ percent, of the yield rate for long-term United States government bonds, as most recently published by the Federal Reserve Board, and the corresponding yield rates for those bonds, as most recently published by the Federal Reserve Board as of each September 1 immediately prior to the four immediately preceding assessment years.

(2) A risk component which shall be a percentage determined on the basis of the location and characteristics of the land, the crops to be grown thereon and the provisions of any lease or rental agreement to which the land is subject.

(3) A component for property taxes which shall be a percentage equal to the estimated total tax rate applicable to the land for the assessment year times the assessment ratio. The estimated total tax rate shall be the cumulative rates used to compute the state's reimbursement of local governments for revenues lost on account of homeowners' property tax exemptions in the tax rate area in which the enforceably restricted land is situated.

(4) A component for amortization of any investment in perennials over their estimated economic life when the total income from land and perennials other than timber exceeds the yield from other typical crops grown in the area.

(c) The value of the land shall be the quotient for the income determined as provided in subdivision (a) divided by the capitalization rate determined as provided in subdivision (b).

(d) Unless a party to an instrument which creates an enforceable restriction expressly prohibits such a valuation, the valuation resulting from the capitalization of income method described in this section shall not exceed the lesser of either the valuation that would have resulted by calculation under Section 110, or the valuation that would have resulted by calculation under Section 110.1, as though the property was not subject to an enforceable restriction in the base year.

In determining the 1975 base year value under Article XIII A of the California Constitution for any parcel for comparison, the county may charge a contractholder a fee limited to the reasonable costs of such determination not to exceed twenty dollars ($20) per parcel.

(e) If the parties to an instrument which creates an enforceable restriction expressly so provide therein, the assessor shall assess those improvements which contribute to the income of land in the manner provided herein. As used in this subdivision "improvements which contribute to the income of the land" shall include, but are not limited to, wells, pumps, pipelines, fences, and structures which are necessary or convenient to the use of the land within the enforceable restrictions imposed.

SEC. 3. Section 423.8 is added to the Revenue and Taxation Code, to read:

423.8. (a) Notwithstanding the acreage requirement specified in subdivision (f) of Section 421, both of the following apply with respect to enrollment in a wildlife habitat contract:

(1) Any open-space land that has been restricted as wildlife or endangered species habitat by a political subdivision of the state or entity of state government shall, upon the request of the owner of that land, be enrolled in a wildlife habitat contract with the political subdivision of the state or entity of state government that has so restricted the subject open-space land.

(2) Any open-space land that has been restricted as wildlife or endangered species habitat by an agency of the federal government shall, upon the request of the landowner, be enrolled in a wildlife habitat contract with the city or county having jurisdiction over the restricted open-space land.

For any open-space land eligible for valuation under Section 422.5, 423, 423.3, 423.5, 426, or 435, that has also been enrolled in a wildlife habitat contract pursuant to this section, the controlling value of the land shall, except as otherwise provided in the following sentence, be the lower of the values determined for that land pursuant to those sections or Section 402.1. Other lands enrolled in a wildlife habitat contract pursuant to this section shall be assessed at the value determined as provided in Section 402.1.

(b) In no event shall this section or Section 421 be construed to authorize a political subdivision or any entity of the state or federal government to restrict the otherwise lawful use of property by designating all or part of that property as wildlife habitat or endangered species habitat without the consent of the owner of that property.

(c) It is the intent of the Legislature in adding this section to establish a nonexclusive alternative method of recognizing, for purposes of property taxation, the existence of certain governmental restrictions on the use of property. Neither this section nor Section 402.1 shall be construed or applied to require the existence of a wildlife habitat contract, as described in this section, as a necessary condition for recognizing the effect upon the taxable value of property of any enforceable restriction that is recognized under Section 422 or 402.1 and is legally established by statute, regulation,

or any action or classification by a governmental entity, for the benefit of wildlife, endangered species, or their habitats.

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

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

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, this act shall become operative commencing with those property taxes levied for the first lien date following the effective date of this act.

CHAPTER 998

An act to amend Section 41751 of the Health and Safety Code, relating to air pollution.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 41751 of the Health and Safety Code is amended to read:

41751. (a) (1) As used in this article, "portable equipment" includes any portable internal combustion engine and equipment that is associated with, and driven by, any portable internal combustion engine.

(2) (A) As used in this article, and except as provided in subdivision (b), a "portable internal combustion engine" is any internal combustion engine which is, by itself, or contained within or attached to a piece of equipment, is portable or transportable.

(B) As used in this paragraph, "portable or transportable" means designed to be, and capable of being, carried or moved from one location to another. Indicia of portability or transportability include, but are not limited to, wheels, skids, carrying handles, or a dolly, trailer, or platform.

(b) Any engine otherwise included in this section is not a portable internal combustion engine if either of the following applies:

(1) The engine remains, or will remain, at a fixed location for more than 12 consecutive months. For purposes of this paragraph, a "fixed location" is any single site at a building, structure, facility, or installation.

(2) The engine is used to propel nonroad equipment or a motor vehicle of any kind, including, but not limited to, a heavy-duty vehicle.

(c) Portable equipment includes, but is not limited to, any of the following:

(1) Confined and unconfined abrasive blasting equipment.

(2) Portland concrete batch plants.

(3) Sand and gravel screening, rock crushing, unheated pavement crushing, and recycling operations equipment.

(4) Consistent with federal law, portable internal combustion engines used in conjunction with, but not limited to, the following types of operations:

(A) Well drilling, including service equipment and work over rigs.

(B) Power generation, excluding cogeneration.

(C) Pumps.

(D) Compressors.

(E) Pile drivers.

(F) Welding.

(G) Cranes.

(H) Wood chippers.

(5) Equipment necessary for the operation of portable equipment.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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

CHAPTER 999

An act to amend Sections 25123.3, 25123.5, 25143, 25200.1.5, 25200.14, 25218.8, 25244.21, and 25245.4 of, and to add Section 25150.6 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 27, 1996.]

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

SECTION 1. Section 25123.3 of the Health and Safety Code is amended to read:

25123.3. (a) For purposes of this section, the following terms have the following meaning:

(1) "Liquid hazardous waste" means a hazardous waste that meets the definition of free liquids, as specified in Section 66260.10 of Title 22 of the California Code of Regulations, as that section read on January 1, 1994.

(2) "Remediation waste staging" means the temporary accumulation of non-RCRA contaminated soil that is generated and held onsite, and that is accumulated for the purpose of onsite treatment pursuant to a certified, authorized or permitted treatment method, such as a transportable treatment unit, if all of the following requirements are met:

(A) The hazardous waste being accumulated does not contain free liquids.

(B) The hazardous waste is accumulated on an impermeable surface, such as high density polyethylene (HDPE) of at least 20 mills that is supported by a foundation, or high density polyethylene of at least 60 mills that is not supported by a foundation.

(C) The generator provides controls for windblown dispersion and precipitation runoff and run-on and complies with any stormwater permit requirements issued by a regional water quality control board.

(D) The generator has the accumulation site inspected weekly and after storms to ensure that the controls for windblown dispersion and precipitation runoff and run-on are functioning properly.

(E) The staging area is certified by a registered engineer for compliance with the standards specified in subparagraphs (A) to (D), inclusive.

(3) "Transfer facility" means any offsite facility which is related to the transportation of hazardous waste, including, but not limited to, loading docks, parking areas, storage areas, and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

(b) "Storage facility" means a hazardous waste facility at which the hazardous waste meets any of the following requirements:

(1) The hazardous waste is held for greater than 90 days at an onsite facility. The department may establish criteria and procedures to extend that 90-day period, consistent with the federal act, and to prescribe the manner in which the hazardous waste may be held if not otherwise prescribed by statute.

(2) The hazardous waste is held for any period of time at an offsite facility which is not a transfer facility.

(3) (A) Except as provided in subparagraph (C), the hazardous waste is held at a transfer facility for periods greater than six days, or

greater than 10 days for transfer facilities in areas zoned industrial by the local planning authority.

(B) The department may adopt regulations which set forth enforceable management standards that protect human health and the environment and which apply to persons holding hazardous waste at a transfer facility located in a commercial or residential area pursuant to subparagraph (A). Any regulations adopted pursuant to this subparagraph shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare, and may be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(C) The department may extend the period of time specified in subparagraph (A) for hazardous waste which is generated as a result of an emergency release and which is collected and temporarily stored by emergency rescue personnel, as defined in Section 25501, or by a response action contractor, as defined in Section 25364.6, upon the request of emergency rescue personnel or the response action contractor. Notwithstanding any other provision of law, a transfer facility which holds hazardous waste for periods greater than six days, or greater than 10 days for transfer facilities in areas zoned industrial by the local planning authority, pursuant to this subparagraph shall not be classified as a storage facility.

(4) (A) Except as provided in subparagraph (B), the hazardous waste is held onsite for any period of time, unless the hazardous waste is held in a container, tank, drip pad, or containment building pursuant to regulations adopted by the department.

(B) Notwithstanding subparagraph (A), a generator that accumulates hazardous waste generated and held onsite for 90 days or less for offsite transportation is not a storage facility if all of the following requirements are met:

(i) The waste is non-RCRA contaminated soil.

(ii) The hazardous waste being accumulated does not contain free liquids.

(iii) The hazardous waste is accumulated on an impermeable surface, such as high density polyethylene (HDPE) of at least 20 mills that is supported by a foundation, or high density polyethylene of at least 60 mills that is not supported by a foundation.

(iv) The generator provides controls for windblown dispersion and precipitation runoff and run-on and complies with any stormwater permit requirements issued by a regional water quality control board.

(v) The generator has the accumulation site inspected weekly and after storms to ensure that the controls for windblown dispersion and precipitation runoff and run-on are functioning properly.

(vi) The generator, after final offsite transportation, inspects the accumulation site for contamination and remediates as necessary.

(vii) The site is certified by a registered engineer for compliance with the standards specified in clauses (i) to (vi), inclusive.

(5) The hazardous waste is held at a transfer facility for any period of time in a manner other than in a container or tank.

(6) (A) Except as provided in subparagraph (B), the hazardous waste is held at a transfer facility for any period of time and handling occurs.

(B) Notwithstanding subparagraph (A), and to the extent consistent with the federal act, a transfer facility is not a storage facility if the hazardous waste is held in containers or tanks at a transfer facility for a period of six days or less, or 10 days or less for transfer facilities in areas zoned industrial by the local planning authority, and no handling occurs, other than the transfer of packages or containerized hazardous waste from one vehicle to another.

(c) The time period for calculating the 90-day period for purposes of paragraph (1) of subdivision (b) begins when the facility has accumulated 100 kilograms of hazardous waste or one kilogram of extremely hazardous waste or acutely hazardous waste. However, if the facility generates more than 100 kilograms of hazardous waste or one kilogram of extremely hazardous waste or acutely hazardous waste during any calendar month, the time period begins when any amount of hazardous waste first begins to accumulate in that month.

(d) Notwithstanding paragraph (1) of subdivision (b), a generator of hazardous waste that accumulates waste onsite is not a storage facility if all of the following requirements are met:

(1) The generator accumulates a maximum of 55 gallons of hazardous waste, one quart of acutely hazardous waste, or one quart of extremely hazardous waste at an initial accumulation point which is at or near the area where the waste is generated and which is under the control of the operator of the process generating the waste.

(2) The generator accumulates the waste in containers other than tanks.

(3) The generator does not hold the hazardous waste onsite without a hazardous waste facilities permit or other grant of authorization for a period of time longer than the shorter of the following time periods:

(A) One year from the initial date of accumulation.

(B) Ninety days, or if subdivision (h) is applicable, 180 or 270 days, from the date that the quantity limitation specified in paragraph (1) is reached.

(4) The generator labels any container used for the accumulation of hazardous waste with the initial date of accumulation and with the words "hazardous waste" or other words that identify the contents of the container.

(5) Within three days of reaching any applicable quantity limitation specified in paragraph (1), the generator labels the container holding the accumulated hazardous waste with the date the quantity limitation was reached and either transports the waste

offsite or holds the waste onsite and complies with either the regulations adopted by the department establishing requirements for generators subject to the time limit specified in paragraph (1) of subdivision (b) or the requirements specified in paragraph (1) of subdivision (h), whichever requirements are applicable.

(6) The generator complies with regulations adopted by the department pertaining to the use and management of containers and any other regulations adopted by the department to implement this subdivision.

(e) (1) Notwithstanding paragraphs (1) and (4) of subdivision (b), hazardous waste held for remediation waste staging shall not be considered to be held at a hazardous waste storage facility if the total accumulation period is one year or less from the date of the initial placing of hazardous waste by the generator at the staging site for onsite remediation, except that the department may grant one six-month extension, upon a showing of reasonable cause by the generator.

(2) (A) The generator shall submit a notification of plans to store and treat hazardous waste onsite pursuant to paragraph (2) of subdivision (a), in person or by certified mail, with return receipt requested, to the department and to one of the following:

(i) The CUPA, if the generator is under the jurisdiction of a CUPA.

(ii) If the generator is not under the jurisdiction of a CUPA, the notification shall be submitted to the officer or agency authorized, pursuant to subdivision (f) of Section 25404.3, to implement and enforce the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404.

(B) If, after the notification pursuant to subparagraph (A), or during the initial year or the six-month extension granted by the department, the generator determines that treatment cannot be accomplished for all, or part of, the hazardous waste accumulated in a remediation waste staging area, the generator shall immediately notify the department and the appropriate local agency, pursuant to subparagraph (A), that the treatment has been discontinued. The generator shall then handle and dispose of the hazardous waste in accordance with paragraph (4) of subdivision (b).

(C) A generator shall not hold hazardous waste for remediation waste staging unless the generator can show, through laboratory testing, bench scale testing, or other documentation, that soil held for remediation waste staging is potentially treatable. Any fines and penalties imposed for a violation of this subparagraph may be imposed beginning with the 91st day that the hazardous waste was initially accumulated.

(3) Once an onsite treatment operation is completed on hazardous waste held pursuant to paragraph (1), the generator shall inspect the staging area for contamination and remediate as necessary.

(f) Notwithstanding any other provision of this chapter, remediation waste staging and non-RCRA contaminated soil held for offsite transportation in accordance with paragraph (4) of subdivision (b) shall not be considered to be disposal or land disposal of hazardous waste.

(g) A generator who holds hazardous waste for remediation waste staging pursuant to paragraph (2) of subdivision (a) or who holds hazardous waste onsite for offsite transportation pursuant to paragraph (4) of subdivision (b) shall maintain records onsite that demonstrate compliance with this section related to storing hazardous waste for remediation waste staging or related to holding hazardous waste onsite for offsite transportation, as applicable. The records maintained pursuant to this subdivision shall be available for review by any public agency authorized pursuant to Section 25180 or 25185.

(h) (1) Notwithstanding paragraph (1) of subdivision (b), a generator of less than 1,000 kilograms of hazardous waste in any calendar month who accumulates hazardous waste onsite for 180 days or less, or 270 days or less if the generator transports the generator's own waste, or offers the generator's waste for transportation, over a distance of 200 miles or more, for offsite treatment, storage, or disposal, is not a storage facility if all of the following apply:

(A) The quantity of hazardous waste accumulated onsite never exceeds 6,000 kilograms.

(B) The generator complies with the requirements of subdivisions (d), (e), and (f) of Section 262.34 of Title 40 of the Code of Federal Regulations.

(C) The generator does not hold acutely hazardous waste or extremely hazardous waste in an amount greater than one kilogram for a time period longer than that specified in paragraph (1) of subdivision (b).

(2) A generator meeting the requirements of paragraph (1) who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the facility to which the generator's waste is submitted, within 60 days from the date that the hazardous waste was accepted by the initial transporter, shall submit to the department a legible copy of the manifest, with some indication that the generator has not received confirmation of delivery.

SEC. 2. Section 25123.5 of the Health and Safety Code is amended to read:

25123.5. "Treatment" means any method, technique, or process which is not otherwise excluded from the definition of treatment by this chapter and which is designed to change the physical, chemical, or biological character or composition of any hazardous waste or any material contained therein, or which removes or reduces its harmful properties or characteristics for any purpose. "Treatment" does not

include the removal of residues from manufacturing process equipment for the purposes of cleaning that equipment.

SEC. 3. Section 25143 of the Health and Safety Code is amended to read:

25143. (a) The department may grant a variance from one or more of the requirements of this chapter, or the regulations adopted pursuant to this chapter, for the management of a hazardous waste if all of the following conditions apply:

(1) One of the following conditions applies:

(A) The hazardous waste is solely a non-RCRA hazardous waste or the hazardous waste or its management is exempt from, or is not otherwise regulated pursuant to, the federal act.

(B) The requirement from which a variance is being granted is not a requirement of the federal act, or the regulations adopted to implement the federal act.

(C) The department has issued, or is simultaneously issuing, a variance from the federal act for the hazardous waste management pursuant to subdivision (c).

(2) The department makes one of the following findings:

(A) The hazardous waste, the amount of the hazardous waste, or the hazardous waste management activity or management unit is insignificant or unimportant as a potential hazard to human health and safety or to the environment, when managed in accordance with the conditions, limitations, and other requirements specified in the variance.

(B) The requirements, from which a variance is being granted, are insignificant or unimportant in preventing or minimizing a potential hazard to human health and safety or the environment.

(C) The handling, processing, or disposal of the hazardous waste, or the hazardous waste management activity, is regulated by another governmental agency in a manner that ensures it will not pose a substantial present or potential hazard to human health and safety, and the environment.

(D) A requirement imposed by another public agency provides protection of human health and safety or the environment equivalent to the protection provided by the requirement from which the variance is being granted.

(3) The variance is granted in accordance with this section.

(b) (1) The department may grant a variance upon receipt of a variance application for a site or sites owned or operated by an individual or business concern. The individual or business concern submitting the application for a variance shall submit to the department sufficient information to enable the department to determine if all of the conditions required by subdivision (a) are satisfied for all situations within the scope of the requested variance.

(2) The department may also grant a variance, on its own initiative, to one or more individuals or business concerns. If the variance is granted to more than one individual or business concern,

the department, in granting the variance pursuant to this paragraph, shall comply with all of the following requirements:

(A) The department shall make all of the following findings, in addition to the findings required pursuant to paragraph (2) of subdivision (a):

(i) That the variance is necessary to address a temporary situation, or that the variance is needed to address an ongoing situation pending the adoption of regulations by the department.

(ii) That the variance will not create a substantive competitive disadvantage for a member or members of a specific class of facilities. This finding shall be based upon information available to the department at the time that the variance is granted.

(iii) That there are no reasonably foreseeable site-specific physical or operating conditions that could potentially impact the finding made by the department pursuant to paragraph (2) of subdivision (a). This finding shall be supported by substantial evidence in the record as a whole, and shall be based upon both of the following:

(I) The types of hazardous waste streams, the estimated amounts of hazardous waste, and the locations that are affected by the variance. The estimate of the amounts of hazardous waste that are affected by the variance shall be based upon information reasonably available to the department.

(II) Due inquiry, with respect to the hazardous waste streams and management activities affected by the variance, regarding the potential for mismanagement, enforcement and site remediation experience, and proximity to sensitive receptors.

(B) The variance shall not be granted for a period of more than one year. A variance granted pursuant to this paragraph may be renewed for one additional one-year period, if the department makes a finding that the variance has not resulted in harm to human health or safety or to the environment and that there has been substantial compliance with the conditions contained in the variance.

(C) The department shall issue a public notice at least 30 days prior to granting the variance to allow an opportunity for public comment. The public notice shall be issued in the California Regulatory Register, to the department's regulatory mailing list, and to all potentially affected hazardous waste facilities and generators known to the department. The department shall, upon request, hold a public meeting prior to granting the variance. In granting the variance and in making the findings required by paragraph (2) of subdivision (a) and subparagraph (A), the department shall consider all public comments received.

(D) The department shall not grant a variance pursuant to this paragraph from the definition of, or classification as, a hazardous waste, or from requirements pertaining to the investigation or remediation of releases of hazardous waste or constituents.

(E) The authority of the department to grant or renew variances pursuant to this paragraph shall remain in effect only until January

1, 2002, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date. This subparagraph shall not be construed to invalidate any variance granted pursuant to this paragraph prior to the expiration of the department's authority.

(c) (1) In addition to the variance authorized pursuant to subdivisions (a) and (b), the department, after making one of the findings specified in paragraph (2) of subdivision (a), may also grant a variance from the requirements of the federal act in accordance with the provisions of Sections 260.30, 260.31, 260.32, and 260.33 of Title 40 of the Code of Federal Regulations, or any successor federal regulations, regarding the issuance of variances from classification of a material as a solid waste or variances classifying enclosed devices using controlled flame combustion as boilers.

(2) This subdivision shall take effect on the date that the department obtains authorization from the Environmental Protection Agency to implement those provisions of the federal act that are identified in paragraph (1).

(d) Each variance issued pursuant to this section shall be issued on a form prescribed by the department and shall, as applicable, include, but not be limited to, all of the following:

(1) Information identifying the individuals or business concerns to which the variance applies. This identification shall be by name, location of the site or sites, type of hazardous waste generated or managed, or type of hazardous waste management activity, as applicable.

(2) As applicable, a description of the physical characteristics and chemical composition of the hazardous waste or the specifications of the hazardous waste management activity or unit to which the variance applies.

(3) The time period during which the variance is effective.

(4) A specification of the requirements of this chapter or the regulations adopted pursuant to this chapter from which the variance is granted.

(5) A specification of the conditions, limitations, or other requirements to which the variance is subject.

(e) (1) Variances issued pursuant to this section are subject to review at the discretion of the department and may be revoked or modified at any time.

(2) The department shall revoke or modify a variance if the department finds any of the following:

(A) The conditions required by this section are no longer satisfied.

(B) The holder of the variance is in violation of one or more of the conditions, limitations, or other requirements of the variance, and, as a result of the violation, the conditions required by this section are no longer satisfied.

(C) If the variance was granted because of the finding specified in subparagraph (C) or (D) of paragraph (2) of subdivision (a), the holder of the variance is in violation of one or more of the regulatory

requirements of another governmental agency to which the holder is subject and the violation invalidates that finding.

(f) (1) (A) The department may, upon mutual agreement with an individual or business concern applying for a variance, charge a fee that is equal to the actual cost of the department in reviewing and making a determination on the variance.

(B) If the applicant pays a fee pursuant to subparagraph (A), the applicant is not subject to the variance fee required by Section 25205.7.

(2) The department may waive all, or part, of the fees required by Section 25205.7 for an application for a variance by an individual or business concern.

(g) Within 30 days from the date of granting a variance, the department shall issue a public notice on the California Regulatory Register.

SEC. 4. Section 25150.6 is added to the Health and Safety Code, to read:

25150.6. (a) Except as provided in subdivision (e), the department may, by regulation, exempt a hazardous waste management activity from one or more of the requirements of this chapter, if the department does all of the following:

(1) Prepares the analysis of the hazardous waste management activity to which the exemption will apply, as required by subdivision (b).

(2) Demonstrates that one of the conclusions required by subdivision (c) is valid.

(3) Imposes, as may be necessary, conditions and limitations on the exemption that ensure that the exempted activity will not pose a significant potential hazard to human health or safety or to the environment.

(b) Before the department adopts a regulation exempting a hazardous waste activity from one or more of the requirements of this chapter pursuant to subdivision (a), the department shall evaluate the activity and prepare an analysis that addresses all of the following aspects of the activity, to the extent that the requirement or requirements from which the activity will be exempted can affect these aspects of the activity:

(1) The types of hazardous waste streams and the estimated amounts of hazardous waste that are managed as part of the activity and the hazards to human health or safety or to the environment posed by reasonably foreseeable mismanagement of those hazardous wastes and their hazardous constituents. The estimate of the amounts of hazardous waste that are managed as part of the activity shall be based upon information reasonably available to the department.

(2) The complexity of the activity, and the amount and complexity of operator training, equipment installation and maintenance, and monitoring that are required to ensure that the activity is conducted

in a manner that safely and effectively manages the particular hazardous waste stream.

(3) The chemical or physical hazards that are associated with the activity and the degree to which those hazards are similar to, or differ from, the chemical or physical hazards that are associated with the production processes that are carried out in the facilities that produce the hazardous waste that is managed as part of the activity.

(4) The types of accidents that might reasonably be foreseen to occur during the management of particular types of hazardous waste streams as part of the activity, the likely consequences of those accidents, and the actual reasonably available accident history associated with the activity.

(5) The types of locations at which the activity may be carried out, an estimate of the number of these locations, and the types of hazards that may be posed by proximity to the land uses described in subdivision (b) of Section 25232. The estimate of the number of locations at which the activity may be carried out shall be based upon information reasonably available to the department.

(c) The department shall not adopt a regulation pursuant to subdivision (a) unless it first demonstrates, using the information developed in the analysis prepared pursuant to subdivision (b), that one of the following is valid:

(1) The requirement from which the activity is exempted is not significant or important in either of the following:

(A) Preventing or mitigating potential hazards to human health or safety or to the environment posed by the activity.

(B) Ensuring that the activity is conducted in compliance with other applicable requirements of this chapter and the regulations adopted pursuant to this chapter.

(2) A requirement is imposed and enforced by another public agency that provides protection of human health and safety and the environment that is as effective as, and equivalent to, the protection provided by the requirement, or requirements, from which the activity is being exempted.

(3) Conditions or limitations imposed on the exemption will provide protection of human health and safety and the environment equivalent to the requirement, or requirements, from which the activity is exempted.

(4) Conditions or limitations imposed on the exemption accomplish the same regulatory purpose as the requirement, or requirements, from which the activity is being exempted but at less cost or greater administrative convenience and without increasing potential risks to human health or safety or to the environment.

(d) A regulation adopted pursuant to this section shall not be deemed to meet the standard of necessity, pursuant to Section 11349.1 of the Government Code, unless the department has complied with subdivisions (b) and (c).

(e) The department shall not exempt a hazardous waste management activity from a requirement of this chapter or the regulations adopted by the department if the requirement is also a requirement for that activity under the federal act.

(f) The authority of the department to adopt regulations pursuant to this section shall remain in effect only until January 1, 2002, unless a later enacted statute, which is enacted before January 1, 2002, deletes or extends that date. This subdivision shall not be construed to invalidate any regulation adopted pursuant to this section prior to the expiration of the department's authority.

SEC. 5. Section 25200.1.5 of the Health and Safety Code is amended to read:

25200.1.5. (a) The department may establish an administrative process to certify hazardous waste environmental technologies that it determines will not pose a significant potential hazard to human health and safety or to the environment if they are used under specified operating conditions. Hazardous waste environmental technologies which may be certified shall include, but are not limited to, hazardous waste management technologies, site mitigation technologies, and waste minimization and pollution prevention technologies. The certification process shall not be used for hazardous waste incineration technologies. The certification shall include all of the following:

(1) A statement of the technical specifications applicable to the technology.

(2) A determination of the composition of the hazardous wastes or chemical constituents for which the technology can appropriately be used.

(3) An estimate of the efficacy and efficiency of the technology in regard to the hazardous wastes or chemical constituents for which it is certified.

(4) A specification of the minimal operational standards the technology is required to meet to ensure that the certified technology is managed properly and used safely.

(b) An applicant for certification of a hazardous waste environmental technology shall provide the department with any information required by the department to make a determination on the application for certification.

(c) The department's proposed decision on an application for certification of a hazardous waste environmental technology shall be published in the California Regulatory Notice Register and shall be subject to a 30-day comment period. The department's final decision on an application for certification of a hazardous waste environmental technology shall become effective not sooner than 30 days from the date of publication of the final decision in the California Regulatory Notice Register.

(d) The department may decertify a hazardous waste environmental technology if it determines, on the basis of any

information, that the hazardous waste environmental technology may pose a significant potential hazard to human health and safety or to the environment. The department may decertify a hazardous waste environmental technology in accordance with the procedure set forth in subdivision (c).

(e) The department's decision on an application for certification under this section is exempt from the requirements of Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and shall not be subject to the review and approval of the Office of Administrative Law.

(f) Based on the determination made by the department pursuant to subdivision (a), other local and state government permitting authorities may take this certification process into consideration when making their permitting decisions.

(g) (1) The department shall place appropriate conditions on any certification granted pursuant to this section. Those conditions may include, but are not limited to, all of the following:

(A) Limits on the types, volume, and concentration of waste streams that may be employed with the technology.

(B) Operating requirements.

(C) Monitoring requirements.

(2) Any technology certified by the department pursuant to this section may be eligible for authorization pursuant to permit-by-rule or conditional authorization pursuant to Section 25200.3, or conditional exemption pursuant to Section 25201.5, only if the department determines that the use of that technology to handle the waste stream or streams is demonstrated to be as safe and as effective as the processes that are subject to regulation pursuant to permit-by-rule or conditional authorization pursuant to Section 25200.3 or conditional exemption pursuant to Section 25201.5. A certified technology determined to be eligible for authorization pursuant to permit-by-rule shall, in addition to any conditions placed on the certification pursuant to paragraph (1), operate in accordance with all conditions of the certification and permit-by-rule.

(3) In determining the placement of a technology certified pursuant to this section for operation pursuant to permit-by-rule or pursuant to a grant of conditional authorization under Section 25200.3 or conditional exemption under Section 25201.5, the department shall, to the extent information is available, consider all the following factors in making its determination:

(A) The hazardous waste streams that are treated using the treatment methods and the hazards to human health and safety or the environment posed by those hazardous wastes and their hazardous constituents.

(B) The complexity of the treatment method, the degree of difficulty in carrying it out, and the technology that is used to carry it out.

(C) Chemical or physical hazards that are associated with the use of the treatment process and the degree to which these hazards are similar to, or differ from, the chemical or physical hazards that are associated with the production processes that are carried out in the facilities that produce the hazardous waste that is treated using the treatment methods.

(D) The levels of specialized operator training, equipment maintenance, and monitoring that are required to ensure the safety of the treatment method and its effectiveness in treating particular hazardous waste streams.

(E) The types of accidents that may occur during the treatment of particular types of hazardous waste streams, the likely consequences of those accidents, and the actual accident history associated with use of the treatment method.

(h) The department shall charge fees to review and certify environmental technologies pursuant to this section that are sufficient to recover the actual costs of the department in reviewing and approving the technology.

(i) The department shall implement a program to continually monitor and oversee manufacturers and users of technologies certified pursuant to this section, to ensure that the certified technologies are operating in a manner which is not hazardous to human health and safety or to the environment.

(j) The department shall adopt regulations to implement the certification process.

SEC. 6. Section 25200.14 of the Health and Safety Code is amended to read:

25200.14. (a) For purposes of this section, "phase I environmental assessment" means a preliminary site assessment based on reasonably available knowledge of the facility, including, but not limited to, historical use of the property, prior releases, visual and other surveys, records, consultant reports, and regulatory agency correspondence.

(b) (1) Except as provided in paragraph (2) and in subdivision (i), in implementing the requirements of Section 25200.10 for facilities operating pursuant to a permit-by-rule under the regulations adopted by the department regarding transportable treatment units and fixed treatment units, which are contained in Chapter 45 (commencing with Section 67450.1) of Division 4.5 of Title 22 of the California Code of Regulations, or for generators operating pursuant to a grant of conditional authorization under Section 25200.3, the department or the unified program agency authorized to implement this section pursuant to Section 25404.1 shall require the owner or operator of the facility or the generator to complete and file a phase I environmental assessment with the

department or the authorized unified program agency not later than one year from the date of adoption of the checklist specified in subdivision (f), but not later than January 1, 1997, or one year from the date that the facility or generator becomes authorized to operate, whichever date is later. After submitting a phase I environmental assessment, the owner or operator of the facility or the generator shall subsequently submit to the department or the authorized unified program agency, during the next regular reporting period, if any, updated information obtained by the facility owner or operator or the generator concerning releases subsequent to the submission of the phase I environmental assessment.

(2) Paragraph (1) does not apply to a facility owner or operator that is conducting, or has conducted, a site assessment of the entire facility or to a generator that is conducting, or has conducted, a site assessment of the entire facility of the generator in accordance with an order issued by a California regional water quality control board or any other state or federal environmental enforcement agency.

(c) An assessment which would otherwise meet the requirements of this section that is prepared for another purpose and was completed not more than three years prior to the date by which the facility owner or operator or the generator is required to submit a phase I environmental assessment may be used to comply with this section if the assessment is supplemented by any relevant updated information reasonably available to the facility owner or operator or to the generator.

(d) The department or the unified program agency authorized to implement this section pursuant to Section 25404.1 shall not require sampling or testing as part of the phase I environmental assessment. A phase I environmental assessment shall be certified by the facility owner or operator or by the generator, or by their designee, or by a certified professional engineer, or a geologist, or a registered environmental assessor. The phase I environmental assessment shall indicate whether the preparer believes that further investigation, including sampling and analysis, is necessary to determine whether a release has occurred, or to determine the extent of a release from a solid waste management unit or hazardous waste management unit.

(e) (1) If the results of a phase I environmental assessment conducted pursuant to subdivision (b) indicate that further investigation is needed to determine the existence or extent of a release from a solid waste management unit or hazardous waste management unit, the facility owner or operator or the generator shall submit a schedule, within 90 days from the date of submission of the phase I environmental assessment, for that further investigation to the department or to the unified program agency authorized to implement this section pursuant to Section 25404.1. If the department or the authorized unified program agency determines, based upon a review of the phase I environmental

assessment or other site-specific information in its possession, that further investigation is needed to determine the existence or extent of a release from a solid waste management unit or hazardous waste management unit, in addition to any further action proposed by the facility owner or operator or the generator, or determines that a different schedule is necessary to prevent harm to human health and safety or to the environment, the department or the authorized unified program agency shall inform the facility owner or operator or the generator of that determination and shall set a reasonable time period in which to accomplish that further investigation.

(2) In determining if a schedule is acceptable for investigation or remediation of any facility or generator subject to this section, the department may require more expeditious action if the department determines that hazardous constituents are mobile and are likely moving toward, or have entered, a source of drinking water, as defined by the State Water Resources Control Board, or determines that more expeditious action is otherwise necessary to protect human health or safety or the environment. To the extent that the department determines that the hazardous constituents are relatively immobile, or that more expeditious action is otherwise not necessary to protect public health or safety or the environment, the department may allow a longer schedule to allow the facility or generator to accumulate a remediation fund, or other financial assurance mechanism, prior to taking corrective action.

(3) If a facility owner or operator or the generator is conducting further investigation to determine the nature or extent of a release pursuant to, and in compliance with, an order issued by a California regional water quality control board or other state or federal environmental enforcement agency, the department or the authorized unified program agency shall deem that investigation adequate for the purposes of determining the nature and extent of the release or releases that the order addressed, as the investigation pertains to the jurisdiction of the ordering agency.

(f) The department shall develop a checklist to be used by facility owners or operators and generators in conducting a phase I environmental assessment. The development and publication of the checklist is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The department shall hold at least one public workshop concerning the development of the checklist. The checklist shall not exceed the phase I requirements adopted by the American Society for Testing and Materials (ASTM) for due diligence for commercial real estate transactions. The department shall deem compliance with those ASTM standards, or compliance with the checklist developed and published by the department, as meeting the phase I environmental assessment requirements of this section.

(g) A facility, or to the extent required by the regulations adopted by the department, a transportable treatment unit, operating

pursuant to a permit-by-rule shall additionally comply with the remaining corrective action requirements specified in Section 67450.7 of Title 22 of the California Code of Regulations, in effect on January 1, 1992.

(h) A generator operating pursuant to a grant of conditional authorization pursuant to Section 25200.3 shall additionally comply with paragraph (3) of subdivision (c) of Section 25200.3.

(i) The department or the authorized unified program agency shall not require a phase I environmental assessment for those portions of a facility subject to a corrective action order issued pursuant to Section 25187, a cleanup and abatement order issued pursuant to Section 13304 of the Water Code, or a corrective action required under subsection (u) of Section 6924 of Title 42 of the United States Code or subsection (h) of Section 6928 of Title 42 of the United States Code.

SEC. 7. Section 25218.8 of the Health and Safety Code is amended to read:

25218.8. (a) Except as provided in subdivision (b), a hazardous waste facilities permit shall be obtained for the operation of a household hazardous waste collection facility.

(b) A hazardous waste facilities permit is not required for the operation of a recycle-only household hazardous waste collection facility if all of the following conditions are met:

(1) The facility accepts only the following recyclable household hazardous waste materials for subsequent transport to an authorized recycling facility:

(A) Latex paint.

(B) Used oil.

(C) Used oil filters.

(D) Antifreeze.

(E) Spent lead-acid batteries.

(F) Nickel-cadmium, alkaline, carbon-zinc, or other small batteries, if the facility is in compliance with Section 25216.1.

(G) Intact spent fluorescent lamps.

(H) Intact spent high intensity discharge (HID) lamps.

(2) No hazardous wastes or other materials are handled at the facility other than the materials specified in paragraph (1).

(3) The materials are transported to the collection facility by either of the following:

(A) The person who generated the material.

(B) The authorized curbside household hazardous waste collection program.

(4) The materials transported to the facility are transported in accordance with Section 25218.5.

(5) The materials collected are not stored at the facility for more than 180 days, except that less than one ton of spent lead-acid batteries may be stored at the facility for up to one year. More than

one ton of spent lead-acid batteries shall not be stored at the facility for more than 180 days.

(6) The materials collected are managed in accordance with the hazardous waste labeling, containerization, emergency response, and personnel training requirements of this chapter.

(7) The facility is in compliance with Section 25218.2.

SEC. 8. Section 25244.21 of the Health and Safety Code is amended to read:

25244.21. (a) Every generator shall retain the original of the current review and plan, plan summary, report, and report summary, shall maintain a copy of the current review and plan, plan summary, report, and report summary at each site, or, for a multisite review and plan, plan summary, report, or report summary, at a central location, and upon request, shall make it available to any authorized representative of the department or the unified program agency conducting an inspection pursuant to Section 25185. If a generator fails, within five days, to make available to the inspector the review and plan, plan summary, report, or report summary, the department, the unified program agency, or any authorized representative of the department, or of the unified program agency, conducting an inspection pursuant to Section 25185, shall, if appropriate, impose a civil penalty pursuant to Section 25187, in an amount not to exceed one thousand dollars ($1,000) for each day the violation of this article continues, notwithstanding Section 25189.2.

(b) If a generator fails to respond to a request for a copy of its review and plan, plan summary, report, or report summary made by the department pursuant to subdivision (c) of Section 25244.18, or by a local agency, including a unified program agency, pursuant to subdivision (g) of Section 25244.18, within 30 days from the date of the request, the department or unified program agency shall, if appropriate, assess a civil penalty pursuant to Section 25187, in an amount not to exceed one thousand dollars ($1,000) for each day the violation of this article continues, notwithstanding Section 25189.2.

(c) (1) Any person may request the department to certify that a generator is in compliance with this article by having the department certify that the generator has properly completed the review and plan, plan summary, report and report summary required pursuant to Sections 25244.19 and 25244.20. The department shall respond within 60 days to a request for certification. Upon receiving a request for certification, the department shall request from the generator, which is the subject of the request, a copy of the generator's review and plan, plan summary, report, and report summary, pursuant to subdivision (c) of Section 25244.19, if the department does not have these documents. The department shall forward a copy of the review and plan, plan summary, report, and report summary to the person requesting certification, within 10 days after the department receives the request for certification or receives the review and plan, plan summary, report, and report summary, whichever is later. The

department shall protect trade secrets in accordance with Section 25244.23 in a review and plan, plan summary, report, or report summary, requested to be released pursuant to this subdivision.

(2) This subdivision does not prohibit any person from directly requesting from a generator a copy of the review and plan, plan summary, report, or report summary. Solely for the purposes of responding to a request pursuant to this subdivision, the department shall deem the review and plan, plan summary, report, or report summary to be a public record subject to Section 25152.5, and shall act in compliance with that section.

SEC. 9. Section 25245.4 of the Health and Safety Code is amended to read:

25245.4. (a) (1) (A) On and before September 30, 1996, a facility or transportable treatment unit operating pursuant to a permit-by-rule is exempt from any standard or regulation requiring the provision of financial assurances for the costs of closing a treatment unit of the facility authorized under a permit-by-rule or closing the transportable treatment unit that is adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245.

(B) On and after October 1, 1996, a facility or transportable treatment unit operating pursuant to a permit-by-rule under the regulations adopted by the department regarding transportable treatment units and fixed treatment units, which are contained in Chapter 45 (commencing with Section 67450.1) of Division 4.5 of Title 22 of the California Code of Regulations, shall provide financial assurances for the costs of closing a treatment unit of the facility authorized under a permit-by-rule under those regulations, or closing the transportable treatment unit, as specified in the standards and regulations adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245 and subdivision (d), unless the facility or transportable treatment unit is exempt from those financial assurance requirements pursuant to this chapter. A facility operating pursuant to a permit-by-rule which operates not more than 30 days in any calendar year is not required to provide financial assurances for the costs of closure of such a treatment unit pursuant to paragraph (1) of subdivision (a) of Section 25245.

(2) A facility or transportable treatment unit operating pursuant to a permit-by-rule is exempt from any standard or regulation requiring the provision of financial assurances for third-party liability that is adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245.

(3) A facility or transportable treatment unit operating pursuant to a permit-by-rule is not required to provide financial assurances for postclosure maintenance pursuant to paragraph (2) of subdivision (a) of Section 25245, unless the department determines, pursuant to the regulations adopted by the department, that the facility is required to obtain a postclosure permit.

(b) (1) (A) On and before September 30, 1996, a conditionally authorized generator who treats waste pursuant to Section 25200.3 is exempt from any standard or regulation requiring the provision of financial assurance for the costs of closing the conditionally authorized units that is adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245.

(B) On and after October 1, 1996, a conditionally authorized generator who treats waste pursuant to Section 25200.3 shall provide financial assurances for the costs of closing the conditionally authorized units, as specified in the standards and regulations adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245 and subdivision (d).

(2) A generator operating under a grant of conditional authorization pursuant to Section 25200.3 shall not be required to provide financial assurances for third-party liability damages pursuant to paragraph (1) of subdivision (a) of Section 25245.

(3) A generator operating under a grant of conditional authorization pursuant to Section 25200.3, shall not be required to provide financial assurances for postclosure maintenance pursuant to paragraph (2) of subdivision (a) of Section 25245, unless the department determines, pursuant to the regulations adopted by the department that the generator is required to obtain a postclosure permit.

(c) Notwithstanding any other provision of law, a person who treats waste pursuant to a grant of conditional exemption under this chapter is exempt, for those activities, from any standards or regulations adopted by the department pursuant to paragraph (1) of subdivision (a) of Section 25245 and is not required to provide financial assurances for the costs of closing the treatment units or for damage claims arising out of the operations of the unit pursuant to paragraph (1) of subdivision (a) of Section 25245, or to provide financial assurances for postclosure maintenance pursuant to paragraph (2) of subdivision (a) of Section 25245, unless the department determines, pursuant to the regulations adopted by the department, that the person is required to obtain a postclosure permit.

(d) (1) On or before February 1, 1996, the department shall adopt regulations to implement subparagraph (B) of paragraph (1) of subdivision (a) and subparagraph (B) of paragraph (1) of subdivision (b).

(2) The regulations adopted pursuant to this subdivision may be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(3) The adoption of regulations pursuant to this subdivision is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, and general welfare.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code, or because the costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 1000

An act to amend Section 1719 of the Civil Code, relating to commercial paper.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 1719 of the Civil Code is amended to read:

1719. (a) (1) Notwithstanding any penal sanctions that may apply, any person who passes a check on insufficient funds shall be liable to the payee for the amount of the check and a service charge payable to the payee for an amount not to exceed twenty-five dollars ($25) for the first check passed on insufficient funds and an amount not to exceed thirty-five dollars ($35) for each subsequent check to that payee passed on insufficient funds.

(2) Notwithstanding any penal sanctions that may apply, any person who passes a check on insufficient funds shall be liable to the payee for damages equal to treble the amount of the check if a written demand for payment is mailed by certified mail to the person who had passed a check on insufficient funds and the written demand informs this person of (A) the provisions of this section, (B) the amount of the check, and (C) the amount of the service charge payable to the payee. The person who had passed a check on insufficient funds shall have 30 days from the date the written demand was mailed to pay the amount of the check, the amount of the service charge payable to the payee, and the costs to mail the written demand for payment. If this person fails to pay in full the

amount of the check, the service charge payable to the payee, and the costs to mail the written demand within this period, this person shall then be liable instead for the amount of the check, minus any partial payments made toward the amount of the check or the service charge within 30 days of the written demand, and damages equal to treble that amount, which shall not be less than one hundred dollars ($100) nor more than one thousand five hundred dollars ($1,500). When a person becomes liable for treble damages for a check that is the subject of a written demand, that person shall no longer be liable for any service charge for that check and any costs to mail the written demand.

(3) Notwithstanding paragraphs (1) and (2), a person shall not be liable for the service charge, costs to mail the written demand, or treble damages if he or she stops payment in order to resolve a good faith dispute with the payee. The payee is entitled to the service charge, costs to mail the written demand, or treble damages only upon proving by clear and convincing evidence that there was no good faith dispute, as defined in subdivision (b).

(4) Notwithstanding paragraph (1), a person shall not be liable under that paragraph for the service charge if, at any time, he or she presents the payee with written confirmation by his or her financial institution that the check was returned to the payee by the financial institution due to an error on the part of the financial institution.

(5) Notwithstanding paragraph (1), a person shall not be liable under that paragraph for the service charge if the person presents the payee with written confirmation that his or her account had insufficient funds as a result of a delay in the regularly scheduled transfer of, or the posting of, a direct deposit of a social security or government benefit assistance payment.

(6) As used in this subdivision, to "pass a check on insufficient funds" means to make, utter, draw, or deliver any check, draft, or order for the payment of money upon any bank, depository, person, firm, or corporation that refuses to honor the check, draft, or order for any of the following reasons:

(A) Lack of funds or credit in the account to pay the check.

(B) The person who wrote the check does not have an account with the drawee.

(C) The person who wrote the check instructed the drawee to stop payment on the check.

(b) For purposes of this section, in the case of a stop payment, the existence of a "good faith dispute" shall be determined by the trier of fact. A "good faith dispute" is one in which the court finds that the drawer had a reasonable belief of his or her legal entitlement to withhold payment. Grounds for the entitlement include, but are not limited to, the following: services were not rendered, goods were not delivered, goods or services purchased are faulty, not as promised, or otherwise unsatisfactory, or there was an overcharge.

(c) In the case of a stop payment, the notice to the drawer required by this section shall be in substantially the following form:

NOTICE

To: _____
(name of drawer)

_____ is the payee of a check you wrote
(name of payee)

for $ _____. The check was not paid because
(amount)

you stopped payment, and the payee demands payment. You may have a good faith dispute as to whether you owe the full amount. If you do not have a good faith dispute with the payee and fail to pay the payee the full amount of the check in cash, a service charge of an amount not to exceed twenty−five dollars ($25) for the first check passed on insufficient funds and an amount not to exceed thirty−five dollars ($35) for each subsequent check passed on insufficient funds, and the costs to mail this notice within 30 days after this notice was mailed, you could be sued and held responsible to pay at least both of the following:

(1) The amount of the check.

(2) Damages of at least one hundred dollars ($100) or, if higher, three times the amount of the check up to one thousand five hundred dollars ($1,500).

If the court determines that you do have a good faith dispute with the payee, you will not have to pay the service charge, treble damages, or mailing cost. If you stopped payment because you have a good faith dispute with the payee, you should try to work out your dispute with the payee. You can contact the payee at:

_____
(name of payee)

_____
(street address)

_____
(telephone number)

You may wish to contact a lawyer to discuss your legal rights and responsibilities.

_____
(name of sender of notice)

(d) In the case of a stop payment, a court may not award damages or costs under this section unless the court receives into evidence a copy of the written demand which, in that case, shall have been sent

to the drawer and a signed certified mail receipt showing delivery, or attempted delivery if refused, of the written demand to the drawer's last known address.

(e) A cause of action under this section may be brought in small claims court by the original payee, if it does not exceed the jurisdiction of that court, or in any other appropriate court. The payee shall, in order to recover damages because the drawer instructed the drawee to stop payment, show to the satisfaction of the trier of fact that there was a reasonable effort on the part of the payee to reconcile and resolve the dispute prior to pursuing the dispute through the courts.

(f) A cause of action under this section may be brought in municipal court by a holder of the check or an assignee of the payee. However, if the assignee is acting on behalf of the payee, for a flat fee or a percentage fee, the assignee may not charge the payee a greater flat fee or percentage fee for that portion of the amount collected that represents treble damages than is charged the payee for collecting the face amount of the check, draft, or order. This subdivision shall not apply to an action brought in small claims court.

(g) Notwithstanding subdivision (a), if the payee is a municipal court, the written demand for payment described in subdivision (a) may be mailed to the drawer by a municipal court clerk. Notwithstanding subdivision (d), in the case of a stop payment where the demand is mailed by a municipal court clerk, a court may not award damages or costs pursuant to subdivision (d), unless the court receives into evidence a copy of the written demand, and a certificate of mailing by a municipal court clerk in the form provided for in subdivision (4) of Section 1013a of the Code of Civil Procedure for service in civil actions. For purposes of this subdivision, in courts where a single court clerk serves more than one court, the clerk shall be deemed the court clerk of each court.

(h) The requirements of this section in regard to remedies are mandatory upon a court.

(i) The assignee of the payee or a holder of the check may demand, recover, or enforce the service charge, damages, and costs specified in this section to the same extent as the original payee.

(j) (1) A drawer is liable for damages and costs only if all of the requirements of this section have been satisfied.

(2) The drawer shall in no event be liable more than once under this section on each check for a service charge, damages, or costs.

(k) Nothing in this section is intended to condition, curtail, or otherwise prejudice the rights, claims, remedies, and defenses under Division 3 (commencing with Section 3101) of the Commercial Code of a drawer, payee, assignee, or holder, including a holder in due course as defined in Section 3302 of the Commercial Code, in connection with the enforcement of this section.

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CHAPTER 1001

An act to amend Section 16584 of, to add and repeal Sections 16583.5 and 16583.7 of, and to repeal Section 16587 of, the Government Code, and to amend Section 19532 of, and to add and repeal Section 19568 of, the Revenue and Taxation Code, relating to state funds, and making an appropriation therefor.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 16583.5 is added to the Government Code, to read:

16583.5. (a) Notwithstanding any other provision of law, the Student Aid Commission shall enter into an interagency agreement with the Franchise Tax Board to collect all or part of the commission's outstanding accounts receivable.

(b) (1) The Student Aid Commission shall develop criteria and policy that would define when an account receivable is delinquent and thereby subject to collection by the Franchise Tax Board. For purposes of this section, at a minimum, "delinquent" means that all of the following conditions exist prior to referral to the Franchise Tax Board:

(A) The amount is due and payable.

(B) Notice of the amount due and payable was sent to the debtor at the last known address maintained by the Student Aid Commission.

(C) In the case of complaints or protests by the debtor, the debtor has been provided all required administrative hearings, and does not have a judicial proceeding pending with respect to that debt.

(D) Notwithstanding Section 16584, the Student Aid Commission has referred the account to a private debt collector and, not less than nine months following that referral, the private debt collector has been unable to collect the account.

(2) This policy and criteria may include a minimum dollar threshold for delinquencies that would be referred to the Franchise Tax Board.

(c) When a delinquency is referred to the Franchise Tax Board pursuant to this section, the amount of the delinquency and any interest on the delinquency or other amounts that accrued prior to or accrue subsequent to the date of referral, shall be collected by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for

earnings withholding orders for taxes and including entering into agreements as authorized by Sections 19376 and 19377 of the Revenue and Taxation Code.

(d) Any law providing for the collection of a delinquent personal income tax liability, including Part 10.7 (commencing with Section 21001) of Division 2 of the Revenue and Taxation Code, which includes Section 21021 of the Revenue and Taxation Code relating to the awarding of damages for reckless disregard of procedures, shall apply to delinquencies referred under this section in the same manner and with the same force and effect and to the full extent as if the language of the law had been incorporated in full into this chapter, except to the extent that any provision is either inconsistent with this chapter or is not relevant to this chapter.

(e) The Franchise Tax Board shall provide notice to the debtor at the most recent address of record or last known address that payment by the debtor of the amount due within a certain timeframe, which at a minimum shall be 10 days after the date of the notice, shall prevent further collection action.

(f) Any information, information sources, or enforcement remedies and capabilities available to the Student Aid Commission shall be available to the Franchise Tax Board for purposes of collecting delinquencies referred under this section.

(g) Any agreement entered into pursuant to subdivision (a) shall include all of the following:

(1) The criteria, standards, and procedures for referring the delinquencies to the Franchise Tax Board for collection pursuant to this section.

(2) A statement that the delinquencies referred to the Franchise Tax Board are delinquent, as defined by the Student Aid Commission under paragraph (1) of subdivision (b), and subject to collection by the Franchise Tax Board.

(3) A statement that in the event a person whose delinquency is referred under subdivision (c) notifies the Franchise Tax Board that there is a disagreement as to the amount due subject to collection, the Franchise Tax Board may, upon notification by that person, refer the person to the Student Aid Commission, return the account to the Student Aid Commission, or rescind any collection action that may have been taken. No account that is returned pursuant to this subdivision shall be again referred as a delinquency unless the delinquency has been reduced to a judgment or is an enforceable lien, if required to satisfy due process requirements.

(4) A statement that the Franchise Tax Board's departmental costs attributable to the delinquencies referred pursuant to this section shall be reimbursed from a percentage of the referred delinquencies collected by the Franchise Tax Board not to exceed 15 percent of the amount collected by the Franchise Tax Board on behalf of the Student Aid Commission.

(5) A statement that the debtor may be allowed an opportunity to voluntarily enter into an installment payment agreement as provided under Section 19008 of the Revenue and Taxation Code.

(h) For purposes of this section, "departmental costs attributable to the accounts referred under subdivision (c)" means the Franchise Tax Board's costs incurred to administer, maintain, and support the collection of delinquencies referred to the Franchise Tax Board pursuant to this section. These costs shall not include development and implementation costs that shall be repaid under a separate agreement between the Student Aid Commission and the Franchise Tax Board as provided by statute.

(i) The activities required to implement and administer this section shall not interfere with the primary mission of the Franchise Tax Board to administer Part 10 (commencing with Section 17001), and Part 11 (commencing with Section 23001), of Division 2 of the Revenue and Taxation Code.

(j) Delinquencies referred to the Franchise Tax Board for collection pursuant to this section shall accrue interest in an amount computed by the Student Aid Commission, as permitted by law.

(k) In no event shall amounts collected pursuant to this section be construed to be an income tax delinquency. In the case of a bankruptcy action, any delinquency referred under this section shall not be construed to be an income tax delinquency.

(*l*) The Franchise Tax Board, Student Aid Commission, and Controller may each adopt regulations to implement the delinquency referral program authorized by this section in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3. The initial adoption of any emergency regulations after January 1, 1997, shall be deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare.

(m) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 2. Section 16583.7 is added to the Government Code, to read:

16583.7. (a) Upon concurrence of the Controller, amounts collected by the Franchise Tax Board pursuant to Section 16583.5 shall be deposited as specified in an interagency agreement with the Student Aid Commission.

(b) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 3. Section 16584 of the Government Code is amended to read:

16584. (a) A participant may enter into a contract with a private debt collector or private person or entity for the assignment or sale

of all or part of its accounts receivable, provided that the participant does all of the following:

(1) Determines the assignment or sale is likely to generate more net revenue or net value than equivalent state efforts including collections efforts pursuant to Section 16583.5.

(2) Determines the assignment or sale will not compromise future state revenue collections.

(3) Notifies the debtor in writing at the address of record that the alleged accounts receivable debt will be turned over for private collection unless the debt is paid, or appealed within a time period, as determined by the participant.

(b) No participant shall enter into a contract for the assignment or sale of any accounts receivable pursuant to subdivision (a) if the accounts receivable debt has been contested.

(c) Any contract entered into pursuant to this section is subject to Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

SEC. 4. Section 16587 of the Government Code is repealed.

SEC. 5. Section 19532 of the Revenue and Taxation Code, as amended by Chapter 33 of the Statutes of 1995, is amended to read:

19532. In the event the debtor has more than one debt being collected by the Franchise Tax Board and the amount collected by the Franchise Tax Board is insufficient to satisfy the total amount owing, the amount collected shall be applied in the following priority:

(a) Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable under Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part.

(b) Payment of any debts referred for collection under Article 5 (commencing with Section 19271) of Chapter 5.

(c) Payment of delinquent wages collected pursuant to the Labor Code.

(d) Payment of delinquencies collected under Section 10878.

(e) Payment of any amounts due that are referred for collection under Article 6 (commencing with Section 19280) of Chapter 5.

(f) Payment of any amounts that are referred for collection pursuant to Section 62.9 of the Labor Code.

(g) Payment of delinquent penalties collected for the Department of Industrial Relations pursuant to the Labor Code.

(h) Payment of delinquent fees collected for the Department of Industrial Relations pursuant to the Labor Code.

(i) Payment of delinquencies referred by the Student Aid Commission pursuant to Section 16583.5 of the Government Code.

SEC. 6. Section 19568 is added to the Revenue and Taxation Code, to read:

19568. (a) Any information provided to, or obtained by, the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001) or Part 11 (commencing with

Section 23001) may be used by the Franchise Tax Board for purposes of collecting the delinquencies referred pursuant to Section 16583.5 of the Government Code.

(b) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2002, deletes or extends that date.

SEC. 7. Nothing in this act shall preclude the taking of any actions or the making of any adjustments that are required to satisfy federal or other regulatory mandates with respect to the collection of a Student Aid Commission account receivable prior or subsequent to the referral of that delinquency to the Franchise Tax Board pursuant to Section 16583.5 of the Government Code.

SEC. 8. The sum of seven hundred ninety-eight thousand dollars ($798,000) is hereby appropriated from the State Guaranteed Loan Reserve Fund to the Student Aid Commission for allocation to the Franchise Tax Board for expenditure during the 1996–97 fiscal year for purposes of implementing this act.

SEC. 9. This act shall be implemented only if federal law and regulations permit the appropriation specified in Section 8.

CHAPTER 1002

An act to amend Sections 1855.4 and 1855.5 of the Insurance Code, relating to insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 1855.4 of the Insurance Code is amended to read:

1855.4. Members and subscribers of advisory organizations may use the policy or bond forms, or manuals, of advisory organizations, either consistently or intermittently, but, except for insurers having common ownership or management, shall not agree with each other or others to adhere thereto or violate the antitrust or unfair business practice laws. The fact that two or more admitted insurers are members or subscribers of an advisory organization, or the fact that they use, either consistently or intermittently, the policy or bond forms, or manuals, prepared by an advisory organization, shall not be sufficient evidence, alone or in conjunction with each other, to support a finding either that an agreement to adhere to those forms or manuals exists or that an insurer or advisory organization is violating the antitrust or unfair business practice laws. These facts may be used only for the purpose of supplementing or explaining

other evidence of the existence of an agreement to adhere to those forms or manuals or the existence of the violation of the antitrust or unfair business practice laws. No act, agreement, or practice involving the activities of an advisory organization, an insurer's participation in those activities, or the use of an advisory organization's products or services shall be found to be unfair or unreasonable under this code because it is uncompetitive unless proven by a preponderance of the evidence that the act, agreement, or practice violates the antitrust or unfair business practice laws. Findings of this nature that are made in support of an order or regulation of the commissioner shall be determined and enforced under Article 7 (commencing with Section 1858) of this chapter. As used in this section, "antitrust laws" means Part 2 (commencing with Section 16600) of the Business and Professions Code, and "unfair business practice laws" means Part 3 (commencing with Section 17500) of the Business and Professions Code.

SEC. 2. Section 1855.5 of the Insurance Code is amended to read:

1855.5. (a) An advisory organization may prepare and distribute insurance policy or bond forms, and manuals, including policy writing rules, rating plans, classification codes and descriptions, territory codes and descriptions, prospective loss costs, and rules that include factors and relativities such as increased limits factors, classification relativities, or similar factors, if, prior to being used by insurers, they are submitted in writing to the commissioner for his or her consideration and approval, together with any information the commissioner may reasonably require. All of these documents shall be available for public inspection at the office of the commissioner. The commissioner shall approve advisory organization policy forms or bond forms, or manuals, that are not found by him or her to be unfair, unreasonable, or violate the provisions of this code, including Sections 1861.02 and 1861.05.

(b) Upon submission of any advisory organization policy forms or bond forms, or manuals, the commissioner may review them, and if after a hearing, at which representatives of consumers and other interested parties may participate, upon not less than 10 days' notice to an advisory organization he or she finds that the contents of policy forms or bond forms, or manuals, are unfair or unreasonable, or violate the provisions of this code, he or she may issue a written order to the advisory organization specifying in what respect the contents of the policy forms, bond forms, or manuals, are unfair or unreasonable or violate the provisions of this code and disapprove the use of the forms or manuals.

(c) Notwithstanding the provisions of this section, if the commissioner fails to act within 90 days of the submission of a proposed policy or bond form, or manual by an advisory organization, the policy or bond form, or manual, shall be deemed approved.

(d) For good cause, and after a hearing, at which representatives of consumers and other interested parties may participate, upon not

less than 10 days' notice to the advisory organization, the commissioner may revoke approval of any policy form or bond form or manual only upon his or her finding grounds that would permit disapproval of the policy or bond form, or manual, if submitted for approval at the time of the revocation hearing.

(e) Nothing in this chapter shall be interpreted to allow an advisory organization to set or establish rates or to issue any manual that contains final rates for any insurance coverage, policy endorsement, or bond.

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

In order to clarify existing provisions of the Insurance Code at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1003

An act to amend Sections 16602 and 17900 of the Business and Professions Code, to amend Section 15722 of, to amend and repeal Section 15002 of, to add Chapter 5 (commencing with Section 16100) to, and to repeal Chapter 1 (commencing with Section 15001) of, Title 2 of, the Corporations Code, to amend Section 3940 of the Public Resources Code, and to amend Sections 6829 and 23097 of, to add Sections 6831, 9032, 30353, 32388, 38576, 43447, 45608, 46463, 50138.5, 55208, and 60492 to, and to add Article 4 (commencing with Section 40166) to Chapter 6 of Part 19 of, and Article 4 (commencing with Section 41127.5) to Chapter 6 of Part 20 of, Division 2 of, the Revenue and Taxation Code, relating to partnerships.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 16602 of the Business and Professions Code is amended to read:

16602. (a) Any partner may, upon or in anticipation of any of the circumstances described in subdivision (b), agree that he or she will not carry on a similar business within a specified county or counties, city or cities, or a part thereof, where the partnership business has been transacted, so long as any other member of the partnership, or any person deriving title to the business or its goodwill from any such other member of the partnership, carries on a like business therein.

(b) Subdivision (a) applies to any of the following circumstances:

(1) A dissolution of the partnership.

(2) Dissociation of the partner from the partnership.

(3) A sale or other disposition of the partner's interest in a partnership.

SEC. 1.1. Section 17900 of the Business and Professions Code is amended to read:

17900. (a) As used in this chapter, "fictitious business name" means:

(1) In the case of an individual, a name that does not include the surname of the individual or a name that suggests the existence of additional owners.

(2) In the case of a partnership or other association of persons, other than a limited partnership that has filed a certificate of limited partnership with the Secretary of State pursuant to Section 15621 of the Corporations Code, a foreign limited partnership that has filed an application for registration with the Secretary of State pursuant to Section 15692 of the Corporations Code, a registered limited liability partnership that has filed a registration pursuant to Section 15049 or 16953 of the Corporations Code, or a foreign limited liability partnership that has filed an application for registration pursuant to Section 15055 or 16959 of the Corporations Code, a name that does not include the surname of each general partner or a name that suggests the existence of additional owners.

(3) In the case of a corporation, any name other than the corporate name stated in its articles of incorporation.

(4) In the case of a limited partnership that has filed a certificate of limited partnership with the Secretary of State pursuant to Section 15621 of the Corporations Code and in the case of a foreign limited partnership that has filed an application for registration with the Secretary of State pursuant to Section 15692 of the Corporations Code, any name other than the name of the limited partnership as on file with the Secretary of State.

(5) In the case of a limited liability company, any name other than the name stated in its articles of organization and in the case of a foreign limited liability company that has filed an application for registration with the Secretary of State pursuant to Section 17451 of the Corporations Code, any name other than the name of the limited liability company as on file with the Secretary of State.

(b) A name that suggests the existence of additional owners within the meaning of subdivision (a) is one which includes such words as "Company," "& Company," "& Son," "& Sons," "& Associates," "Brothers," and the like, but not words that merely describe the business being conducted.

SEC. 1.2. Chapter 1 (commencing with Section 15001) of Title 2 of the Corporations Code is repealed.

SEC. 1.3. Section 15002 of the Corporations Code is amended to read:

15002. As used in this act:

(a) "Court" includes every court and judge having jurisdiction in the case.

(b) "Business" includes every trade, occupation, or profession.

(c) "Person" includes individuals, partnerships, limited liability partnerships, limited partnerships, corporations, limited liability companies, and other associations.

(d) "Bankrupt" includes a debtor under Chapter 7 of the federal bankruptcy law or an insolvent under any state insolvency act.

(e) "Conveyance" includes every assignment, lease, mortgage, or encumbrance.

(f) "Real property" includes land and any interest or estate in land.

(g) "Professional limited liability partnership services" means the practice of public accountancy or the practice of law.

(h) "Licensed person" means any person who is duly licensed, authorized, or registered under the provisions of the Business and Professions Code to provide professional limited liability partnership services or who is lawfully able to render professional limited liability partnership services in this state.

(i) (1) "Registered limited liability partnership" means a partnership, other than a limited partnership, formed pursuant to an agreement governed by Article 8 (commencing with Section 15047) or Article 10 (commencing with Section 16951), that is registered under Section 15049 or Section 16953 and (A) each of the partners of which is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (B) is licensed under the laws of the state to engage in the practice of public accountancy or the practice of law, or (C) (i) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by the State Bar, practices law or is related to a foreign limited liability partnership and (ii) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited liability partnership or foreign limited liability partnership.

(2) For the purposes of subparagraph (C) of paragraph (1), a partnership is related to a registered limited liability partnership or foreign limited liability partnership (A) if at least a majority of the partners in one partnership are also partners in the other partnership, (B) if at least a majority in interest in each partnership, hold interests in or are members of another person, other than an individual, and each partnership renders services pursuant to an agreement with that other person, or (C) if one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(j) (1) "Foreign limited liability partnership" means a partnership, other than a limited partnership, formed pursuant to an agreement governed by the laws of another jurisdiction and denominated or registered as a limited liability partnership or registered limited liability partnership under the laws of that jurisdiction (A) in which each partner is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (B) is licensed under the laws of the state to engage in the practice of public accountancy or the practice of law, or (C) (i) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by this State Bar, practices law or is related to a foreign limited liability partnership and (ii) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited liability partnership or foreign limited liability partnership.

(2) For the purposes of subparagraph (C) of paragraph (1), a partnership is related to a registered limited liability partnership or foreign limited liability partnership if (A) at least a majority of the partners in one partnership are also partners in the other partnership, or (B) at least a majority in interest in each partnership, hold interests or are members in another person, except an individual, and each renders services pursuant to an agreement with that other person, or (C) one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(k) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 1999, deletes or extends that date.

SEC. 1.5. Section 15722 of the Corporations Code is amended to read:

15722. In any case not provided for in this chapter, limited partnerships shall be governed in the same manner as general partnerships would be governed pursuant to Section 16111, by the Uniform Partnership Act (Chapter 1 (commencing with Section 15001)), or the Uniform Partnership Act of 1994 (Chapter 5 (commencing with Section 16100)).

SEC. 2. Chapter 5 (commencing with Section 16100) is added to Title 2 of the Corporations Code, to read:

CHAPTER 5. UNIFORM PARTNERSHIP ACT OF 1994

Article 1. General Provisions

16100. This chapter may be cited as the Uniform Partnership Act of 1994.

16101. As used in this chapter, the following terms and phrases have the following meanings:

(1) "Business" includes every trade, occupation, and profession.

(2) "Debtor in bankruptcy" means a person who is the subject of either of the following:

(A) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application.

(B) A comparable order under federal, state, or foreign law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) (A) "Foreign limited liability partnership" means a partnership, other than a limited partnership, formed pursuant to an agreement governed by the laws of another jurisdiction and denominated or registered as a limited liability partnership or registered limited liability partnership under the laws of that jurisdiction (i) in which each partner is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (ii) which is licensed under the laws of the state to engage in the practice of public accountancy or the practice of law, or (iii) which (I) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by this State Bar, practices law or is related to a foreign limited liability partnership and (II) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited liability partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a majority in interest in each partnership hold interests in or are members of another person, except an individual, and each partnership renders services pursuant to an agreement with that other person, or (iii) one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(5) "Licensed person" means any person who is duly licensed, authorized, or registered under the provisions of the Business and Professions Code to provide professional limited liability partnership services or who is lawfully able to render professional limited liability partnership services in this state.

(6) (A) "Registered limited liability partnership" means a partnership, other than a limited partnership, formed pursuant to an

agreement governed by Article 10 (commencing with Section 16951), that is registered under Section 16953 and (i) each of the partners of which is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (ii) is licensed under the laws of the state to engage in the practice of public accountancy or the practice of law, or (iii)(I) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by the State Bar, practices law or is related to a foreign limited liability partnership and (II) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited liability partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a majority in interest in each partnership hold interests in or are members of another person, other than an individual, and each partnership renders services pursuant to an agreement with that other person, or (iii) one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(7) "Partnership" means an association of two or more persons to carry on as coowners a business for profit formed under Section 16202, predecessor law, or comparable law of another jurisdiction, and includes, for all purposes of the laws of this state, a registered limited liability partnership.

(8) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(9) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(10) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited partnership, limited liability partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(12) "Professional limited liability partnership services" means the practice of public accountancy or the practice of law.

(13) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(14) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(15) "Statement" means a statement of partnership authority under Section 16303, a statement of denial under Section 16304, a statement of dissociation under Section 16704, a statement of dissolution under Section 16805, a statement of conversion under Section 16906, a statement of merger under Section 16915, or an amendment or cancellation of any of the foregoing.

(16) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

16102. (a) A person knows a fact if the person has actual knowledge of it.

(b) A person has notice of a fact if any of the following apply:

(1) The person knows of it.

(2) The person has received a notification of it.

(3) The person has reason to know it exists from all of the facts known to the person at the time in question.

(4) Subdivision (f) of Section 16953 or subdivision (f) of Section 16959 as applicable.

(c) A person notifies or gives a notification to another by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows of it.

(d) A person receives a notification when either of the following apply:

(1) The person knows of the notification.

(2) The notification is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(e) Except as otherwise provided in subdivision (f), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(f) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge

by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

16103. (a) Except as otherwise provided in subdivision (b), relations among the partners and between the partners and the partnership are governed by the partnership agreement. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(b) The partnership agreement may not do any of the following:

(1) Vary the rights and duties under Section 16105 except to eliminate the duty to provide copies of statements to all of the partners.

(2) Unreasonably restrict the right of access to books and records under subdivision (b) of Section 16403, or the right to be furnished with information under subdivision (c) of Section 16403.

(3) Eliminate the duty of loyalty under subdivision (b) of Section 16404 or paragraph (3) of subdivision (b) of Section 16603, but, if not manifestly unreasonable, may do either of the following:

(A) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty.

(B) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

(4) Unreasonably reduce the duty of care under subdivision (c) of Section 16404 or paragraph (3) of subdivision (b) of Section 16603.

(5) Eliminate the obligation of good faith and fair dealing under subdivision (d) of Section 16404, but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable.

(6) Vary the power to dissociate as a partner under subdivision (a) Section 16602, except to require the notice under paragraph (1) of Section 16601 to be in writing.

(7) Vary the right of a court to expel a partner in the events specified in paragraph (5) of Section 16601.

(8) Vary the requirement to wind up the partnership business in cases specified in paragraph (4), (5), or (6) of Section 16801.

(9) Restrict rights of third parties under this chapter.

(10) Vary the law applicable to a registered limited liability partnership under subdivision (b) of Section 16106.

16104. (a) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(b) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in Section 3289 of the Civil Code.

16105. (a) A statement may be filed in the office of the Secretary of State. A certified copy of a statement that is filed in an office in

another state may be filed in the office of the Secretary of State. Either filing has the effect provided in this chapter with respect to partnership property located in or transactions that occur in this state.

(b) A certified copy of a statement that has been filed in the office of the Secretary of State and recorded in the office for recording transfers of real property has the effect provided for recorded statements in this chapter. A recorded statement that is not a certified copy of a statement filed in the office of the Secretary of State does not have the effect provided for recorded statements in this chapter.

(c) A statement filed by a partnership shall be executed by at least two partners. Other statements shall be executed by a partner or other person authorized by this chapter. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.

(d) A person authorized by this chapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(e) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

(f) The Secretary of State may collect a fee for filing or providing a certified copy of a statement. The officer responsible for recording transfers of real property may collect a fee for recording a statement.

16106. (a) Except as otherwise provided in subdivision (b) of this section, or Section 16958, the law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership.

(b) With respect to a registered limited liability partnership, the law of this state shall govern relations among the partners and between the partners and the partnership, and the liability of partners for obligations of the partnership.

16107. A partnership governed by this chapter is subject to any amendment to or repeal of this chapter.

16108. Except with respect to the provisions of this chapter specifically relating to registered limited liability partnerships and foreign limited liability partnerships, this chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

16109. The rights and duties of surviving partners, the legal representatives of deceased partners, the creditors of such partners, and the creditors of the partnership created by or defined in this

chapter shall be given full force and effect notwithstanding any inconsistent provisions of the Probate Code, but nothing in this chapter shall otherwise affect any provision of the Probate Code.

16110. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

16111. (a) Except as provided in Section 16955.5, before January 1, 1999, this chapter governs only a partnership formed (1) on or after the effective date of this chapter, unless that partnership is continuing the business of a dissolved partnership under Section 15041, or (2) before the effective date of this chapter if that partnership elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be governed by this chapter.

(b) On and after January 1, 1999, this chapter governs all partnerships.

(c) Except with respect to the provisions of this chapter specifically relating to registered limited liability partnerships and foreign limited liability partnerships, the provisions of this chapter relating to the liability of the partnership's partners to third parties apply to limit those partners' liability to a third party who had done business with the partnership within one year preceding the partnership's election to be governed by this chapter, only if the third party knows or has received a notification of the partnership's election to be governed by this chapter.

16112. This chapter does not affect an action or proceeding commenced or right accrued before this chapter takes effect.

16113. (a) The fee for filing a statement of partnership is seventy dollars ($70).

(b) Unless another fee is specified by law or the law specifies that no fee is to be charged, the fee for filing any partnership statement pursuant to this chapter is thirty dollars ($30).

(c) There is no fee for filing a statement of dissolution for the purposes of canceling a statement of partnership.

16114. Unless another fee is specified by law or the law specifies that no fee is to be charged, the fee for acceptance of copies of process against a surviving foreign partnership or limited partnership pursuant to subdivision (b) of Section 16906 is fifty dollars ($50) for each surviving foreign partnership or limited partnership general partnership upon whom service is sought.

Article 2. Nature of Partnership

16201. A partnership is an entity distinct from its partners.

16202. (a) Except as otherwise provided in subdivision (b), the association of two or more persons to carry on as coowners a business

for profit forms a partnership, whether or not the persons intend to form a partnership.

(b) An association formed under a statute other than this chapter, a predecessor statute, or a comparable statute of another jurisdiction is not a partnership under this chapter.

(c) In determining whether a partnership is formed, the following rules apply:

(1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the coowners share profits made by the use of the property.

(2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.

(3) A person who receives a share of the profits of a business is presumed to be a partner in the business, unless the profits were received for any of the following reasons:

(A) In payment of a debt by installments or otherwise.

(B) In payment for services as an independent contractor or of wages or other compensation to an employee.

(C) In payment of rent.

(D) In payment of an annuity or other retirement benefit to a beneficiary, representative, or designee of a deceased or retired partner.

(E) In payment of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral.

(F) In payment for the sale of the goodwill of a business or other property by installments or otherwise.

16203. Property acquired by a partnership is property of the partnership and not of the partners individually.

16204. (a) Property is partnership property if acquired in the name of either of the following:

(1) The partnership.

(2) One or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(b) Property is acquired in the name of the partnership by a transfer to either of the following:

(1) The partnership in its name.

(2) One or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the

partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(d) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

Article 3. Relations of Partners to Persons Dealing with Partnership

16301. Subject to the effect of a statement of partnership authority under Section 16303 both of the following apply:

(1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.

(2) An act of a partner that is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

16302. (a) Partnership property may be transferred as follows:

(1) Subject to the effect of a statement of partnership authority under Section 16303, partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name.

(2) Partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(3) Partnership property held in the name of one or more persons other than the partnership, without an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held.

(b) A partnership may recover partnership property from a transferee only if it proves that execution of the instrument of initial transfer did not bind the partnership under Section 16301 and either of the following applies:

(1) As to a subsequent transferee who gave value for property transferred under paragraph (1) or (2) of subdivision (a), proves that the subsequent transferee knew or had received a notification that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(2) As to a transferee who gave value for property transferred under paragraph (3) of subdivision (a), proves that the transferee knew or had received a notification that the property was partnership property and that the person who executed the instrument of initial transfer lacked authority to bind the partnership.

(c) A partnership may not recover partnership property from a subsequent transferee if the partnership would not have been entitled to recover the property, under subdivision (b), from any earlier transferee of the property.

(d) If a person holds all of the partners' interests in the partnership, all of the partnership property vests in that person. The person may execute a document in the name of the partnership to evidence vesting of the property in that person and may file or record the document.

16303. (a) A partnership may file a statement of partnership authority, which is subject to all of the following:

(1) The statement shall include all of the following:

(A) The name of the partnership.

(B) The street address of its chief executive office and of one office in this state, if there is one.

(C) The names and mailing addresses of all of the partners or of an agent appointed and maintained by the partnership for the purpose of subdivision (b).

(D) The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership.

(2) The statement may specify the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(b) If a statement of partnership authority names an agent, the agent shall maintain a list of the names and mailing addresses of all of the partners and make it available to any person on request for good cause shown.

(c) If a filed statement of partnership authority is executed pursuant to subdivision (c) of Section 16105 and states the name of the partnership but does not contain all of the other information required by subdivision (a), the statement nevertheless operates with respect to a person not a partner as provided in subdivisions (d) and (e).

(d) A filed statement of partnership authority supplements the authority of a partner to enter into transactions on behalf of the partnership as follows:

(1) Except for transfers of real property, a grant of authority contained in a filed statement of partnership authority is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a limitation on that authority is not then contained in another filed statement. A filed cancellation of a limitation on authority revives the previous grant of authority.

(2) A grant of authority to transfer real property held in the name of the partnership contained in a certified copy of a filed statement of partnership authority recorded in the office for recording transfers of that real property is conclusive in favor of a person who gives value without knowledge to the contrary, so long as and to the extent that a certified copy of a filed statement containing a limitation on that authority is not then of record in the office for recording transfers of that real property. The recording in the office for recording transfers of that real property of a certified copy of a filed cancellation of a limitation on authority revives the previous grant of authority.

(e) A person not a partner is deemed to know of a limitation on the authority of a partner to transfer real property held in the name of the partnership if a certified copy of the filed statement containing the limitation on authority is of record in the office for recording transfers of that real property.

(f) Except as otherwise provided in subdivisions (d) and (e) and Sections 16704 and 16805, a person not a partner is not deemed to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

16304. A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to subdivision (b) of Section 16303 may file a statement of denial stating the name of the partnership as filed with the Secretary of State, any identification number issued by the Secretary of State, and the fact that is being denied, that may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in subdivisions (d) and (e) of Section 16303.

16305. (a) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(b) If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

16306. (a) Except as otherwise provided in subdivisions (b) and (c), all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(b) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

(c) Notwithstanding any other section of this chapter, and subject to subdivisions (d), (e), (f), and (h), a partner in a registered limited liability partnership is not liable or accountable, directly or indirectly, including by way of indemnification, contribution, assessment, or otherwise, for debts, obligations, or liabilities of or chargeable to the partnership or another partner in the partnership, whether arising in tort, contract, or otherwise, that are incurred, created, or assumed by the partnership while the partnership is a registered limited liability partnership, by reason of being a partner or acting in the conduct of the business or activities of the partnership.

(d) Notwithstanding subdivision (c), all or certain specified partners of a registered limited liability partnership, if the specified partners agree, may be liable in their capacity as partners for all or specified debts, obligations, or liabilities of the registered limited liability partnership if the partners possessing a majority of the interests of the partners in the current profits of the partnership, or a different vote as may be required in the partnership agreement, specifically agreed to the specified debts, obligations, or liabilities in writing, prior to the debt, obligation, or liability being incurred. That specific agreement may be modified or revoked if the partners possessing a majority of the interests of the partners in the current profits of the partnership, or a different vote as may be required in the partnership agreement, agree to the modification or revocation in writing; provided, however, that a modification or revocation shall not affect the liability of a partner for any debts, obligations, or liabilities of a registered limited liability partnership incurred, created, or assumed by the registered limited liability partnership prior to the modification or revocation.

(e) Nothing in subdivision (c) shall be construed to affect the liability of a partner of a registered limited liability partnership to third parties for that partner's tortious conduct.

(f) The limitation of liability in subdivision (c) shall not apply to claims based upon acts, errors, or omissions arising out of the rendering of professional limited liability partnership services of a registered limited liability partnership providing legal services unless that partnership has a currently effective certificate of registration issued by the State Bar.

(g) A partner in a registered limited liability partnership is not a proper party to a proceeding by or against a registered limited liability partnership in which personal liability for partnership debts, obligations, or liabilities is asserted against the partner, unless that partner is personally liable under subdivision (d) or (e).

(h) Nothing in this section shall affect or impair the ability of a partner to act as a guarantor or surety for, provide collateral for or

otherwise be liable for, the debts, obligations, or liabilities of a registered limited liability partnership.

16307. (a) A partnership may sue and be sued in the name of the partnership.

(b) Except as otherwise provided in subdivision (g) of Section 16306, an action may be brought against the partnership and any or all of the partners in the same action or in separate actions.

(c) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is also a judgment against the partner.

(d) A judgment creditor of a partner may not levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership unless any of the following apply:

(1) A judgment based on the same claim has been obtained against the partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part.

(2) The partnership is a debtor in bankruptcy.

(3) The partner has agreed that the creditor need not exhaust partnership assets.

(4) A court grants permission to the judgment creditor to levy execution against the assets of a partner based on a finding that partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers.

(5) Liability is imposed on the partner by law or contract independent of the existence of the partnership.

(e) This section applies to any partnership liability or obligation resulting from a representation by a partner or purported partner under Section 16308.

16308. Except with respect to registered limited liability partnerships and foreign limited liability partnerships:

(a) If a person, by words or conduct, purports to be a partner, or consents to being represented by another as a partner, in a partnership or with one or more persons not partners, the purported partner is liable to a person to whom the representation is made, if that person, relying on the representation, enters into a transaction with the actual or purported partnership. If the representation, either by the purported partner or by a person with the purported partner's consent, is made in a public manner, the purported partner is liable to a person who relies upon the purported partnership even if the purported partner is not aware of being held out as a partner to the claimant. If partnership liability results, the purported partner is liable with respect to that liability as if the purported partner were a partner. If no partnership liability results, the purported partner is liable with respect to that liability jointly and severally with any other person consenting to the representation.

(b) If a person is thus represented to be a partner in an existing partnership, or with one or more persons not partners, the purported partner is an agent of persons consenting to the representation to bind them to the same extent and in the same manner as if the purported partner were a partner, with respect to persons who enter into transactions in reliance upon the representation. If all of the partners of the existing partnership consent to the representation, a partnership act or obligation results. If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(c) A person is not liable as a partner merely because the person is named by another in a statement of partnership authority.

(d) A person does not continue to be liable as a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership.

(e) Except as otherwise provided in subdivisions (a) and (b), persons who are not partners as to each other are not liable as partners to other persons.

Article 4. Relations of Partners to Each Other and to Partnership

16401. (a) Each partner is deemed to have an account that is subject to both of the following:

(1) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits.

(2) Subject to Sections 16306 and 16957, charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

(b) Each partner is entitled to an equal share of the partnership profits and, subject to Sections 16306 and 16957, is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

(c) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.

(d) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

(e) A payment or advance made by a partner that gives rise to a partnership obligation under subdivision (c) or (d) constitutes a loan to the partnership that accrues interest from the date of the payment or advance.

(f) Each partner has equal rights in the management and conduct of the partnership business.

(g) A partner may use or possess partnership property only on behalf of the partnership.

(h) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.

(i) A person may become a partner only with the consent of all of the partners.

(j) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.

(k) This section does not affect the obligations of a partnership to other persons under Section 16301.

16402. A partner has no right to receive, and may not be required to accept, a distribution in kind.

16403. (a) A partnership shall keep its books and records, if any, at its chief executive office.

(b) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(c) Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability, both of the following:

(1) Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this chapter; and

(2) On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

16404. (a) The fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subdivisions (b) and (c).

(b) A partner's duty of loyalty to the partnership and the other partners includes all of the following:

(1) To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the

partner of partnership property or information, including the appropriation of a partnership opportunity.

(2) To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership.

(3) To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.

(c) A partner's duty of care to the partnership and the other partners in the conduct and winding up of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(f) A partner may lend money to and transact other business with the partnership, and as to each loan or transaction, the rights and obligations of the partner regarding performance or enforcement are the same as those of a person who is not a partner, subject to other applicable law.

(g) This section applies to a person winding up the partnership business as the personal or legal representative of the last surviving partner as if the person were a partner.

16405. (a) A partnership may maintain an action against a partner for a breach of the partnership agreement, or for the violation of a duty to the partnership, causing harm to the partnership.

(b) A partner may maintain an action against the partnership or another partner for legal or equitable relief, with or without an accounting as to partnership business, to do any of the following:

(1) Enforce the partner's rights under the partnership agreement.

(2) Enforce the partner's rights under this chapter, including all of the following:

(A) The partner's rights under Section 16401, 16403, or 16404.

(B) The partner's right on dissociation to have the partner's interest in the partnership purchased pursuant to Section 16701 or 16701.5, or to enforce any other right under Article 6 (commencing with Section 16601) or 7 (commencing with Section 16701).

(C) The partner's right to compel a dissolution and winding up of the partnership business under Section 16801 or enforce any other right under Article 8 (commencing with Section 16801).

(3) Enforce the rights and otherwise protect the interests of the partner, including rights and interests arising independently of the partnership relationship.

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

16406. (a) If a partnership for a definite term or particular undertaking is continued, without an express agreement, after the expiration of the term or completion of the undertaking, the rights and duties of the partners remain the same as they were at the expiration or completion, so far as is consistent with a partnership at will.

(b) If the partners, or those of them who habitually acted in the business during the term or undertaking, continue the business without any settlement or liquidation of the partnership, they are presumed to have agreed that the partnership will continue.

Article 5. Transferees and Creditors of Partner

16501. A partner is not a coowner of partnership property and has no interest in partnership property that can be transferred, either voluntarily or involuntarily.

16502. The only transferable interest of a partner in the partnership is the partner's share of the profits and losses of the partnership and the partner's right to receive distributions. The interest is personal property.

16503. (a) A transfer, in whole or in part, of a partner's transferable interest in the partnership is permissible. However, a transfer does not do either of the following:

(1) By itself cause the partner's dissociation or a dissolution and winding up of the partnership business.

(2) As against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning partnership transactions, or to inspect or copy the partnership books or records.

(b) A transferee of a partner's transferable interest in the partnership has a right to all of the following:

(1) To receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

(2) To receive upon the dissolution and winding up of the partnership business, in accordance with the transfer, the net amount otherwise distributable to the transferor.

(3) To seek under paragraph (6) of Section 16801 a judicial determination that it is equitable to wind up the partnership business.

(c) In a dissolution and winding up, a transferee is entitled to an account of partnership transactions only from the date of the latest account agreed to by all of the partners.

(d) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

(e) A partnership need not give effect to a transferee's rights under this section until it has notice of the transfer.

(f) A transfer of a partner's transferable interest in the partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

16504. (a) On application by a judgment creditor of a partner or of a partner's transferee, a court having jurisdiction may charge the transferable interest of the judgment debtor to satisfy the judgment. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or that the circumstances of the case may require.

(b) A charging order constitutes a lien on the judgment debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, an interest charged may be redeemed in any of the following manners:

(1) By the judgment debtor.

(2) With property other than partnership property, by one or more of the other partners.

(3) With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged.

(d) This chapter does not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.

(e) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership.

Article 6. Partner's Dissociation

16601. A partner is dissociated from a partnership upon the occurrence of any of the following events:

(1) The partnership's having notice of the partner's express will to withdraw as a partner or on a later date specified by the partner.

(2) An event agreed to in the partnership agreement as causing the partner's dissociation.

(3) The partner's expulsion pursuant to the partnership agreement.

(4) The partner's expulsion by the unanimous vote of the other partners if any of the following apply:

(A) It is unlawful to carry on the partnership business with that partner.

(B) There has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes, or a court order charging the partner's interest, that has not been foreclosed.

(C) Within 90 days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business.

(D) A partnership, limited partnership, or limited liability company that is a partner has been dissolved and its business is being wound up.

(5) On application by the partnership or another partner, the partner's expulsion by judicial determination because of any of the following:

(A) The partner engaged in wrongful conduct that adversely and materially affected the partnership business.

(B) The partner willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under Section 16404.

(C) The partner engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with the partner.

(6) The partner's act or failure to act in any of the following instances:

(A) By becoming a debtor in bankruptcy.

(B) By executing an assignment for the benefit of creditors.

(C) By seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of that partner or of all or substantially all of that partner's property.

(D) By failing, within 90 days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the partner or of all or substantially all of the partner's property obtained without the partner's consent or acquiescence, or failing within 90 days after the expiration of a stay to have the appointment vacated.

(7) In the case of a partner who is an individual, by any of the following:

(A) The partner's death.

(B) The appointment of a guardian or general conservator for the partner.

(C) A judicial determination that the partner has otherwise become incapable of performing the partner's duties under the partnership agreement.

(8) In the case of a partner that is a trust or is acting as a partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor trustee.

(9) In the case of a partner that is an estate or is acting as a partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the partnership, but not merely by reason of the substitution of a successor personal representative.

(10) Termination of a partner who is not an individual, partnership, corporation, trust, or estate.

16602. (a) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to paragraph (1) of Section 16601.

(b) A partner's dissociation is wrongful only if any of the following apply:

(1) It is in breach of an express provision of the partnership agreement.

(2) In the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking if any of the following apply:

(A) The partner withdraws by express will, unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under paragraphs (6) to (10), inclusive, of Section 16601 or wrongful dissociation under this subdivision.

(B) The partner is expelled by judicial determination under paragraph (5) of Section 16601.

(C) The partner is dissociated by becoming a debtor in bankruptcy.

(D) In the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(c) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

16603. Upon a partner's dissociation, all of the following apply:

(1) The partner's right to participate in the management and conduct of the partnership business terminates.

(2) The partner's duty of loyalty under paragraph (3) of subdivision (b) of Section 16404 terminates.

(3) The partner's duty of loyalty under paragraphs (1) and (2) of subdivision (b) of Section 16404 and duty of care under subdivision (c) of Section 16404 continue only with regard to matters arising and events occurring before the partner's dissociation.

Article 7. Partner's Dissociation When Business Not Wound Up

16701. Except as provided in Section 16701.5, all of the following shall apply:

(a) If a partner is dissociated from a partnership, the partnership shall cause the dissociated partner's interest in the partnership to be purchased for a buyout price determined pursuant to subdivision (b).

(b) The buyout price of a dissociated partner's interest is the amount that would have been distributable to the dissociating partner under subdivision (b) of Section 16807 if, on the date of dissociation, the assets of the partnership were sold at a price equal to the greater of the liquidation value or the value based on a sale of the entire business as a going concern without the dissociated partner and the partnership was wound up as of that date. Interest shall be paid from the date of dissociation to the date of payment.

(c) Damages for wrongful dissociation under subdivision (b) of Section 16602, and all other amounts owing, whether or not presently due, from the dissociated partner to the partnership, shall be offset against the buyout price. Interest shall be paid from the date the amount owed becomes due to the date of payment.

(d) A partnership shall indemnify a dissociated partner whose interest is being purchased against all partnership liabilities, whether incurred before or after the dissociation, except liabilities incurred by an act of the dissociated partner under Section 16702.

(e) If no agreement for the purchase of a dissociated partner's interest is reached within 120 days after a written demand for payment, the partnership shall pay, or cause to be paid, in cash to the dissociated partner the amount the partnership estimates to be the buyout price and accrued interest, reduced by any offsets and accrued interest under subdivision (c).

(f) If a deferred payment is authorized under subdivision (h), the partnership may tender a written offer to pay the amount it estimates to be the buyout price and accrued interest, reduced by any offsets under subdivision (c), stating the time of payment, the amount and type of security for payment, and the other terms and conditions of the obligation.

(g) The payment or tender required by subdivision (e) or (f) shall be accompanied by all of the following:

(1) A statement of partnership assets and liabilities as of the date of dissociation.

(2) The latest available partnership balance sheet and income statement, if any.

(3) An explanation of how the estimated amount of the payment was calculated.

(4) Written notice that the payment is in full satisfaction of the obligation to purchase unless, within 120 days after the written notice, the dissociated partner commences an action to determine

the buyout price, any offsets under subdivision (c), or other terms of the obligation to purchase.

(h) A partner who wrongfully dissociates before the expiration of a definite term or the completion of a particular undertaking is not entitled to payment of any portion of the buyout price until the expiration of the term or completion of the undertaking, unless the partner establishes to the satisfaction of the court that earlier payment will not cause undue hardship to the business of the partnership. A deferred payment shall be adequately secured and bear interest.

(i) A dissociated partner may maintain an action against the partnership, pursuant to subparagraph (B) of paragraph (2) of subdivision (b) of Section 16405, to determine the buyout price of that partner's interest, any offsets under subdivision (c), or other terms of the obligation to purchase. The action shall be commenced within 120 days after the partnership has tendered payment or an offer to pay or within one year after written demand for payment if no payment or offer to pay is tendered. The court shall determine the buyout price of the dissociated partner's interest, any offset due under subdivision (c), and accrued interest, and enter judgment for any additional payment or refund. If deferred payment is authorized under subdivision (h), the court shall also determine the security for payment and other terms of the obligation to purchase. The court may assess reasonable attorney's fees and the fees and expenses of appraisers or other experts for a party to the action, in amounts the court finds equitable, against a party that the court finds acted arbitrarily, vexatiously, or not in good faith. The finding may be based on the partnership's failure to tender payment or an offer to pay or to comply with subdivision (g).

16701.5. (a) Section 16701 shall not apply to any dissociation that occurs within 90 days prior to a dissolution under Section 16801.

(b) For dissociations occurring within 90 days prior to the dissolution, both of the following shall apply:

(1) All partners who dissociated within 90 days prior to the dissolution shall be treated as partners under Section 16807.

(2) Any damages for wrongful dissociation under subdivision (b) of Section 16602 and all other amounts owed by the dissociated partner to the partnership, whether or not presently due, shall be taken into account in determining the amount distributable to the dissociated partner under Section 16807.

16702. (a) For two years after a partner dissociates, the partnership, including a surviving partnership under Article 9 (commencing with Section 16901), is bound by an act of the dissociated partner that would have bound the partnership under Section 16301 before dissociation only if at the time of entering into the transaction all of the following apply to the other party:

(1) The other party reasonably believed that the dissociated partner was then a partner.

(2) The other party did not have notice of the partner's dissociation.

(3) The other party is not deemed to have had knowledge under subdivision (e) of Section 16303 or notice under subdivision (c) of Section 16704.

(b) A dissociated partner is liable to the partnership for any damage caused to the partnership arising from an obligation incurred by the dissociated partner after dissociation for which the partnership is liable under subdivision (a).

16703. (a) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation, except as otherwise provided in subdivision (b).

(b) Except for registered limited liability partnerships and foreign limited liability partnerships, a partner who dissociates is liable as a partner to the other party in a transaction entered into by the partnership, or a surviving partnership under Article 9 (commencing with Section 16901), within two years after the partner's dissociation, only if at the time of entering into the transaction all of the following apply to the other party:

(1) The other party reasonably believed that the dissociated partner was then a partner.

(2) The other party did not have notice of the partner's dissociation.

(3) The other party is not deemed to have had knowledge under subdivision (e) of Section 16303 or notice under subdivision (c) of Section 16704.

(c) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(d) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

16704. (a) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership as filed with the Secretary of State, any identification number issued by the Secretary of State, and that the partner is dissociated from the partnership.

(b) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of subdivisions (d) and (e) of Section 16303.

(c) For the purposes of paragraph (3) of subdivision (a) of Section 16702 and paragraph (3) of subdivision (b) of Section 16703, a person not a partner is deemed to have notice of the dissociation 90 days after the statement of dissociation is filed.

16705. Continued use of a partnership name, or a dissociated partner's name as part thereof, by partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

Article 8. Winding Up Partnership Business

16801. A partnership is dissolved, and its business shall be wound up, only upon the occurrence of any of the following events:

(1) In a partnership at will, by the express will to dissolve and wind up the partnership business of at least half of the partners, including partners, other than wrongfully dissociating partners, who have dissociated within the preceding 90 days, and for which purpose a dissociation under paragraph (1) of Section 16601 constitutes an expression of that partner's will to dissolve and wind up the partnership business.

(2) In a partnership for a definite term or particular undertaking, when any of the following occurs:

(A) After the expiration of 90 days after a partner's dissociation by death or otherwise under paragraphs (6) to (10), inclusive, of Section 16601, or a partner's wrongful dissociation under subdivision (b) of Section 16602 unless before that time a majority in interest of the partners, including partners who have rightfully dissociated pursuant to subparagraph (A) of paragraph (2) of subdivision (b) of Section 16602, agree to continue the partnership.

(B) The express will of all of the partners to wind up the partnership business.

(C) The expiration of the term or the completion of the undertaking.

(3) An event agreed to in the partnership agreement resulting in the winding up of the partnership business.

(4) An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within 90 days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section.

(5) On application by a partner, a judicial determination that any of the following apply:

(A) The economic purpose of the partnership is likely to be unreasonably frustrated.

(B) Another partner has engaged in conduct relating to the partnership business that makes it not reasonably practicable to carry on the business in partnership with that partner.

(C) It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement.

(6) On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business after the expiration of the term or completion of the undertaking, if the partnership was for a definite term or

particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer.

16802. (a) Subject to subdivision (b), a partnership continues after dissolution only for the purpose of winding up its business. The partnership is terminated when the winding up of its business is completed.

(b) At any time after the dissolution of a partnership and before the winding up of its business is completed, all of the partners, including any dissociating partner other than a wrongfully dissociating partner, may waive the right to have the partnership's business wound up and the partnership terminated. In that event both of the following apply:

(1) The partnership resumes carrying on its business as if dissolution had never occurred, and any liability incurred by the partnership or a partner after the dissolution and before the waiver is determined as if dissolution had never occurred.

(2) The rights of a third party accruing under paragraph (1) of Section 16804 or arising out of conduct in reliance on the dissolution before the third party knew or received a notification of the waiver may not be adversely affected.

16803. (a) After dissolution, a partner who has not dissociated may participate in winding up the partnership's business, but on application of any partner, partner's legal representative, or transferee, the court, for good cause shown, may order judicial supervision of the winding up.

(b) The legal representative of the last surviving partner may wind up a partnership's business.

(c) A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and close the partnership's business, dispose of and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to Section 16807, settle disputes by mediation or arbitration, and perform other necessary acts.

16804. Subject to Section 16805, a partnership is bound by a partner's act after dissolution that is either of the following:

(1) Appropriate for winding up the partnership business.

(2) Would have bound the partnership under Section 16301 before dissolution, if the other party to the transaction did not have notice of the dissolution.

16805. (a) After dissolution, a partner who has not wrongfully dissociated may file a statement of dissolution stating the name of the partnership as filed with the Secretary of State, any identification number issued by the Secretary of State, and that the partnership has dissolved and is winding up its business.

(b) A statement of dissolution cancels a filed statement of partnership authority for the purposes of subdivision (d) of Section

16303 and is a limitation on authority for the purposes of subdivision (e) of Section 16303.

(c) For the purposes of Sections 16301 and 16804, a person not a partner is deemed to have notice of the dissolution and the limitation on the partners' authority as a result of the statement of dissolution 90 days after it is filed.

(d) After filing and, if appropriate, recording a statement of dissolution, a dissolved partnership may file and, if appropriate, record a statement of partnership authority that will operate with respect to a person not a partner as provided in subdivisions (d) and (e) of Section 16303 in any transaction, whether or not the transaction is appropriate for winding up the partnership business.

16806. (a) Except as otherwise provided in subdivision (b) and except for registered limited liability partnerships and foreign limited liability partnerships, after dissolution a partner is liable to the other partners for the partner's share of any partnership liability incurred under Section 16804.

(b) Except for registered limited liability partnerships and foreign limited liability partnerships, a partner who, with knowledge of the dissolution, incurs a partnership liability under paragraph (2) of Section 16804 by an act that is not appropriate for winding up the partnership business is liable to the partnership for any damage caused to the partnership arising from the liability.

16807. (a) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, shall be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus shall be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subdivision (b).

(b) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, the profits and losses that result from the liquidation of the partnership assets shall be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. Except for registered limited liability partnerships and foreign limited liability partnerships, a partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account.

(c) If a partner fails to contribute the full amount that the partner is obligated to contribute under subdivision (b), all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are liable under Section 16306. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the

partnership obligations for which the partner is personally liable under Section 16306.

(d) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under Section 16306.

(e) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(f) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.

Article 9. Conversions and Mergers

16901. In this article, the following terms have the following meanings:

(1) "Constituent other business entity" means any other business entity that is merged with or into one or more limited partnerships and includes a surviving other business entity.

(2) "Constituent partnership" means a partnership that is merged with or into one or more other partnerships or other business entities and includes a surviving partnership.

(3) "Disappearing other business entity" means a constituent other business entity that is not the surviving other business entity.

(4) "Disappearing partnership" means a constituent limited partnership that is not the surviving partnership.

(5) "Domestic" means organized under the laws of this state when used in relation to any partnership, other business entity, or person (other than an individual).

(6) "Foreign other business entity" means any other business entity formed under the laws of any state other than this state or under the laws of the United States or of a foreign country.

(7) "Foreign partnership" means a partnership formed under the laws of any state other than this state or under the laws of a foreign country.

(8) "General partner" means a partner in a partnership and a general partner in a limited partnership.

(9) "Limited liability company" means a limited liability company created under Title 2.5 (commencing with Section 17000), or comparable law of another jurisdiction.

(10) "Limited partner" means a limited partner in a limited partnership.

(11) "Limited partnership" means a limited partnership created under Chapter 3 (commencing with Section 15611), predecessor law, or comparable law of another jurisdiction.

(12) "Other business entity" means a limited partnership, limited liability company, or an unincorporated association (other than a nonprofit association), but excluding a partnership.

(13) "Partner" includes both a general partner and a limited partner.

(14) "Surviving other business entity" means an other business entity into which one or more partnerships are merged.

(15) "Surviving partnership" means a partnership into which one or more other partnerships or other business entities are merged.

16902. A partnership, other than a registered limited liability partnership, may be converted into a domestic limited partnership or limited liability company or a foreign other business entity pursuant to this article if pursuant to the proposed conversion each of the partners of the converting partnership would receive a percentage interest in the profits and capital of the converted other business entity equal to the partner's percentage interest in profits and capital of the converting partnership as of the effective time of the conversion. Notwithstanding this section, the conversion of a partnership to a domestic limited partnership or limited liability company or foreign other business entity may be effected only if: (1) the law under which that domestic limited partnership or limited liability company or foreign other business entity will exist expressly permits the formation of that other entity pursuant to a conversion; and (2) the partnership complies with any and all other requirements of such other law that applies to conversion of the other business entity.

16903. (a) A partnership that desires to convert to a domestic limited partnership or limited liability company or foreign other business entity shall approve a plan of conversion. The plan of conversion shall state:

(1) The terms and conditions of the conversions.

(2) The place of the organization of the converted entity and of the converting partnership and the name of the converted entity after conversion, if different from that of the converting partnership.

(3) The manner of converting the partnership interests of each of the partners into securities of or interests in the converted entity.

(4) The provisions of the governing document for the converted entity, such as a limited partnership agreement or limited liability company articles of organization and operating agreement, to which the holders of interest in the converted entity are to be bound.

(5) Any other details or provisions as are required by laws under which the converted entity is organized.

(6) Any other details or provisions that are desired.

(b) The plan of conversion shall be approved by that number or percentage of partners required by the partnership agreement to approve a conversion of the partnership as set forth in the partnership agreement. If the partnership agreement fails to specify the required partner approval for a conversion of the partnership,

then the plan of conversion shall be approved by that number or percentage of partners required by the partnership agreement to approve an amendment to the partnership agreement; provided, however, that if the conversion effects a change for which the partnership agreement requires a greater number or percentage of partners than that required to amend the partnership agreement, then the plan of conversion shall be approved by that greater number or percentage. If the partnership agreement fails to specify the vote required to amend the partnership agreement, then the plan of conversion shall be approved by all partners.

(c) If the partnership is converting into a limited partnership, then in addition to the approval of the partners as set forth in subdivision (b), the plan of conversion shall be approved by all partners who will become general partners of the converted limited partnership pursuant to the plan of conversion.

(d) All partners of the converting partnership except those that dissociate upon effectiveness of the conversion pursuant to subdivision (e) of Section 16904 shall be deemed parties to any partnership or operating or organic document for the converted entity adopted as part of the plan of conversion, regardless of whether that partner has executed the plan of conversion or the operating or partnership agreement or other organic document for the converted entity. Any adoption of a new partnership, operating agreement, or other organic document made pursuant to the foregoing sentence shall be effective at the effective time or date of the conversion.

(e) Notwithstanding its prior approval, a plan of conversion may be amended before the conversion takes effect if the amendment is approved by the partnership in the same manner, and by the same number or percentage of partners, as was required for approval of the original plan of conversion.

(f) The partners of a converting partnership may, at any time before the conversion is effective, in their discretion, abandon a conversion, without further approval by the partners, in the same manner, and by the same number or percentage of partners, as was required for approval of the original plan of conversion at any time before the conversion is effective, subject to the contractual rights of third parties.

(g) The converted entity shall keep the plan of conversion at: (1) the principal place of business of the converted entity, if the converted entity is a foreign other business entity; or (2) the office at which records are to be kept under Section 15614 if the converted entity is a domestic limited partnership, or at the office at which records are to be kept under Section 17057 if the converted entity is a domestic limited liability company. Upon the request of a partner of a converting partnership, the authorized person on behalf of the converted entity shall promptly deliver to the partner or the holder of interests or other securities, at the expense of the converted entity,

a copy of the plan of conversion. A waiver by a partner of the rights provided in this subdivision shall be unenforceable.

16904. (a) A conversion into a domestic limited partnership or limited liability company shall become effective upon the earliest date that all of the following shall have occurred:

(1) The approval of the plan of conversion by the partners of the converting partnership as provided in Section 16903.

(2) The filing of all documents required by law to create the converted limited partnership or limited liability company, which documents shall also contain a statement of conversion, if required under Section 16906.

(3) The effective date, if set forth in the plan of conversion, shall have occurred.

(b) A copy of the certificate of limited partnership or articles of organization complying with Section 16906, if applicable, duly certified by the Secretary of State, is conclusive evidence of the conversion of the partnership.

16905. (a) The conversion of a partnership into a foreign other business entity shall comply with Section 16902.

(b) If the partnership is converting into a foreign other business entity, then the conversion proceedings shall be in accordance with the laws of the state or place of organization of the foreign other business entity and the conversion shall become effective in accordance with that law.

(c) The Secretary of State is the agent for service of process in an action or proceeding against a converted foreign other business entity to enforce an obligation of a partnership that has converted to a foreign entity. Unless a statement of conversion has been filed to effect the conversion, the converted entity shall promptly notify the Secretary of State of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the Secretary of State shall mail a copy of the process to the converted entity.

16906. (a) If the converting partnership has filed a statement of partnership authority under Section 16303 that is effective at the time of the conversion, then upon conversion to a domestic limited partnership or limited liability company, the certificate of limited partnership or articles of organization filed by the converted entity, as applicable, shall contain or be accompanied by a statement of conversion, in such form as may be prescribed by the Secretary of State. If the converting partnership has not filed a statement of partnership authority under Section 16303 that is effective at the time of the conversion, upon conversion to a domestic limited partnership or limited liability company, the converted entity may, but is not required to file, on or with its certificate of limited partnership or articles of organization, a statement of conversion. A statement of conversion shall be executed and acknowledged by two partners (unless a lesser number is provided in the partnership agreement) and shall set forth all of the following:

(1) The name and the Secretary of State's file number, if any, of the converting partnership.

(2) A statement that the principal terms of the plan of conversion were approved by a vote of the partners, which equaled or exceeded the vote required under Section 16903.

(b) A partnership converting to a foreign other business entity that has filed a statement of partnership authority under Section 16303 that is effective at the time of conversion may file a statement of conversion with the Secretary of State. The statement of conversion shall contain the following:

(1) The names of the converting partnership and the converted entity.

(2) The street address of the converted entity's chief executive office and of an office in this state, if any.

(3) The form of organization of the converted entity.

(c) The filing with the Secretary of State of a certificate of limited partnership or articles of organization containing a statement of conversion as set forth in subdivision (a) or a statement of conversion filed pursuant to subdivision (b) shall have the effect of the filing of a cancellation by the converting partnership of any statement of partnership authority filed by it.

16907. (a) Whenever a partnership or other business entity having any real property in this state converts into a partnership or an other business entity pursuant to the laws of this state or of the state or place in which the other business entity was organized, and the laws of the state or place of organization (including this state) of the converting partnership or other business entity provide substantially that the conversion of a converting entity vests in the converted partnership or other business entity all the real property of the converting partnership or converting other business entity, the filing for record in the office of the county recorder of any county in this state in which any of the real property of the converting partnership or converting other business entity is located of either (1) a statement of conversion or a certificate of limited partnership or articles of organization complying with Section 16906, in such form as prescribed by the Secretary of State, certified by the Secretary of State, or (2) a copy of a statement of conversion, certificate of limited partnership, or articles of organization containing a statement of conversion or other certificate evidencing the creation of a foreign other business entity by conversion, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the conversion is effected, shall evidence record ownership in the converted partnership or converted other business entity of all interest of the converting partnership or converting other business entity in and to the real property located in that county.

(b) A filed and, if appropriate, recorded statement of conversion, certificate of limited partnership, or articles of organization

containing a statement of conversion or other certificate evidencing the creation of an other business entity by conversion executed and declared to be accurate pursuant to subdivision (c) of Section 16105, stating the name of the converting partnership or converting other business entity in whose name property was held before the conversion and the name of the converted entity, but not containing all of the other information required by Section 16906, operates with respect to the entities named to the extent provided in subdivision (a).

(c) Recording of a statement of conversion, certificate of limited partnership, or articles of organization containing a statement of conversion, or other certificate evidencing the creation of another business entity by conversion, in accordance with paragraph (1) of Section 16902 shall create, in favor of bona fide purchasers or encumbrancers for value, a conclusive presumption that the conversion was validly completed.

16908. (a) A domestic limited partnership or limited liability company or a foreign other business entity may be converted to a domestic partnership pursuant to this article, but only if the converting entity is not prohibited by the laws under which it is organized to effect the conversion.

(b) An entity that desires to convert into a domestic partnership shall approve a plan of conversion or such instrument as is required to be approved to effect the conversion pursuant to the laws under which the entity is organized.

(c) The conversion of a domestic limited partnership or limited liability company or foreign other business entity shall be approved by the number or percentage of the partners, members, or holders of interest of the converting entity as is required by the law under which the entity is organized, or a greater or lesser percentage (subject to applicable laws) as set forth in the limited partnership agreement, articles of organization, or operating agreement or other governing document for the converting entity.

(d) The conversion by a domestic limited partnership or limited liability company or a foreign other business entity into a partnership shall be effective under this article at such time as the conversion is effective under the law under which the converting entity is organized.

16909. (a) An entity that converts into another entity pursuant to this article is for all purposes the same entity that existed before the conversion.

(b) When a conversion takes effect, all of the following apply:

(1) All the rights and property, whether real, personal, or mixed, of the converting entity remains vested in the converted entity.

(2) All debts, liabilities, and obligations of the converting entity continue as debts, liabilities, and obligations of the converted entity.

(3) All rights of creditors and liens upon the property of the converting entity shall be preserved unimpaired and remain

enforceable against the converted entity to the same extent as against the converting entity as if the conversion had not occurred.

(4) Any action or proceeding pending by or against the converting entity may be continued against the converted entity as if the conversion had not occurred.

(c) A partner of a converting partnership is liable for:

(1) All obligations of the converting partnership for which the partner was personally liable before the conversion.

(2) All obligations of the converted entity incurred after the conversion takes effect, but those obligations may be satisfied only out of property of the entity if (A) the converted other business entity is a limited partnership and the partner becomes a limited partner or (B) the converted other business entity is a limited liability company and the partner becomes a member, unless the articles of organization or the operating agreement of the limited liability company provide otherwise.

(d) A partner of a partnership that converted from an other business entity is liable for any and all obligations of the converting other business entity for which the partner was personally liable before the conversion, but only to the extent the partner was liable for the obligation of the converting entity prior to the conversion.

(e) A partner of a converting partnership, who does not vote in favor of the conversion and does not agree to become a partner, member, or holder of interest of the converted other business entity shall have the right to dissociate from the partnership, as of the date the conversion takes effect. Within 10 days after the approval of the conversion by the partners as required under this article, the converting partnership shall send notice of the approval of the conversion to each partner that has not approved the conversion, accompanied by copies of Section 16701 and a brief description of the procedure to be followed under that section if the partner wishes to dissociate from the partnership. A partner that desires to dissociate from the converting partnership shall send written notice of such dissociation within 30 days after the date of the notice of the approval of the conversion. The converting partnership shall cause the partner's interest in the entity to be purchased under Section 16701. The converting partnership is bound under Section 16702 by an act of a general partner dissociated under this subdivision, and the partner is liable under Section 16703 for transactions entered into by the converted entity after the conversion takes effect. The dissociation of a partner in connection with a conversion pursuant to the terms of this subdivision shall not be deemed to be a wrongful dissociation under Section 16602.

16910. (a) The following entities may be merged pursuant to this article:

(1) Two or more partnerships into one partnership.

(2) One or more partnerships and one or more other business entities into one of those other business entities.

(3) One or more partnerships, other than a limited liability partnership, and one or more other business entities into one partnership.

(b) Notwithstanding subdivision (a), the merger of any number of partnerships with any number of other business entities may be effected only if the other business entities that are organized in California are authorized by the laws under which they are organized to effect the merger, and (1) if a domestic partnership is the surviving partnership, the foreign other business entities are not prohibited by the laws under which they are organized from effecting that merger and (2) if a foreign partnership or foreign other business entity is the survivor of the merger, the laws of the jurisdiction under which the survivor is organized authorize that merger.

16911. (a) Each partnership and other business entity which desires to merge shall approve an agreement of merger. The agreement of merger shall be approved by the number or percentage of partners specified for merger in the partnership agreement of the constituent partnership. If the partnership agreement fails to specify the required partner approval for merger of the constituent partnership, then the agreement of merger shall be approved by that number or percentage of partners specified by the partnership agreement to approve an amendment to the partnership agreement; provided, however, that if the merger effects a change for which the partnership agreement requires a greater number or percentage of partners than that required to amend the partnership agreement, then the merger shall be approved by that greater number or percentage. If the partnership agreement contains no provision specifying the vote required to amend the partnership agreement, then the agreement of merger must be approved by all the partners. The agreement of merger shall be approved on behalf of each constituent other business entity by those persons required to approve the merger by the laws under which it is organized. Other persons may be parties to the agreement of merger. The agreement of merger shall state:

(1) The terms and conditions of the merger.

(2) The name and place of organization of the surviving partnership or surviving other business entity, and of each disappearing partnership and disappearing other business entity, and the agreement of merger may change the name of the surviving partnership, which new name may be the same as or similar to the name of a disappearing partnership.

(3) The manner of converting the partnership interests of each of the constituent partnerships into interests or other securities of the surviving partnership or surviving other business entity, and if partnership interests of any of the constituent partnerships are not to be converted solely into interest or other securities of the surviving partnership or surviving other business entity, the cash, property,

rights, interests, or securities which the holders of the partnership interest are to receive in exchange for the partnership interests, which cash, property, rights, interests, or securities may be in addition to or in lieu of interests of other securities of the surviving partnership or surviving other business entity, or that the partnership interests are canceled without consideration.

(4) Any other details or provisions as are required by the laws under which any constituent other business entity is organized.

(5) Any other details or provisions that are desired, including, without limitation, a provision for the treatment of fractional partnership interests.

(b) If the partnership is merging into a limited partnership, then in addition to the approval of the partners as set forth under subdivision (a), the agreement of merger must be approved by all partners who will become general partners of the surviving limited partnership upon the effectiveness of the merger.

(c) Notwithstanding its prior approval, an agreement of merger may be amended before the merger takes effect if the amendment is approved by the partners of each constituent partnership, in the same manner as required for approval of the original agreement of merger, and by each of the constituent other business entities.

(d) The partners of a constituent partnership may in their discretion, abandon a merger, subject to the contractual rights, if any, of third parties, including other constituent partnerships and constituent other business entities, if the abandonment is approved by the partners of the constituent partnership in the same manner as required for approval of the original agreement of merger.

(e) An agreement of merger approved in accordance with subdivision (a) may (1) effect any amendment to the partnership agreement of any domestic constituent partnership or (2) effect the adoption of a new partnership agreement for a domestic constituent partnership if it is the surviving partnership in the merger. Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to the foregoing sentence shall be effective at the effective time or date of the merger.

(f) The surviving partnership or surviving other business entity shall keep the agreement of merger at the principal place of business of the surviving entity if the surviving entity is a partnership or a foreign other business entity, at the office referred to in subdivision (a) of Section 15614 if the surviving entity is a domestic limited partnership or at the office referred to in Section 17057 if the surviving entity is a domestic limited liability company and, upon the request of a partner of a constituent partnership or a holder of interests or other securities of a constituent other business entity, the authorized person on behalf of the partnership or the surviving other business entity shall promptly deliver to the partner or the holder of interests or other securities, at the expense of the surviving partnership or surviving other business entity, a copy of the

agreement of merger. A waiver by a partner or holder of interests or other securities of the rights provided in this subdivision shall be unenforceable.

16912. (a) Unless a future effective date or time is provided in a certificate of merger if a certificate of merger is required to be filed under Section 16915 in which event the merger shall be effective at the future effective date or time:

(1) A merger in which no domestic other business entity is a party to the merger shall be effective upon the later of any of the following:

(A) The approval of the agreement of merger by all parties to the merger as provided in Section 16911.

(B) The filing of all documents required by law to be filed as a condition to the effectiveness of the merger; or

(C) Any effective date specified in the agreement of merger; and

(2) A merger in which a domestic other business entity is a party to the merger shall be effective upon the filing of the certificate of merger in the office of the Secretary of State.

(b) For all mergers in which a certificate of merger is required to be filed under Section 16915, a copy of the certificate of merger duly certified by the Secretary of State is conclusive evidence of the merger of (A) the constituent partnerships (either by themselves or together with constituent other business entities) into the surviving other business entity, or (B) the constituent partnerships or the constituent other business entities, or both, into the surviving partnership.

16913. (a) The merger of any number of domestic partnerships with any number of foreign partnerships or foreign other business entities shall be required to comply with Section 16910.

(b) If the surviving entity is a domestic partnership or a domestic other business entity, the merger proceedings with respect to that partnership or other business entity and any domestic disappearing partnership shall conform to the provisions of this chapter governing the merger of domestic partnerships, but if the surviving entity is a foreign partnership or a foreign other business entity, then, subject to the requirements of subdivision (d), the merger proceedings may be in accordance with the laws of the state or place of organization of the surviving partnership or surviving other business entity.

(c) If the surviving entity is a domestic other business entity or is a domestic partnership in a merger in which a domestic other business entity is also a party, the certificate of merger shall be filed as provided in subdivision (b) of Section 16915, and thereupon, subject to subdivision (a) of Section 16912, the merger shall be effective as to each domestic constituent partnership and domestic constituent other business entity.

(d) If the surviving entity is a foreign partnership or foreign other business entity, the merger shall become effective in accordance with the law of the jurisdiction in which the surviving partnership or surviving other business entity is organized, but shall be effective as

to any domestic disappearing partnership as of the time of effectiveness in the foreign jurisdiction in accordance with Section 16912.

16914. (a) When a merger takes effect, all of the following apply:

(1) The separate existence of the disappearing partnerships and disappearing other business entities ceases and the surviving partnership or surviving other business entity shall succeed, without other transfer, act or deed, to all the rights and property whether real, personal, or mixed, of each of the disappearing partnerships and disappearing other business entities and shall be subject to all the debts and liabilities of each in the same manner as if the surviving partnership or surviving other business entity had itself incurred them.

(2) All rights of creditors and all liens upon the property of each of the constituent partnerships and constituent other business entities shall be preserved unimpaired and may be enforced against the surviving partnership or the surviving other business entity to the same extent as if the debt, liability or duty which gave rise to that lien had been incurred or contracted by it, provided that such liens upon the property of a disappearing partnership or disappearing other business entity shall be limited to the property affected thereby immediately prior to the time the merger is effective.

(3) Any action or proceeding pending by or against any disappearing partnership or disappearing other business entity may be prosecuted to judgment, which shall bind the surviving partnership or surviving other business entity, or the surviving partnership or surviving other business entity may be proceeded against or be substituted in the disappearing partnership's or the disappearing other business entity's place.

(b) The Secretary of State is the agent for service of process in an action or proceeding against a foreign surviving partnership or foreign surviving other business entity to enforce an obligation of a domestic partnership or domestic other business entity that is a party to a merger. Unless a certificate of merger has been filed to effect the merger, the surviving entity shall promptly notify the Secretary of State of the mailing address of its chief executive office and of any change of address. Upon receipt of process, the Secretary of State shall mail a copy of the process to the foreign surviving partnership or foreign surviving other business entity.

(c) A partner of the surviving partnership or surviving limited partnership or a member of the surviving limited liability company is liable for all of the following:

(1) All obligations of a party to the merger for which the partner or member was personally liable before the merger.

(2) All other obligations of the surviving entity incurred before the merger by a party to the merger, but those obligations may be satisfied only out of property of the entity.

(3) All obligations of the surviving entity incurred after the merger takes effect, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner or, unless expressly provided otherwise in the articles of organization, a member of a limited liability company.

(d) If the obligations incurred before the merger by a party to the merger are not satisfied out of the property of the surviving partnership or surviving other business entity, the general partners of that party immediately before the effective date of the merger, to the extent such party was a partnership or a limited partnership, shall contribute the amount necessary to satisfy that party's obligations to the surviving entity, in the manner provided in Section 16807 or in the limited partnership act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved.

(e) A partner of a domestic disappearing partnership, who does not vote in favor of the merger and does not agree to become a partner, member or holder of interest of the surviving partnership or surviving other business entity shall have the right to dissociate from the partnership, as of the date the merger takes effect. Within 10 days after the approval of the merger by the partners as required under this article, each domestic disappearing partnership shall send notice of the approval of the merger to each partner that has not approved the merger, accompanied by a copy of Section 16701 and a brief description of the procedure to be followed under that section if the partner wishes to dissociate from the partnership. A partner that desires to dissociate from a disappearing partnership shall send written notice of such dissociation within 30 days after the date of the notice of the approval of the merger. The disappearing partnership shall cause the partner's interest in the entity to be purchased under Section 16701. The surviving entity is bound under Section 16702 by an act of a general partner dissociated under this subdivision, and the partner is liable under Section 16703 for transactions entered into by the surviving entity after the merger takes effect. The disassociation of a partner in connection with a merger pursuant to the terms of this subdivision shall not be deemed a wrongful disassociation under Section 16602.

16915. (a) In a merger involving only partnerships, or in a merger to which a domestic partnership and an other business entity is a party but in which no other domestic other business entity is a party, the surviving partnership or surviving foreign other business entity may file with the Secretary of State a statement that one or more partnerships have merged into the surviving partnership or surviving other business entity. A statement of merger shall contain the following:

(1) The name of each partnership or other business entity that is a party to the merger.

(2) The name of the surviving entity into which the other partnerships or other business entities where merged.

(3) The street address of the surviving entity's chief executive office and of an office in this state, if any.

(4) Whether the surviving entity is a partnership or an other business entity, specifying the type of the entity.

(b) In a merger involving a domestic partnership in which a domestic other business entity is also a party, after approval of the merger by the constituent partnerships and any constituent other business entities, the constituent partnerships and constituent other business entities shall file a certificate of merger in the office of and on a form prescribed by, the Secretary of State. The certificate of merger shall be executed and acknowledged by each domestic constituent partnership by two partners (unless a lesser number is provided in the partnership agreement) and by each foreign constituent partnership by one or more partners, and by each constituent other business entity by those persons required to execute the certificate of merger by the laws under which the constituent other business entity is organized. The certificate of merger shall set forth all of the following:

(1) The names and the Secretary of State's file numbers, if any, of each of the constituent partnerships and constituent other business entities, separately identifying the disappearing partnerships and disappearing other business entities and the surviving partnership or surviving other business entity.

(2) If a vote of the partners was required under Section 16911, a statement that the principal terms of the agreement of merger were approved by a vote of the partners, which equaled or exceeded the vote required.

(3) If the surviving entity is a domestic partnership and not an other business entity, any change to the information set forth in any filed statement of partnership authority of the surviving partnership resulting from the merger, including any change in the name of the surviving partnership resulting from the merger. The filing of a certificate of merger setting forth any such changes to any filed statement of partnership authority of the surviving partnership shall have the effect of the filing of a certificate of amendment of the statement of partnership authority by the surviving partnership, and the surviving partnership need not file a certificate of amendment under Section 16015 to reflect those changes.

(4) The future effective date or time (which shall be a date or time certain not more than 90 days subsequent to the date of filing) of the merger, if the merger is not to be effective upon the filing of the certificate of merger with the office of the Secretary of State.

(5) If the surviving entity is an other business entity or a foreign partnership, the full name, type of entity, legal jurisdiction in which the entity was organized and by whose laws its internal affairs are governed, and the address of the principal place of business of the entity.

(6) Any other information required to be stated in the certificate of merger by the laws under which each constituent other business entity is organized.

(c) A statement of merger or a certificate of merger, as is applicable under subdivision (a) or (b), shall have the effect of the filing of a cancellation for each disappearing partnership of any statement of partnership authority filed by it.

16916. (a) Whenever a domestic or foreign partnership or other business entity having any real property in this state merges with another partnership or other business entity pursuant to the laws of this state or of the state or place in which any constituent partnership or constituent other business entity was organized, and the laws of the state or place of organization (including this state) of any disappearing partnership or disappearing other business entity provide substantially that the making and filing of a statement of merger or certificate of merger vests in the surviving partnership or surviving other business entity all the real property of any disappearing partnership and disappearing other business entity, the filing for record in the office of the county record of any county in this state in which any of the real property of the disappearing partnership or disappearing other business entity is located of either (1) a certificate of merger certified by the Secretary of State, or other certificate prescribed by the Secretary of State, or (2) a copy of the statement of merger or certificate of merger, certified by the Secretary of State or an authorized public official of the state or place pursuant to the laws of which the merger is effected, shall evidence record ownership in the surviving partnership or surviving other business entity of all interest of such disappearing partnership or disappearing other business entity in and to the real property located in that county.

(b) A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to subdivision (c) of Section 16105, stating the name of a partnership or other business entity that is a party to the merger in whose name property was held before the merger and the name of the surviving entity, but not containing all of the other information required by Section 16915, operates with respect to the partnerships or other business entities named to the extent provided in subdivision (a).

(c) Recording of the certificate of merger in accordance with subdivision (a) shall create, in favor of bona fide purchasers or encumbrancers for value, a conclusive presumption that the merger was validly completed.

16917. This article is not exclusive. Partnerships, other than limited liability partnerships, may be converted or merged in any other manner provided by law.

Article 10. Limited Liability Partnerships

16951. For purposes of this chapter, the only types of limited liability partnerships that shall be recognized are a registered limited liability partnership and a foreign limited liability partnership, as defined in Section 16101. No registered limited liability partnership or foreign limited liability partnership may render professional limited liability partnership services in this state except through licensed persons.

16952. The name of a registered limited liability partnership shall contain the words "Registered Limited Liability Partnership" or "Limited Liability Partnership" or one of the abbreviations "L.L.P.," "LLP," "R.L.L.P.," or "RLLP" as the last words or letters of its name.

16953. (a) To become a registered limited liability partnership, a partnership, other than a limited partnership, shall file with the Secretary of State a registration, executed by one or more partners authorized to execute a registration, stating (1) the name of the partnership; (2) the address of its principal office; (3) the name and address of the agent for service of process on the limited liability partnership in California; (4) a brief statement of the business in which the partnership engages; (5) any other matters that the partnership determines to include; and (6) that the partnership is registering as a registered limited liability partnership.

(b) The registration shall be accompanied by a fee of seventy dollars ($70).

(c) The Secretary of State shall register as a registered limited liability partnership any partnership that submits a completed registration with the required fee.

(d) The Secretary of State may cancel the filing of the registration if a check or other remittance accepted in payment of the filing fee is not paid upon presentation. Upon receiving written notification that the item presented for payment has not been honored for payment, the Secretary of State shall give a first written notice of the applicability of this section to the agent for service of process or to the person submitting the instrument. Thereafter, if the amount has not been paid by cashier's check or equivalent, the Secretary of State shall give a second written notice of cancellation and the cancellation shall thereupon be effective. The second notice shall be given 20 days or more after the first notice and 90 days or less after the date of the original filing.

(e) A partnership becomes a registered limited liability partnership at the time of the filing of the initial registration with the Secretary of State or at any later date or time specified in the registration and the payment of the fee required by subdivision (b). A partnership continues as a registered limited liability partnership until a notice that it is no longer a registered limited liability partnership has been filed pursuant to subdivision (b) of Section 16954 or, if applicable, until it has been dissolved and finally wound

up. The status of a partnership as a registered limited liability partnership and the liability of a partner of the registered limited liability partnership shall not be adversely affected by errors or subsequent changes in the information stated in a registration under subdivision (a) or an amended registration or notice under Section 16954.

(f) The fact that a registration or amended registration pursuant to this section is on file with the Secretary of State is notice that the partnership is a registered limited liability partnership and of those other facts contained therein that are required to be set forth in the registration or amended registration.

(g) The Secretary of State shall provide a form for a registration under subdivision (a), which shall include the form for confirming compliance with the optional security requirement pursuant to subdivision (c) of Section 16956.

(h) A limited liability partnership providing professional limited liability partnership services in this state shall comply with all statutory and administrative registration or filing requirements of the state board, commission, or other agency that prescribes the rules and regulations governing the particular profession in which the partnership proposes to engage, pursuant to the applicable provisions of the Business and Professions Code relating to that profession. No such state board, commission, or other agency shall disclose, unless compelled by a subpoena or other order of a court of competent jurisdiction, any information it receives in the course of evaluating the compliance of a limited liability partnership with applicable statutory and administrative registration or filing requirements, provided that nothing herein shall be construed to prevent a state board, commission, or other agency from disclosing the manner in which the limited liability partnership has complied with the requirements of Section 16956, or the compliance or noncompliance by the limited liability partnership with any other requirements of the state board, commission, or other agency.

16954. (a) The registration of a registered limited liability partnership may be amended by an amended registration executed by one or more partners authorized to execute an amended registration and filed with the Secretary of State, as soon as reasonably practical after any information set forth in the registration or previously filed amended registration becomes inaccurate or to add information to the registration or amended registration.

(b) If a registered limited liability partnership ceases to be a registered limited liability partnership, it shall file with the Secretary of State a notice, executed by one or more partners authorized to execute the notice, that it is no longer a registered limited liability partnership.

(c) An amendment pursuant to subdivision (a) and a notice pursuant to subdivision (b) shall each be accompanied by a fee of thirty dollars ($30).

(d) The Secretary of State shall provide forms for an amended registration under subdivision (a) and a notice under subdivision (b).

16955. (a) A domestic partnership, other than a limited partnership, may convert to a registered limited liability by the vote of the partners possessing a majority of the interests of its partners in the current profits of the partnership or by a different vote as may be required in its partnership agreement.

(b) When such a conversion takes effect, all of the following apply:

(1) All property, real and personal, tangible and intangible, of the converting partnership remains vested in the converted registered limited liability partnership.

(2) All debts, obligations, liabilities, and penalties of the converting partnership continue as debts, obligations, liabilities, and penalties of the converted registered limited liability partnership.

(3) Any action, suit, or proceeding, civil or criminal, then pending by or against the converting partnership may be continued as if the conversion had not occurred.

(4) To the extent provided in the agreement of conversion and in this chapter, the partners of a partnership shall continue as partners in the converted registered limited liability partnership.

(5) A partnership that has been converted to a registered limited liability partnership pursuant to this chapter is the same person that existed prior to the conversion.

16955.5. A registered limited liability partnership or a partnership converting to a registered limited liability partnership may, by the vote of the partners possessing a majority of the interests of its partners in the current profits of the partnership or by a different vote as may be required in its partnership agreement, elect to be governed by the law in effect prior to adoption of this chapter or by this chapter. The election may be made from time to time and may be revoked by the vote of the partners possessing a majority of the interests of the partners in the current profits of the partnership or by a different vote as may be required in the partnership agreement. Any election not to be governed by this chapter and any revocation of that election shall be set forth in the registration filed by the registered limited liability partnership with the Secretary of State, in an amendment to the registration filed with the Secretary of State, or in an attachment to the registration or amendment. Any such election shall terminate and be of no further force or effect on or after January 1, 1998. After that date the registered limited liability partnership shall be governed by the law as specified in subdivisions (a) and (b) of Section 16111.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 1998, deletes or extends that date.

16956. (a) At the time of registration pursuant to Section 16953, in the case of a registered limited liability partnership, and Section 16959, in the case of a foreign limited liability partnership, and at all

times during which those partnerships shall transact intrastate business, every registered limited liability partnership and foreign limited liability partnership, as the case may be, shall be required to provide security for claims against it as follows:

(1) For claims based upon acts, errors, or omissions arising out of the practice of public accountancy, a registered limited liability partnership or foreign limited liability partnership providing accountancy services shall comply with one, or pursuant to subdivision (b) some combination, of the following:

(A) Maintaining a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims in an amount for each claim of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership; however, the maximum amount of insurance is not required to exceed five million dollars ($5,000,000) for claims initially asserted in any one calendar year, less amounts paid in defending, settling, or discharging those claims.

(B) Maintaining in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance companies as security for payment of liabilities imposed by law for damages arising out of all claims in an amount of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services; however, the maximum amount of security is not required to exceed five million dollars ($5,000,000) for claims initially asserted in any one calendar year, less amounts paid in defending, settling, or discharging those claims.

(C) Confirming, pursuant to the procedure in subdivision (c), that, as of the most recently completed fiscal year of the partnership, it had a net worth equal to or exceeding ten million dollars ($10,000,000).

(2) For claims based upon acts, errors, or omissions arising out of the practice of law, a registered limited liability partnership or foreign limited liability partnership providing legal services shall comply with one, or pursuant to subdivision (b) some combination, of the following:

(A) Each registered limited liability partnership or foreign limited liability partnership providing legal services shall maintain a policy or policies of insurance against liability imposed on or against it by law for damages arising out of claims in an amount for each claim of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership; however, the maximum amount of insurance is not required to exceed seven million five hundred thousand dollars ($7,500,000) for claims initially asserted in any one calendar year, less amounts paid in defending, settling, or discharging those claims.

(B) Each registered limited liability partnership or foreign limited liability partnership providing legal services shall maintain in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance companies as security for payment of liabilities imposed by law for damages arising out of all claims in an amount of at least one hundred thousand dollars ($100,000) multiplied by the number of licensed persons rendering professional services; however, the maximum amount of security is not required to exceed seven million five hundred thousand dollars ($7,500,000) for claims initially asserted in any one calendar year, less amounts paid in defending, settling, or discharging those claims.

(C) Each partner of a registered limited liability partnership or foreign limited liability partnership providing legal services, by virtue of that person's status as a partner, thereby automatically guarantees payment of the difference between the maximum amount of security required for the partnership by paragraph (2) of this subdivision and the security otherwise provided in accordance with the provisions of subparagraphs (A) and (B) of paragraph (2) of this subdivision, provided that the aggregate amount paid by all partners under these guarantees shall not exceed the difference. Withdrawal by a partner shall not affect the rights or obligations of such partner arising prior to withdrawal. Nothing contained in this subparagraph shall affect or impair the rights or obligations of the partners among themselves, or the partnership, including, but not limited to, rights of contribution, subrogation, or indemnification.

(b) For purposes of satisfying the security requirements of this section, a registered limited liability partnership or foreign limited liability partnership may aggregate the security provided by it pursuant to subparagraphs (A), (B), and (C) of paragraph (1) of subdivision (a) or subparagraphs (A), (B), and (C) of paragraph (2) of subdivision (a), as the case may be. Any registered limited liability partnership or foreign limited liability partnership intending to comply with the alternative security provisions set forth in subparagraph (C) of paragraph (1) of subdivision (a) shall furnish the following information to the Secretary of State's office, in the manner prescribed in, and accompanied by all information required by, the applicable section:

TRANSMITTAL FORM FOR EVIDENCING COMPLIANCE WITH SECTION 16956(a)(1)(C) OF THE CALIFORNIA CORPORATIONS CODE

The undersigned hereby confirms the following:

1. _____
Name of registered or foreign limited liability partnership

2. _____
Jurisdiction where partnership is organized

3. _____
Address of principal office

4. The registered or foreign limited liability partnership renders accountancy services and chooses to satisfy the requirements of Section 16956 by confirming, pursuant to Sections 16956(a)(1)(C) and 16956(c), that, as of the most recently completed fiscal year, the partnership had a net worth equal to or exceeding ten million dollars ($10,000,000).

5. _____
Title of authorized person executing this form

6. _____
Signature of authorized person executing this form

(c) Pursuant to subparagraph (C) of paragraph (1) of subdivision (a), a registered limited liability partnership or foreign limited liability partnership rendering accountancy services may satisfy the requirements of this section by confirming that, as of the last day of its most recently completed fiscal year, it had a net worth equal to or exceeding ten million dollars ($10,000,000). In order to comply with this alternative method of meeting the requirements established in this section, a registered limited liability partnership or foreign limited liability partnership shall file an annual confirmation with the Secretary of State's office, signed by an authorized member of the registered limited liability partnership or foreign limited liability partnership, accompanied by a transmittal form as prescribed by subdivision (b). In order to be current in a given year, the partnership form for confirming compliance with the optional security requirement shall be on file within four months of the completion of the fiscal year and, upon being filed, shall constitute full compliance with the financial security requirements for purposes of this section as of the beginning of the fiscal year. A confirmation filed during any particular fiscal year shall continue to be effective for the first four months of the next succeeding fiscal year.

(d) Neither the existence of the requirements of subdivision (a) nor the extent of the registered limited liability partnership's or foreign limited liability partnership's compliance with the

alternative requirements in this section shall be admissible in court or in any way be made known to a jury or other trier of fact in determining an issue of liability for, or to the extent of, the damages in question.

(e) Notwithstanding any other provision of this section, if a registered limited liability partnership is otherwise in compliance with the terms of this section at the time that a bankruptcy or other insolvency proceeding is commenced with respect to the registered limited liability partnership, it shall be deemed to be in compliance with this section during the pendency of the proceeding. A registered limited liability partnership that has been the subject of a proceeding and that conducts business after the proceeding ends shall thereafter comply with paragraph (1) or (2) of subdivision (a), in order to obtain the limitations on liability afforded by subdivision (c) of Section 16306.

16957. (a) No distribution shall be made by a registered limited liability partnership if, after giving effect to the distribution:

(1) The registered limited liability partnership would not be able to pay its debts as they become due in the usual course of business.

(2) The registered limited liability partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the registered limited liability partnership were to be dissolved at the time of the distribution, to satisfy the preferential rights of other partners upon dissolution that are superior to the rights of the partners receiving the distribution.

(b) A cause of action with respect to an obligation to return a distribution is extinguished unless the action is brought within four years after the distribution is made.

(c) A distribution for purposes of this section means the transfer of money or property by a registered limited liability partnership to its partners without consideration.

16958. (a) (1) The laws of the jurisdiction under which a foreign limited liability partnership is organized shall govern its organization and internal affairs and the liability and authority of its partners, subject to compliance with Section 16956, and (2) a foreign limited liability partnership may not be denied registration by reason of any difference between those laws and the laws of this state.

(b) The name of a foreign limited liability partnership transacting intrastate business in this state shall contain the words "Registered Limited Liability Partnership" or "Limited Liability Partnership" or one of the abbreviations "L.L.P.," "LLP," "R.L.L.P.," or "RLLP," or such other similar words or abbreviations as may be required or authorized by the laws of the jurisdiction of formation of the foreign limited liability partnership, as the last words or letters of its name.

16959. (a) (1) Before transacting intrastate business in this state, a foreign limited liability partnership shall comply with all statutory and administrative registration or filing requirements of the state board, commission, or agency that prescribes the rules and

regulations governing a particular profession in which the partnership proposes to be engaged, pursuant to the applicable provisions of the Business and Professions Code relating to the profession or applicable rules adopted by the governing board. A foreign limited liability partnership that transacts intrastate business in this state shall within 30 days after the effective date of the act enacting this section or the date on which the foreign limited liability partnership first transacts intrastate business in this state, whichever is later, register with the Secretary of State by submitting to the Secretary of State an application for registration as a foreign limited liability partnership, signed by a person with authority to do so under the laws of the jurisdiction of formation of the foreign limited liability partnership, stating the name of the partnership, the address of its principal office, the name and address of its agent for service of process in this state, a brief statement of the business in which the partnership engages, and any other matters that the partnership determines to include.

(2) Annexed to the application for registration shall be a certificate from an authorized public official of the foreign limited liability partnership's jurisdiction of organization to the effect that the foreign limited liability partnership is in good standing in that jurisdiction, if the laws of that jurisdiction permit the issuance of those certificates, or, in the alternative, a statement by the foreign limited liability partnership that the laws of its jurisdiction of organization do not permit the issuance of those certificates.

(b) The registration shall be accompanied by a fee of seventy dollars ($70).

(c) The Secretary of State shall register as a foreign limited liability partnership any partnership that submits a completed application for registration with the required fee.

(d) The Secretary of State may cancel the filing of the registration if a check or other remittance accepted in payment of the filing fee is not paid upon presentation. Upon receiving written notification that the item presented for payment has not been honored for payment, the Secretary of State shall give a first written notice of the applicability of this section to the agent for service of process or to the person submitting the instrument. Thereafter, if the amount has not been paid by cashier's check or equivalent, the Secretary of State shall give a second written notice of cancellation and the cancellation shall thereupon be effective. The second notice shall be given 20 days or more after the first notice and 90 days or less after the original filing.

(e) A partnership becomes registered as a foreign limited liability partnership at the time of the filing of the initial registration with the Secretary of State or at any later date or time specified in the registration and the payment of the fee required by subdivision (b). A partnership continues to be registered as a foreign limited liability partnership until a notice that it is no longer so registered as a limited

liability partnership has been filed pursuant to Section 16960 or, if applicable, once it has been dissolved and finally wound up. The status of a partnership registered as a foreign limited liability partnership and the liability of a partner of that foreign limited liability partnership shall not be adversely affected by errors or subsequent changes in the information stated in an application for registration under subdivision (a) or an amended registration or notice under Section 16960.

(f) The fact that a registration or amended registration pursuant to Section 16960 is on file with the Secretary of State is notice that the partnership is a foreign limited liability partnership and of those other facts contained therein that are required to be set forth in the registration or amended registration.

(g) The Secretary of State shall provide a form for a registration under subdivision (a), which shall include the form for confirming compliance with the optional security requirement pursuant to subdivision (c) of Section 16956.

(h) A foreign limited liability partnership transacting intrastate business in this state shall not maintain any action, suit, or proceeding in any court of this state until it has registered in this state pursuant to this section.

(i) Any foreign limited liability partnership that transacts intrastate business in this state without registration is subject to a penalty of twenty dollars ($20) for each day that unauthorized intrastate business is transacted, up to a maximum of ten thousand dollars ($10,000).

(j) A partner of a foreign limited liability partnership is not liable for the debts or obligations of the foreign limited liability partnership solely by reason of its having transacted business in this state without registration.

(k) A foreign limited liability partnership, transacting business in this state without registration, appoints the Secretary of State as its agent for service of process with respect to causes of action arising out of the transaction of business in this state.

(*l*) "Transact intrastate business" as used in this section means to repeatedly and successively provide professional limited liability partnership services in this state, other than in interstate or foreign commerce.

(m) Without excluding other activities that may not be considered to be transacting intrastate business, a foreign limited liability partnership shall not be considered to be transacting intrastate business merely because its subsidiary or affiliate transacts intrastate business, or merely because of its status as any one or more of the following:

(1) A shareholder of a domestic corporation.

(2) A shareholder of a foreign corporation transacting intrastate business.

(3) A limited partner of a foreign limited partnership transacting intrastate business.

(4) A limited partner of a domestic limited partnership.

(5) A member or manager of a foreign limited liability company transacting intrastate business.

(6) A member or manager of a domestic limited liability company.

(n) Without excluding other activities that may not be considered to be transacting intrastate business, a foreign limited liability partnership shall not be considered to be transacting intrastate business within the meaning of this subdivision solely by reason of carrying on in this state any one or more of the following activities:

(1) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

(2) Holding meetings of its partners or carrying on any other activities concerning its internal affairs.

(3) Maintaining bank accounts.

(4) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability partnership's securities or maintaining trustees or depositories with respect to those securities.

(5) Effecting sales through independent contractors.

(6) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where those orders require acceptance without this state before becoming binding contracts.

(7) Creating or acquiring evidences of debt or mortgages, liens, or security interest in real or personal property.

(8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

(9) Conducting an isolated transaction that is completed within 180 days and not in the course of a number of repeated transactions of a like nature.

(o) A person shall not be deemed to be transacting intrastate business in this state merely because of its status as a partner of a registered limited liability partnership or a foreign limited liability company whether or not registered to transact intrastate business in this state.

(p) The Attorney General may bring an action to restrain a foreign limited liability partnership from transacting intrastate business in this state in violation of this chapter.

(q) Nothing in this section is intended to, or shall, augment, diminish, or otherwise alter existing provisions of law, statutes, or court rules relating to services by a California public accountant or California attorney in another jurisdiction, or services by an out-of-state public accountant or out-of-state attorney in California.

16960. (a) The registration of a foreign limited partnership may be amended by an amended registration executed by one or more partners authorized to execute an amended registration and filed with the Secretary of State, as soon as reasonably practical after any

information set forth in the registration or previously filed amended registration becomes inaccurate, to add information to the registration or amended registration or to withdraw its registration as a foreign limited liability partnership.

(b) If a foreign limited partnership ceases to be a limited liability partnership, it shall file with the Secretary of State a notice, executed by one or more partners authorized to execute the notice, that it is no longer a foreign limited liability partnership.

(c) A foreign limited liability partnership that is, but is no longer required to be, registered under Section 16959 may withdraw its registration by filing a notice with the Secretary of State, executed by one or more partners authorized to execute the notice.

(d) The Secretary of State shall provide forms for an amended registration under subdivision (a) and notices under subdivisions (b) and (c).

(e) The filing of amended registration forms pursuant to subdivision (a) and a notice pursuant to subdivision (b) or (c) shall each be accompanied by a fee of thirty dollars ($30).

16961. The filing of a registration with the Secretary of State under Section 16953 or 16959 shall make it unnecessary for all purposes for the registered limited liability partnership or foreign limited liability partnership to make any of the filings referred to in Chapter 5 (commencing with Section 17900) of Part 3 of Division 7 of the Business and Professions Code.

16962. (a) Each registered limited liability partnership whose principal office is not in this state and each foreign limited liability partnership registered under Section 16959 shall designate as its agent for service of process any natural person or a domestic or foreign corporation entitled to be designated as agent for the service of process pursuant to Section 1505.

(b) In addition to service that may be made as provided in Section 416.40 of the Code of Civil Procedure, delivery by hand of a copy of any process against a registered limited liability partnership or foreign limited liability partnership registered under Section 16959; (1) to any natural person designated by it as agent or (2), if a corporate agent has been designated, to any person named in the latest certificate of the corporate agent filed pursuant to Section 1505 at the office of that corporate agent shall constitute valid service on the registered limited liability partnership or foreign limited liability partnership.

(c) If an agent for the purpose of service of process has resigned and has not been replaced or if the agent designated cannot with reasonable diligence be found at the address designated for personally delivering the process, or if no agent has been designated, and it is shown by affidavit to the satisfaction of the court that process against a registered limited liability partnership or foreign limited liability partnership required to be registered under Section 16959 cannot be served with reasonable diligence upon the designated

agent by hand in the manner provided in Section 415.10, subdivision (a) of Section 415.20, or subdivision (a) of Section 415.30 of the Code of Civil Procedure or upon the registered limited liability partnership or foreign limited liability partnership in the manner provided in Section 416.40 of the Code of Civil Procedure, the court may make an order that the service be made upon the registered limited liability partnership or foreign limited liability partnership by delivering by hand to the Secretary of State, or to any person employed in the Secretary of State's office in the capacity of assistant to deputy, one copy of the process for each defendant to be served, together with a copy of the order authorizing that service. If the court makes that order, the Secretary of State who receives the process, or the person employed in the Secretary of State's office in the capacity of assistant or deputy who receives the process, is required to accept such process. A fee in the amount of fifty dollars ($50) shall be paid to the Secretary of State for the use of the state upon receipt of the process. Service in this manner shall be deemed complete on the 10th day after delivery of the process to the Secretary of State.

(d) Upon the receipt of the copy of process and the fee therefor, the Secretary of State shall give notice of the service of process to the registered limited liability partnership or foreign limited liability partnership registered under Section 16959 at its principal executive office, by forwarding to that office, by registered mail with request for return receipt, the copy of the process or, if the records of the Secretary of State do not disclose an address for that principal executive office, by forwarding the copy in the same manner to the last designated agent for service of process who has not resigned. If the agent for service of process has resigned and has not been replaced and the records of the Secretary of State do not disclose an address for its principal executive office, no action need be taken by the Secretary of State.

(e) The Secretary of State shall keep a record of all process served upon the Secretary of State under this section and shall record therein the time of service and the Secretary of State's action with reference thereto. The certificate of the Secretary of State, under the Secretary of State's official seal, certifying to the receipt of process, the giving of notice thereof to the registered limited liability partnership or foreign limited liability partnership, and the forwarding of the process pursuant to this section shall be competent and prima facie evidence of the matters stated therein.

(f) The court order pursuant to subdivision (c) that service of process be made upon the registered limited liability partnership or foreign limited liability partnership by delivery to the Secretary of State may be a court order of a court of another state, or of any federal court, if the suit, action, or proceeding has been filed in that court.

SEC. 3. Section 3940 of the Public Resources Code is amended to read:

3940. A mining partnership exists when two or more persons who own or acquire a mining claim for the purpose of working it and extracting the mineral therefrom actually engage in working the claim. To the extent not inconsistent with this chapter, mining partnerships shall be governed in the same manner as other general partnerships would be governed pursuant to Section 16111 of the Corporations Code, by the Uniform Partnership Act (Chapter 1 (commencing with Section 15001) of Title 2 of the Corporations Code), or the Uniform Partnership Act of 1994 (Chapter 5 (commencing with Section 16100) of Title 2 of the Corporations Code).

SEC. 4. Section 6829 of the Revenue and Taxation Code is amended to read:

6829. (a) Notwithstanding Section 16306, 16307, 17101, 17158, 17355, 17450, or 17456 of the Corporations Code, upon termination, dissolution, or abandonment of a partnership, a registered or foreign limited liability partnership or a domestic or foreign corporate or limited liability company business, any officer, member, manager, partner, or other person having control or supervision of, or who is charged with the responsibility for the filing of returns or the payment of tax, or who is under a duty to act for the corporation, partnership, limited liability partnership, or limited liability company in complying with any requirement of this part, shall be personally liable for any unpaid taxes and interest and penalties on those taxes, if the officer, member, manager, or other person willfully fails to pay or to cause to be paid any taxes due from the corporation, partnership, limited liability partnership, or limited liability company pursuant to this part.

(b) The officer, member, manager, partner, or other person shall be liable only for taxes that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation, partnership, limited liability partnership, or limited liability company described in subdivision (a), plus interest and penalties on those taxes.

(c) Personal liability may be imposed pursuant to this section, only if the board can establish that the corporation, partnership, limited liability partnership, or limited liability company had included tax reimbursement in the selling price of, or added tax reimbursement to the selling price of, tangible personal property sold in the conduct of its business, or when it can be established that the corporation, partnership, limited liability partnership, or limited liability company consumed tangible personal property and failed to pay the tax to the seller or has included use tax on the billing and collected the use tax or has issued a receipt for the use tax and failed to report and pay use tax.

(d) For purposes of this section "willfully fails to pay or to cause to be paid" means that the failure was the result of an intentional, conscious, and voluntary course of action.

(e) The sum due for the liability under this section may be collected by determination and collection in the manner provided in Chapter 5 (commencing with Section 6451) and Chapter 6 (commencing with Section 6701).

SEC. 4.5. Section 6831 is added to the Revenue and Taxation Code, to read:

6831. The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for a seller's permit, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

SEC. 5. Section 9032 is added to the Revenue and Taxation Code, to read:

9032. The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

SEC. 6. Section 23097 of the Revenue and Taxation Code is amended to read:

23097. (a) For each taxable year beginning on or after January 1, 1995, every limited liability partnership doing business in this state (as defined in Section 23101) and required to file a return under Section 18633 shall pay annually to the Franchise Tax Board a tax for the privilege of doing business in this state in an amount equal to the applicable amount specified in paragraph (1) of subdivision (d) of Section 23153 for the taxable year.

(b) In addition to any limited liability partnership that is doing business in this state and therefore is subject to the tax imposed by subdivision (a), for each taxable year beginning on or after January 1, 1995, every registered limited liability partnership that has registered with the Secretary of State pursuant to Section 15049 or 16953 of the Corporations Code and every foreign limited liability partnership that has registered with the Secretary of State pursuant to Section 15055 or 16959 of the Corporations Code shall pay annually the tax prescribed in subdivision (a). The tax shall be paid for each taxable year, or part thereof, until any of the following occurs:

(1) A notice of cessation is filed with the Secretary of State pursuant to subdivision (b) of Section 15050, subdivision (b) of Section 16954, subdivision (b) of Section 15056, or subdivision (b) of Section 16960, of the Corporations Code.

(2) A foreign limited liability partnership withdraws its registration pursuant to subdivision (a) of Section 15056, or subdivision (a) of Section 16960, of the Corporations Code.

(3) The registered limited liability partnership or foreign limited liability partnership has been dissolved and finally wound up.

(c) The tax assessed under this section shall be due and payable on the date the return is required to be filed under Section 18633.

SEC. 7. Section 30353 is added to the Revenue and Taxation Code, to read:

30353. The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

SEC. 8. Section 32388 is added to the Revenue and Taxation Code, to read:

32388. The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

SEC. 9. Section 38576 is added to the Revenue and Taxation Code, to read:

38576. The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of registration, the timber owner furnishes the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

SEC. 10. Article 4 (commencing with Section 40166) is added to Chapter 6 of Part 19 of Division 2 of the Revenue and Taxation Code, to read:

Article 4. Miscellaneous

40166. The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

SEC. 11. Article 4 (commencing with Section 41127.5) is added to Chapter 6 of Part 20 of Division 2 of the Revenue and Taxation Code, to read:

Article 4. Miscellaneous

41127.5. The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes to the board a written

partnership agreement that provides that all business assets shall be held in the name of the partnership.

SEC. 12. Section 43447 is added to the Revenue and Taxation Code, to read:

43447. The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

SEC. 13. Section 45608 is added to the Revenue and Taxation Code, to read:

45608. The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

SEC. 14. Section 46463 is added to the Revenue and Taxation Code, to read:

46463. The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

SEC. 15. Section 50138.5 is added to the Revenue and Taxation Code, to read:

50138.5. The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

SEC. 16. Section 55208 is added to the Revenue and Taxation Code, to read:

55208. The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

SEC. 17. Section 60492 is added to the Revenue and Taxation Code, to read:

60492. The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes to the board a written

partnership agreement that provides that all business assets shall be held in the name of the partnership.

SEC. 18. Section 1.2 of this act shall become operative on January 1, 1999.

CHAPTER 1004

An act to add Section 11565.5 to, and to repeal Sections 11563.8 and 11563.9 of, the Government Code, relating to state boards and commissions.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 11563.8 of the Government Code is repealed.

SEC. 2. Section 11563.9 of the Government Code is repealed.

SEC. 3. Section 11565.5 is added to the Government Code, to read:

11565.5. Notwithstanding Sections 11553, 11553.5, 11555, 11556, 11560, 11563.1, 11563.7, and 11564, with respect to any salary increase made after January 1, 1997, for nonelected members of state boards and commissions specified in Sections 11553, 11553.5, 11555, 11556, 11560, 11563.1, 11563.7, and 11564, the annual compensation provided by these sections shall not automatically increase but may be increased in any fiscal year in which there is a general increase in the salary ranges and rates for state civil service classifications. The amount of the increase, as determined by the Department of Personnel Administration and subject to the appropriation of funds by the Legislature in the annual Budget Act, shall not exceed the percentage of the general increase in the salary rates and ranges for classifications provided during that fiscal year for state employees designated as managerial.

CHAPTER 1005

An act to add Section 1871.8 to the Insurance Code, relating to workers' compensation.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 1871.8 is added to the Insurance Code, to read:

1871.8. An insurer or self-insured employer may provide the following notice to an injured worker on or with a check for temporary disability benefits:

Warning: Acceptance of employment with a different employer that requires the performance of activities that you have stated that you cannot perform because of the injury for which you are receiving temporary disability benefits could constitute fraud and could result in criminal prosecution. If convicted, you could lose your rights to workers' compensation benefits and face imprisonment for up to five years and a fine of up to fifty thousand dollars ($50,000) or double the amount of the fraud, whichever is greater.

CHAPTER 1006

An act to amend Section 19601 of the Business and Professions Code, relating to horseracing.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 19601 of the Business and Professions Code is amended to read:

19601. (a) Notwithstanding any other provision of law, a licensed association or fair that is conducting a live meeting in any racing zone may accept wagers on any race conducted in this state, if all of the following requirements are met:

(1) The association or fair that conducts the race and the association or fair that accepts wagers on that race have executed an agreement providing for the conditions for transmission of the audiovisual signal of the race and the amount of compensation, if any, to be paid to the association or fair conducting the transmitted race.

(2) The association or fair that conducts the racing meeting and the organization that is responsible for negotiating purse agreements, satellite wagering agreements, and all other business agreements on behalf of the horsemen participating in that racing meeting consent to the acceptance of the wagers. However, if consent is withheld, any party may appeal the withholding of consent to the board, which may determine that consent is not required.

(3) The association or fair conducts not less that eight races on days when the association or fair is licensed to conduct racing, except that fewer than eight live races per day may be conducted by the mutual agreement of the association or fair and the organization that is responsible for negotiating purse agreements, satellite wagering agreements, and all other business agreements on behalf of the horsemen participating in the racing meeting.

(4) Wagering is offered only within the association's or fair's racing inclosure or within the satellite wagering facility and only within seven days of the commencement of the racing program with the transmitted race.

(5) All wagers are included in the appropriate parimutuel pool at the racetrack of the association or fair where the race is conducted, or, at the election of the parties to the agreement required by paragraph (1), in the appropriate parimutuel pool of the racetrack of the association or fair that accepts the transmitted race.

(6) The association or fair accepting wagers on an out-of-zone transmitted race distributes the audiovisual signal of the race to, and accepts wagers from, all eligible satellite wagering facilities.

(b) Any association or fair accepting wagers under subdivision (a) shall deduct, from the total amount handled in each conventional and exotic parimutuel pool on the transmitted race, the same percentages deducted pursuant to Article 9.5 (commencing with Section 19610) for races at its own meeting. However, if the wagers are from a quarter horse race meeting, then the amounts deducted shall be the same as for a quarter horse race meeting. Amounts deducted under this section, including amounts deducted from wagers on out-of-zone races within the inclosure of the association or fair, shall be distributed as provided under Section 19605.7 with respect to wagers made within the northern zone, or Section 19605.71 with respect to wagers made within the central or southern zone, except that amounts distributed for purposes other than state license fees and fees payable to the California Center for Equine Health and Performance, School of Veterinary Medicine, University of California at Davis, and the California Diagnostic Veterinary Lab System shall be proportionally reduced by the amount of any fees paid as compensation to the association or fair conducting the transmitted race pursuant to subdivision (c). The method used to calculate the reduction in proportionate share shall be approved by the board. For wagers on out-of-zone races made within the association's or fair's inclosure, the percentage amount normally distributed as a satellite wagering facility commission, less any pro rata reduction required by this subdivision, shall be distributed instead as additional commissions and purses pursuant to Section 19605.8. Additionally, for all wagers on out-of-zone races, the percentage amount normally distributed for promotion of the program at satellite wagering facilities, less any pro rata reduction

required by this subdivision, shall be distributed instead as additional commissions and purses pursuant to Section 19605.8.

(c) Nothing in this section precludes an association or fair from charging a fee as a condition of transmitting its races to another zone, except that any fee shall be allocated among all associations, fairs, and satellite wagering facilities receiving the transmitted race in proportion to the amount wagered at each location, and the fee shall not exceed 2.5 percent of the total amount wagered on each out-of-zone race. Any fees received by the association or fair that conducts the transmitted race shall be divided equally between commissions to the association or fair conducting the out-of-zone race and purses to horsemen that participate in the association's or fair's racing meeting.

(d) All breakage and unclaimed tickets, including unclaimed refunds, on wagers on out-of-zone races shall be distributed equally between the association or fair that accepts wagers on the transmitted race, and the horsemen, in the form of purses, who participate in the racing meeting of the association or fair that accepts wagers on the transmitted race.

(e) All wagers made pursuant to this section shall be considered to have been wagered at a satellite wagering facility and shall be excluded from total handle for the purposes of Section 19611.

(f) Notwithstanding Section 19530.5, satellite wagering facilities operated by a county fair, district agricultural association fair, or citrus fruit fair in the Counties of Fresno, Kern, or Tulare shall be considered northern zone facilities and shall receive their audiovisual signal from the association or fair conducting a racing meeting in the northern zone that is authorized to distribute the signal and accept wagers on central and southern zone races. Satellite wagering facilities operated by a county fair, district agricultural association, or citrus fruit fair in the Counties of Santa Barbara or Ventura shall be considered central-southern zone facilities and shall receive the audiovisual signal from the association or fair conducting a racing meeting in the central or southern zone that is authorized to distribute the signal and accept wagers on central and southern zone races.

(g) All purse moneys derived from wagering on out-of-zone races at fair racing meetings conducted shall be distributed to all breeds of horses participating in the fair meeting in direct proportion to the purse money generated by breed on live races conducted during the fair race meeting.

(h) During calendar periods when both a fair and a thoroughbred association conduct live racing, the thoroughbred association shall be the association authorized to distribute the signal and accept wagers on out-of-zone races. The amounts deducted under this section shall be distributed on any day of overlap as provided in Section 19607.5 subject to the agreements specified in paragraph (1) of subdivision (a), except that the applicable state license fee shall be at the rate or

rates specified for nonfair meetings in subdivision (b) of Section 19605.7.

(i) During calendar periods when a thoroughbred association and any other breed association are conducting a racing meeting in the same zone, the thoroughbred association shall be the association authorized to distribute out-of-zone thoroughbred or fair races, except that the thoroughbred association may waive this right and allow the other breed racing association conducting a race meeting to distribute the signal and accept wagers on out-of-zone thoroughbred or fair races for any racing day or days. For the purposes of this subdivision, the combined central and southern zone shall be considered one zone.

(j) In order to encourage additional intrastate simulcasting, maximize state revenues, and further the purposes of this section, the board may adopt regulations to ensure that all horseracing programs conducted within the state are exposed to the maximum number of racing fans. The regulations may include, but are not limited to, the following:

(1) Establishing a minimum number of out-of-zone races that must be accepted by associations and fairs that contract to accept out-of-zone wagers pursuant to subdivision (a).

(2) Requiring associations, fairs, and satellite wagering facilities to present out-of-zone audiovisual signals to racing fans in substantially the same manner as in-zone signals are presented.

(3) Giving racing fans the opportunity to make wagers on out-of-zone racing programs at all parimutuel terminals where wagers on in-zone races are accepted.

(k) Unless otherwise agreed to in writing by each association, a fair conducting satellite wagering in Kern County shall be solely reimbursed by the racing associations located in the northern zone for both of the following:

(1) Any fee that is charged pursuant to subdivision (c) that exceeds the amount that the fair would pay pursuant to that subdivision if the fair were located in the southern zone.

(2) Any reduction in moneys for promotion that is equal to the amount that would be distributed from wagers to the fair for promotion if the fair were located in the southern zone, less what the fair actually receives pursuant to subdivision (b).

CHAPTER 1007

An act to add Section 1507.2 to the Health and Safety Code, to amend Section 17710 of, and to add Section 17732.1 to, the Welfare and Institutions Code, relating to developmental disabilities.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 1507.2 is added to the Health and Safety Code, to read:

1507.2. Notwithstanding any other provision of this chapter, a child with special health care needs, as defined in subdivision (a) of Section 17710 of the Welfare and Institutions Code, may be accepted in a specialized foster care home, as defined in subdivision (i) of Section 17710 of the Welfare and Institutions Code, or retained beyond the age of 18, in accordance with Part 5.5 (commencing with Section 17700) of Division 9 of the Welfare and Institutions Code, relating to children with special health care needs. If the facility accepts a child with special health care needs, or retains a child with special health care needs beyond the age of 18 years, the facility shall maintain all documents required as evidence of compliance with Part 5.5 (commencing with Section 17700) of Division 9 of the Welfare and Institutions Code in the files of the facility that are available for inspection by the certifying or licensing agency.

SEC. 2. Section 17710 of the Welfare and Institutions Code is amended to read:

17710. Unless otherwise specified in this part:

(a) "Child with special health care needs" means a child, or a person who is 22 years of age or younger who is completing a publicly funded education program, who has a condition that can rapidly deteriorate resulting in permanent injury or death or who has a medical condition that requires specialized in-home health care, and who either has been adjudged a dependent of the court pursuant to Section 300, has not been adjudged a dependent of the court pursuant to Section 300 but is in the custody of the county welfare department, or has a developmental disability and is receiving services and case management from a regional center.

(b) "County" means the county welfare department.

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

(d) "Individualized health care plan team" means those individuals who develop a health care plan for a child with special health care needs in a specialized foster care home, as defined in subdivision (i) or group home, which shall include the child's primary care physician or other health care professional designated by the physician, any involved medical team, and the county social worker or regional center worker, and any health care professional designated to monitor the child's individualized health care plan pursuant to paragraph (8) of subdivision (c) of Section 17731, including, if the child is in a certified home, the registered nurse employed by or under contract with the certifying agency to supervise and monitor the child. The child's individualized health care plan team may also include, but shall not be limited to, a public health nurse, representatives from the California Children's Services

Program or the Child Health and Disability Prevention Program, regional centers, the county mental health department and where reunification is the goal, the parent or parents, if available. In addition, where the child is in a specialized foster care home, the individualized health care plan team may include the prospective specialized foster parents, who shall not participate in any team decision pursuant to paragraph (6) of subdivision (c) of Section 17731 or pursuant to paragraph (3) of subdivision (a), or subparagraph (A) of paragraph (2) of subdivision (b) of Section 17732.

(e) "Director" means the Director of Social Services.

(f) "Level of care" means a description of the specialized in-home health care to be provided to a child with special health care needs by the foster family.

(g) Medical conditions requiring specialized in-home health care require dependency upon one or more of the following: enteral feeding tube, total parenteral feeding, a cardiorespiratory monitor, intravenous therapy, a ventilator, oxygen support, urinary catheterization, renal dialysis, ministrations imposed by tracheostomy, colostomy, ileostomy, or other medical or surgical procedures or special medication regimens, including injection, and intravenous medication.

(h) "Specialized in-home health care" includes, but is not limited to, those services identified by the child's primary physician as appropriately administered in the home by any one of the following:

(1) A parent trained by health care professionals where the child is being placed in, or is currently in, a specialized foster care home.

(2) Group home staff trained by health care professionals pursuant to the discharge plan of the facility releasing the child where the child was placed in the home as of November 1, 1993, and who is currently in the home.

(3) A health care professional, where the child is placed in a group home after November 1, 1993. The health care services provided pursuant to this paragraph shall not be reimbursable costs for the purpose of determining the group home rate under Section 11462.

(i) "Specialized foster care home" means any of the following foster homes where the foster parents reside in the home and have been trained to provide specialized in-home health care to foster children:

(1) Licensed foster family homes, as defined in paragraph (5) of subdivision (a) of Section 1502 of the Health and Safety Code.

(2) Licensed small family homes, as defined in paragraph (6) of subdivision (a) of Section 1502 of the Health and Safety Code.

(3) Certified family homes, as defined in subdivision (d) of Section 1506 of the Health and Safety Code, that have accepted placement of a child with special health care needs who is under the supervision and monitoring of a registered nurse employed by, or on contract with, the certifying agency, and who is either of the following:

(A) A dependent of the court under Section 300.

(B) Developmentally disabled and receiving services and case management from a regional center.

SEC. 3. Section 17732.1 is added to the Welfare and Institutions Code, to read:

17732.1. (a) It is the intent of the Legislature that minor children who are residing in specialized foster care home placements on January 1, 1997, be allowed to remain in those homes upon reaching majority, through 22 years of age, in order to ensure continuity of care during completion of publicly funded education.

(b) A child with special health care needs may remain in a licensed foster family home or licensed small family home that is operating as a specialized foster care home pursuant to subdivision (i) of Section 17710 after the age of 18 years, if all of the following requirements are met:

(1) The child was a resident in the home prior to the age of 18.

(2) A determination regarding whether the child may remain as a resident after the age of 18 years is made through the agreement of all parties involved, including the resident, the foster parent, the social worker, the resident's regional center case manager, and the resident's parent, legal guardian, or conservator, as appropriate. This determination shall include a needs and service plan that contains an assessment of the child's needs and of continued compatibility with the other children in placement. The needs and service plan shall be completed within the six months prior to the child's 18th birthday and shall be updated with any significant change and whenever there is a change in household composition. The assessment shall be documented and maintained in the child's file, and shall be made available for inspection by the licensing staff.

(3) The regional center monitors and supervises its placements, as part of its regular and ongoing services to clients, to ensure the continued health and safety, appropriate placement, and compatibility of the developmentally disabled adult with special health care needs.

(4) The department notifies the foster care provider, as part of its orientation process, that the state Foster Family Home and Small Family Home Insurance Fund does not expand existing coverage in Section 1527 of the Health and Safety Code for liability resulting from the provision of care to individuals over the age of 18 years.

CHAPTER 1008

An act to amend Section 426, and to add Sections 11704.5 and 11704.7 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. (a) The Legislature finds that in view of the complexity of the used car industry and in order to ensure a high level of consumer protection, it is essential that applicants for a dealer's license, by those applicants selling used vehicles, possess a general knowledge of the laws that regulate vehicle sales.

(b) It is, therefore, the intent of the Legislature that the Department of Motor Vehicles, in conjunction with the Independent Automobile Dealers Association of California, develop an educational curriculum for applicants for a dealer's license. That curriculum shall be used in the educational program required to be completed by a new applicant for a dealer's license, who will sell used vehicles, prior to the applicant taking a test for a dealer's license.

SEC. 2. Section 426 of the Vehicle Code is amended to read:

426. "New motor vehicle dealer" is a dealer, as defined in Section 285, who, in addition to the requirements of that section, either acquires for resale new and unregistered motor vehicles from manufacturers or distributors of those motor vehicles or acquires for resale new and unregistered off-highway motorcycles from manufacturers or distributors of the vehicles. No distinction shall be made, nor any different construction be given to the definition of "new motor vehicle dealer" and "dealer" except for the application of the provisions of Chapter 6 (commencing with Section 3000) of Division 2 and Section 11704.5 or 11704.6. The provisions of Sections 3001 and 3003 shall not, however, apply to a dealer who deals exclusively in motorcycles.

SEC. 3. Section 11704.5 is added to the Vehicle Code, to read:

11704.5. (a) Commencing January 1, 1998, except as provided in subdivision (d), every person who applies for a dealer's license pursuant to Section 11701 shall be required to take and successfully complete a written examination prepared and administered by the department before a license may be issued. The examination shall include, but need not be limited to, all of the following laws and subjects:

(1) Division 12 (commencing with Section 24000), relating to equipment of vehicles.

(2) Advertising.

(3) Odometers.

(4) Vehicle licensing and registration.

(5) Branch locations.

(6) Offsite sales.

(7) Unlawful dealer activities.

(8) Handling, completion, and disposition of departmental forms.

(b) Prior to the first taking of an examination under subdivision (a), every applicant shall successfully complete a preliminary educational program of not less than four hours. The program shall address, but not be limited to, all of the following topics:

(1) Chapter 2B (commencing with Section 2981) of Title 14 of Part 4 of Division 3 of the Civil Code, relating to motor vehicle sales finance.

(2) Motor vehicle financing.

(3) Truth in lending.

(4) Sales and use taxes.

(5) Division 12 (commencing with Section 24000), relating to equipment of vehicles.

(6) Advertising.

(7) Odometers.

(8) Vehicle licensing and registration.

(9) Branch locations.

(10) Offsite sales.

(11) Unlawful dealer activities.

(12) Air pollution control requirements.

(13) Regulations of the Bureau of Automotive Repair.

(14) Handling, completion, and disposition of departmental forms.

(c) Instruction may be provided by generally accredited educational institutions, private vocational schools, correspondence institutions, and educational programs and seminars offered by professional societies, organizations, trade associations, and other educational and technical programs that meet the requirements of Section 11704.6 and this section or by the department.

(d) This section does not apply to any of the following:

(1) A new motor vehicle dealer or any employee of that dealer.

(2) A person who holds a valid license as a dealer at the time of application.

(3) A person who held a license as a dealer during the 36 months immediately preceding the date of the receipt of the application by the department.

(4) A person who holds a valid license as an automobile dismantler or any employee of that dismantler.

SEC. 4. Section 11704.7 is added to the Vehicle Code, to read:

11704.7. Every person who applies to the department to take or retake the examination required under Section 11704.5 shall pay to the department a fee of sixteen dollars ($16).

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative

on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1009

An act to add and repeal Section 14132.63 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 14132.63 is added to the Welfare and Institutions Code, to read:

14132.63. (a) An orthotist or prosthetist providing services under this chapter shall be required to be certified in orthotics or prosthetics by either the Board for Orthotist Certification or the American Board of Certification in Orthotics and Prosthetics.

(b) This section shall remain in effect only until the date that the director executes a declaration, that shall be retained by the director, stating that the department has adopted regulations requiring an orthotist or prosthetist to be certified in orthotics or prosthetics by either the Board for Orthotist Certification or the American Board of Certification in Orthotics and Prosthetics, as a condition of providing orthotist or prosthetic services under this chapter, and as of that date is repealed.

SEC. 2. It is the intent of the Legislature that the State Department of Health Services, in adopting regulations that would add the Board for Orthotist Certification as an entity by which an orthotist or prosthetist may be certified in order to be eligible to provide Medi-Cal services, consider scope of practice, training, and education, where applicable.

CHAPTER 1010

An act to amend Sections 17321, 17331, and 17331.1 of the Financial Code, relating to escrow agents.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 17321 of the Financial Code is amended to read:

17321. Fidelity Corporation shall bill and collect from each member an annual premium which in the aggregate shall consist of assessments for the operations fund and the fidelity fund.

(a) The annual assessment for the operations fund shall be assessed no later than October 15 of each year for the current fiscal year in accordance with subdivision (b) of Section 17320. The payment of any invoice for assessments under this subdivision is payable by the member escrow agent in three equal and consecutive monthly installments with the first installment payable at or within 30 days after receipt of the Fidelity Corporation invoice. The assessment shall include:

(1) All costs and expenses of administration as budgeted by the board of directors for the current fiscal year.

(2) Any expenses actually incurred in the preceding fiscal year which exceeded the budgeted costs of expenses and administration except for expenses recovered pursuant to subdivision (a) of Section 17321.1.

Each member's assessment shall be determined pro rata based upon the ratio of each member's licensed locations to the total licensed locations of all members as of the preceding June 30.

Members licensed on or after July 1 of each year shall be assessed only for costs and expenses pursuant to paragraph (1) of this subdivision. This assessment shall be prorated on a monthly basis.

(b) The annual assessment for the fidelity fund shall be assessed no later than May 1. The assessment shall be calculated as follows:

(1) If the membership fund and fidelity fund in the aggregate equal an amount less than five million dollars ($5,000,000), then the assessment shall be the greater of: (A) one million dollars ($1,000,000); or (B) the sum of (i) the greater of an amount necessary to bring the membership fund and fidelity fund in the aggregate up to five million dollars ($5,000,000) or the total of all claims paid during the preceding fiscal year (except to the extent of any special assessment made pursuant to subdivision (b) of Section 17321.1) plus (ii) the greater of four hundred thousand dollars ($400,000) or 0.045 percent of the total average trust obligations of all members as reflected in the most recent report required by Section 17348.

(2) If the membership fund and fidelity fund in the aggregate equal an amount that is at least five million dollars ($5,000,000) but less than 1 percent of the total average trust obligations for all members as reflected in the most recent report required by Section 17348 or the fidelity fund equals an amount less than five million dollars ($5,000,000), then the assessment shall be: (A) an amount equal to the total of all claims paid during the preceding fiscal year (except to the extent of any special assessment made pursuant to

subdivision (b) of Section 17321.1); and (B) an amount which is the greater of four hundred thousand dollars ($400,000) or 0.045 percent of the total average trust obligations of all members as reflected in the most recent report required by Section 17348.

(3) If the membership fund and fidelity fund in the aggregate equal 1 percent of the total average trust obligations of all members as reflected in the most recent report required by Section 17348 and the fidelity fund equals at least five million dollars ($5,000,000), then the assessment shall be an amount equal to the actuarial projection of losses for the forthcoming fiscal year.

Each member's fidelity fund assessment for paragraphs (1), (2), and (3) shall be the amount derived by multiplying the amount to be assessed by the ratio that each member's risk factors bear to the total of all members' risk factors.

A member's risk factors shall be computed in accordance with the following formula, except that the total factors of a member shall be reduced by one for each licensed branch location:

Coverage per Licensed Location	Factors
$1,000,000	3
$2,000,000	5
$3,000,000	7
$4,000,000	8
$5,000,000	9

(c) Notwithstanding subdivision (b), the assessment for the fidelity fund for the fiscal year beginning July 1, 1989, shall be made immediately upon 90-day notice of cancellation of the fidelity bond or insurance policy permitted by paragraph (2) of subdivision (c) of Section 17310, but in no event later than 60 days prior to the date of cancellation.

(d) Every licensed member as of March 31 shall pay the fidelity fund assessment, without any pro rata adjustment, notwithstanding that the member may have surrendered a license or have a license revoked prior to the date that the assessment is mailed.

SEC. 2. Section 17331 of the Financial Code is amended to read:

17331. (a) Within 30 days following written notice by Fidelity Corporation to an escrow agent any shareholder, officer, director, trustee, manager, or employee of an escrow agent, directly or indirectly compensated by an escrow agent within this state, shall be required to apply for a Fidelity Corporation Certificate, prepared and issued by Fidelity Corporation, as a condition of their employment or entitlement to compensation, before the person may continue the regular discharge of their duties, or have access to moneys or negotiable securities belonging to or in the possession of

the escrow agent, or draw checks upon the escrow agent or the trust funds of the escrow agent.

(b) Within 60 days of the effective date of this section, each member shall provide Fidelity Corporation with a list of all shareholders, officers, directors, trustees, managers, and employees or other persons, on the form prescribed by Fidelity Corporation.

(c) Fidelity Corporation Certificates may also be known as Escrow Agents' Fidelity Corporation Certificates or EAFC Certificates. The certificate shall at all times remain the property of Fidelity Corporation, and is not transferable by either a member or employee. The certificate shall not be deemed to be, or construed as, a warranty or guarantee by Fidelity Corporation of the integrity, veracity, or competence of the person.

(d) An application for a Fidelity Corporation Certificate shall be in writing and in such form as prescribed by Fidelity Corporation, and may include (1) a fee not to exceed fifty dollars ($50), (2) two passport-size photographs, and (3) a set of fingerprints on the form established by the Department of Justice for requesting state summary criminal history information plus the fee charged by the Department of Justice for processing noncriminal applicant fingerprints. The Department of Justice shall honor the Fidelity Corporation report request form and issue a report to Fidelity Corporation notwithstanding any other provision of law or regulation to the contrary. Fidelity Corporation shall also be entitled to submit a set of fingerprints on the specified noncriminal applicant fingerprint form for the purpose of requesting and obtaining a report from the Department of Justice, for the officers and employees of Fidelity Corporation. Any member shall cause the filing of applications for all existing employees as required by this section within 30 days of written notice by Fidelity Corporation to the member.

(e) The application form shall include a provision for binding arbitration to allow for arbitration of any appeal or dispute as to any decision by Fidelity Corporation concerning the certificate, as follows:

ANY DISPUTE AS TO WHETHER THE DENIAL OF THIS CERTIFICATE APPLICATION IS UNNECESSARY OR UNAUTHORIZED OR WAS IMPROPERLY, NEGLIGENTLY, OR UNLAWFULLY RENDERED, MAY BE DETERMINED BY SUBMISSION TO ARBITRATION AS PROVIDED BY CALIFORNIA LAW, AND NOT BY A LAWSUIT OR RESORT TO COURT PROCESS EXCEPT AS CALIFORNIA LAW PROVIDES FOR JUDICIAL REVIEW OF ARBITRATION PROCEEDINGS OR EXCEPT AS PROVIDED BY SECTION 17331.3 OF THE FINANCIAL CODE. THE APPLICANT MAY, SUBJECT TO AGREEMENT, SUBMIT ANY ISSUE ARISING FROM ANY DECISION BY FIDELITY CORPORATION TO DENY THIS

CERTIFICATE APPLICATION TO BE DECIDED BY BINDING NEUTRAL ARBITRATION. UPON SUCH AGREEMENT, THE APPLICANT HAS NO RIGHTS TO HAVE ANY DISPUTE CONCERNING THIS CERTIFICATE APPLICATION LITIGATED IN A COURT OR JURY TRIAL NOR ANY JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, EXCEPT AS SPECIFICALLY PROVIDED IN THE ESCROW LAW, AND ARBITRATION MAY BE COMPELLED AS PROVIDED BY LAW.

(f) There shall be no liability on the part of and no cause of action of any nature shall arise against Fidelity Corporation or its members, directors, officers, employees, or agents, the State of California, the Department of Corporations, or any officer, agent, or employee of the state or the Department of Corporations for any statements made by Fidelity Corporation in any reports or recommendations made pursuant to this division, or for any reports or recommendations made pursuant to this division to Fidelity Corporation by its members, directors, officers, employees or agents, the State of California, the Department of Corporations, or any officer, agent, or employee of the state or the Department of Corporations, unless the information provided is false and the party making the statement or providing the false information does so with knowledge and malice. Reports or recommendations made pursuant to this section, or Section 17331.1, 17331.2, or 17331.3 shall not be public documents.

(g) There shall be no liability on the part of and no cause of action of any nature shall arise against Fidelity Corporation or its members, directors, officers, employees, or agents, the State of California, the Department of Corporations, or any officer, agent, or employee of the state or the Department of Corporations for the release of any information furnished to Fidelity Corporation pursuant to this section unless the information released is false and the party, including Fidelity Corporation, its members, directors, officers, employees, or agents, the state, the Department of Corporations, or any officer, agent, or employee of the state or the Department of Corporations, who releases the false information does so with knowledge and malice.

(h) There shall be no liability on the part of and no cause of action of any nature shall arise against Fidelity Corporation or its directors, officers, employees, or agents, for any decision to deny an application for a certificate or to suspend or revoke the certificate of any person or for the timing of any decision or the timing of any notice to persons or members thereof, or for any failure to deny an application under subdivision (a) of Section 17331.2. This subdivision does not apply to acts performed in bad faith or with malice.

(i) Fidelity Corporation, any member of Fidelity Corporation, an agent of Fidelity Corporation or of its members, or any person who uses any information obtained under this section for any purpose not authorized by this chapter is guilty of a misdemeanor.

(j) Section 17331, 17331.1, or 17331.2 shall not constitute a restriction or limitation upon the obligation of Fidelity Corporation to indemnify members against loss, as provided in Sections 17310 and 17314. The failure to obtain a certificate, the denial of an application for a certificate, or the suspension, cancellation, or revocation of a certificate shall not limit the obligation of Fidelity Corporation to indemnify a member against loss.

(k) As of January 1, 1992, notwithstanding Section 11105 of the Penal Code, Fidelity Corporation shall be entitled to receive state summary criminal history information and subsequent arrest notification from the Department of Justice as a result of fingerprint cards submitted to the Department of Justice by the Department of Corporations, pursuant to subdivision (g) of Section 17209, Section 17212.1, and subdivision (d) of Section 17414.1, by or on behalf of escrow agents, shareholders, officers, directors, trustees, managers, or employees of an escrow agent, directly or indirectly compensated by an escrow agent. The Department of Justice and Fidelity Corporation shall enter into an agreement to implement this subdivision. The Department of Corporations shall forward to Fidelity Corporation, weekly, a list of names of individual fingerprints submitted to the Department of Justice.

SEC. 3. Section 17331.1 of the Financial Code is amended to read:

17331.1. (a) As of January 1, 1992, any person not previously issued a certificate must, upon employment with an escrow agent within this state, apply to Fidelity Corporation for a certificate within 10 business days. The person may continue employment until or unless denied a certificate by Fidelity Corporation. The member shall submit all applications for certificates to Fidelity Corporation within 10 business days of the date of employment.

(b) Upon written notice by Fidelity Corporation to any or all members that any person has been denied a certificate, or has had a certificate suspended, canceled, or revoked, no member or person acting on behalf of a member shall authorize that person to have access to money or negotiable securities belonging to or in the possession of the escrow agent, or to draw checks upon the escrow agent or the trust accounts of the escrow agent. Any member or person who commits or who causes a violation of this section, which violation was either known or should have been known by the member or such persons committing or causing the violation, may be subject to action by the commissioner and Fidelity Corporation as provided for in this division.

(c) Each member and each person required to have a certificate shall comply with the Fidelity Corporation rules, to be approved by the commissioner, concerning the manner and timing within which Fidelity Corporation shall receive notice of employment, change of the person's name, mailing address, or employment status, the certificate form, and the procedures for the administration thereof.

Fidelity Corporation may collect a fee to cover the cost of processing the notices but no fee shall exceed twenty-five dollars ($25).

(d) Fidelity Corporation shall assess the member a penalty at the rate of twenty-five dollars ($25) for every day that the member has not fully complied with this section, Section 17331, or Section 17331.2.

(e) Any member that suffers a loss of trust obligations caused by any person who is required to have a certificate but has (1) failed to apply for a certificate, (2) has had the application for a certificate denied, (3) has a suspended certificate, or (4) whose certificate has been revoked shall be obligated to pay a deductible in the amount of ten thousand dollars ($10,000) plus 10 percent of the amount by which the loss exceeds ten thousand dollars ($10,000), notwithstanding the statutory deductible as prescribed by Section 17314.3. Other than as provided for in this subdivision, the failure to obtain a certificate, the denial of an application for a certificate, or the suspension, cancellation, or revocation of a certificate shall not limit the obligation of Fidelity Corporation to indemnify a member against loss of trust obligations as defined in this division.

CHAPTER 1011

An act to add and repeal Section 18987.4 of the Welfare and Institutions Code, relating to public social services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 18987.4 is added to the Welfare and Institutions Code, to read:

18987.4. (a) (1) There is hereby created in the State Treasury the Youth Pilot Program Fund. State and federal moneys that, if distributed to a designated county, could be transferred to a county child and family services fund, may be transferred, at the direction of the designated county, to the Youth Pilot Program Fund for the purposes specified in subdivision (c) of Section 18987. Notwithstanding Section 13340 of the Government Code, moneys in the fund are continuously appropriated, without regard to fiscal years, to the State Department of Social Services to be allocated to and expended by counties in accordance with county strategic plans developed pursuant to Section 18987.3.

(2) The Director of Finance may authorize the transfer of funds appropriated pursuant to the following items of the Budget Act of 1996 and budget acts thereafter to implement this section.

(A) State Department of Health Services, Item 4260-101-0001 or Item 4260-111-0001, or any combination thereof.

(B) State Department of Mental Health, Item 4440-101-0001(c) (Program 10.47, Children's Mental Health Services) or Item 4440-131-0001 (Program 10.80, Special Education Pupils Program), or any combination thereof.

(C) State Department of Social Services, Item 5180-101-0001, Item 5180-141-0001, or Item 5180-151-0001 or any combination thereof.

(3) Amounts transferred pursuant to paragraph (2) shall be limited to those amounts that would otherwise be allocated to those designated counties.

(b) The Director of Finance shall provide written notification to the chairperson of the appropriate budget and policy committees in each house of the Legislature upon transfer of any funds into the Youth Pilot Program Fund.

(c) Moneys in the fund shall be available for encumbrance until July 1, 2004, at which time all unencumbered moneys in the fund shall revert to the General Fund.

(d) It is the intent of the Legislature to continue the commitment to maximize federal matching funds for state and county programs.

(e) It is the intent of the Legislature that the Youth Pilot Program Fund shall be continuously appropriated only for the purpose of implementing the Youth Pilot Program pursuant to this chapter, and a continuously appropriated fund shall not be used to implement the provisions of this chapter, should they be extended beyond the pilot program.

(f) This section shall remain in effect only until July 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before July 1, 2004, deletes or extends that date.

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

In order to provide timely authority to blend funds for the purpose of integrating services for high-risk children and families, as provided in Section 18987 of the Welfare and Institutions Code, and to avoid adverse impact to the health and safety of the targeted populations, it is necessary that this act take effect immediately.

CHAPTER 1012

An act to amend Section 16946 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 16946 of the Welfare and Institutions Code is amended to read:

16946. (a) The Hospital Services Account portion of each county's allocation pursuant to Sections 16932 and 16941 shall be divided into two amounts by:

(1) Multiplying the Hospital Services Account funding portion by the percentage specified in paragraph (5) of subdivision (c) of Section 16945.

(2) Multiplying the amount of the Hospital Services Account funding portion by the percentage specified in paragraph (6) of subdivision (c) of Section 16945.

(b) The amount of each county's Hospital Services Account funding portion calculated in paragraph (1) of subdivision (a) shall be used for payment or support of services provided on or after July 1, 1989, by noncounty hospitals. Beginning in the 1991–92 fiscal year and annually thereafter, these amounts shall be reduced by dividing each county's amount by the total amount for all counties, multiplied by the sum of twelve million dollars ($12,000,000). This amount for each county shall be further divided into two equal parts, as follows:

(1) (A) The first part shall be allocated to each noncounty hospital within a county in amounts determined by multiplying the percentages specified in paragraph (7) of subdivision (c) of Section 16945 by the amount of the first part, and may be used for payment or support of services provided by noncounty hospitals to any eligible patient treated at any time during the fiscal year of the allocation.

(B) Funds distributed during fiscal years subsequent to the 1989–90 fiscal year shall be accounted for on a quarterly basis.

(C) For the 1989–90 fiscal year, noncounty hospitals shall provide the demographic data specified in paragraph (2) of subdivision (b) of Section 16918 on a minimum of 5 percent of patients for whom services are paid for in whole or in part by funds allocated pursuant to this paragraph, in addition to any other requirements specified in Section 16918.

(D) For the 1990–91 fiscal year and fiscal years thereafter, noncounty hospitals shall provide data pursuant to the reporting requirements specified in Section 16918 and shall provide posted and individual notices pursuant to Section 16818 for the duration of any quarter during which funds allocated pursuant to this paragraph are used.

(E) Amounts calculated pursuant to this paragraph shall not be reduced or utilized to offset the costs of administering the Hospital Services Account.

(2) (A) (i) The remaining 50 percent of the funds from the Hospital Services Account shall be distributed by the county to hospitals, including those under contract with the county, to

maintain access to emergency care and to purchase other necessary hospital services provided during the fiscal year of the allocation.

(ii) In contracting for emergency care with hospitals in neighboring counties, the county shall not impose conditions to accept transfers that it does not impose on hospitals within its own boundaries.

(B) (i) Prior to distributing funds to hospitals, each county shall consult with the hospitals and consider the historic and projected patterns of care provided by hospitals, by geographic catchment areas within both urban and nonurban areas, unique costs associated with treating disproportionate numbers of severely ill indigent patients, and disproportionate losses sustained by hospitals in the provision of care.

(ii) The county shall also consider the patterns of care of its residents provided by Level I trauma care hospitals in contiguous counties and may make proportionate allocations to those trauma centers.

(c) (1) The amount of each county's Hospital Services Account funding portion calculated in paragraph (2) of subdivision (a) may be used for the payment or support of services provided in county hospitals or noncounty hospitals as determined by each county during the fiscal year of the allocation.

(2) Beginning in the 1991–92 fiscal year and annually thereafter, the amount of each county's funding portion calculated pursuant to paragraph (2) of subdivision (a) shall be reduced by an amount that shall be calculated as follows:

(A) Divide each county's amount of funding under paragraph (2) of subdivision (a) by the total amount of funding under that paragraph for all counties.

(B) Multiply the quotient calculated pursuant to subparagraph (A) by the sum of six million dollars ($6,000,000).

(d) As a condition of receiving funds under this section and Section 16932, each county shall require each county and noncounty hospital to do all of the following:

(1) (A) Maintain the same number and classification of emergency room permits and trauma facility designations as existed on January 1, 1990.

(B) (i) Any hospital that maintained two special permits for basic emergency service on the effective date of this part shall be deemed to have met the requirements of paragraph (1) of subdivision (d), if each of the emergency rooms was located on separate campuses of the hospital and was located not more than two miles from the other emergency room.

(ii) Clause (i) shall apply even if one of the emergency room permits is surrendered after the effective date of this part.

(2) Provide data and reports on the use and expenditure of all funds received. This information shall be in a form and according to procedures specified by the county and the department.

(3) Assure that funds received pursuant to this section are used only for services for persons who cannot afford to pay for those services, and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

(e) (1) If a county or noncounty hospital does not comply with this section, the county shall recover funds received by the hospital as follows:

(A) For any violation of paragraph (1) of subdivision (d), the county shall recover that portion of the funds received which equal the ratio of the number of months not in compliance to 12 months.

(B) For any violation of paragraph (2) of subdivision (d), the county shall recover all funds received.

(C) For any violation of paragraph (3) of subdivision (d), the county shall recover the difference between the amount received and the amount for which the hospital can document that the funds were used only for services for persons who cannot afford to pay for those services and for whom payment will not be made through any private coverage or by any program funded in whole or in part by the federal government.

(2) The county may deny further payments required by this section until the hospital demonstrates compliance.

(f) Funds withheld or recovered pursuant to this section may be reallocated and distributed by the county pursuant to paragraph (2) of subdivision (b).

(g) (1) Except as provided in paragraph (2), funds allocated pursuant to paragraph (1) or (2) of subdivision (b) which are not expended because a hospital does not participate shall be redistributed pursuant to paragraph (2) of subdivision (b).

(2) If no noncounty hospitals remain to participate, the county may distribute those unexpended funds pursuant to subdivision (c).

(h) (1) In any county that comprises not more than one-half percent of the total state population and in which there are a county hospital and a noncounty hospital with emergency room permits located within two miles of each other, the county hospital may surrender its emergency room permit without any penalty for violation of paragraph (1) of subdivision (d) provided all of the following occur:

(A) The county shall enter into a contractual arrangement with the noncounty hospital.

(B) The county and noncounty hospital shall provide for the availability of at least the same level of emergency services and specialty backup which the county hospital and noncounty hospital provided prior to the surrendering of the emergency room permit.

(C) The county shall establish sufficient capacity, including evening and weekend coverage, in its urgent care clinic and other outpatient clinics to provide for the same or greater level of urgent care and nonemergency visits that were provided in the county

hospital emergency department in the calendar year prior to the surrendering of the emergency room permit.

(D) The county shall provide for adequate initial and ongoing public notification and information, in Spanish and English, on the availability of emergency, urgent care, and nonurgent clinic services and how to obtain those services.

(E) The county ensures that there are adequate Spanish translation services and referral services on a 24-hour basis at the noncounty hospital emergency department, and at the county hospital clinics, during their hours of operation.

(2) The department shall annually review the county's compliance with this subdivision. If the department determines that the county is not in compliance with this subdivision, it shall require the county to recover funds and deny further payments pursuant to subdivision (e) until compliance is resumed.

(3) Any county that is permitted under paragraph (1) to surrender its emergency room permit shall continue to fulfill its duties and obligations to provide indigent care according to Section 17000.

(i) Any county of the 24th class that discontinues the provision of acute inpatient care services may surrender its emergency room permit without any penalty for violation of paragraph (1) of subdivision (d), provided that the county shall enter into a contractual arrangement with at least one noncounty hospital meeting the requirements of subdivision (h) and all of the requirements of subparagraphs (A) to (E), inclusive, of paragraph (1) of subdivision (h) are met by the county and the contracting noncounty hospital, in which case paragraphs (2) and (3) of subdivision (h) shall apply to that county.

CHAPTER 1013

An act to repeal and add Section 2856 of the Civil Code, relating to sureties.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 2856 of the Civil Code is repealed.

SEC. 2. Section 2856 is added to the Civil Code, to read:

2856. (a) Any guarantor or other surety, including a guarantor of a note or other obligation secured by real property or an estate for years, may waive any or all of the following:

(1) The guarantor or other surety's rights of subrogation, reimbursement, indemnification, and contribution and any other

rights and defenses that are or may become available to the guarantor or other surety by reason of Sections 2787 to 2855, inclusive.

(2) Any rights or defenses the guarantor or other surety may have in respect of his or her obligations as a guarantor or other surety by reason of any election of remedies by the creditor.

(3) Any rights or defenses the guarantor or other surety may have because the principal's note or other obligation is secured by real property or an estate for years. These rights or defenses include, but are not limited to, any rights or defenses that are based upon, directly or indirectly, the application of Section 580a, 580b, 580d, or 726 of the Code of Civil Procedure to the principal's note or other obligation.

(b) A contractual provision that expresses an intent to waive any or all of the rights and defenses described in subdivision (a) shall be effective to waive these rights and defenses without regard to the inclusion of any particular language or phrases in the contract to waive any rights and defenses or any references to statutory provisions or judicial decisions.

(c) Without limiting any rights of the creditor or any guarantor or other surety to use any other language to express an intent to waive any or all of the rights and defenses described in paragraphs (2) and (3) of subdivision (a), the following provisions in a contract shall effectively waive all rights and defenses described in paragraphs (2) and (3) of subdivision (a):

> The guarantor waives all rights and defenses that the guarantor may have because the debtor's debt is secured by real property. This means, among other things:
> (1) The creditor may collect from the guarantor without first foreclosing on any real or personal property collateral pledged by the debtor.
> (2) If the creditor forecloses on any real property collateral pledged by the debtor:
> (A) The amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price.
> (B) The creditor may collect from the guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right the guarantor may have to collect from the debtor.
> This is an unconditional and irrevocable waiver of any rights and defenses the guarantor may have because the debtor's debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the Code of Civil Procedure.

(d) Without limiting any rights of the creditor or any guarantor or other surety to use any other language to express an intent to waive

all rights and defenses of the surety by reason of any election of remedies by the creditor, the following provision shall be effective to waive all rights and defenses the guarantor or other surety may have in respect of his or her obligations as a surety by reason of an election of remedies by the creditor:

> The guarantor waives all rights and defenses arising out of an election of remedies by the creditor, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed the guarantor's rights of subrogation and reimbursement against the principal by the operation of Section 580d of the Code of Civil Procedure or otherwise.

(e) Subdivisions (b), (c), and (d) shall not apply to a guaranty or other type of suretyship obligation made in respect of a loan secured by a deed of trust or mortgage on a dwelling for not more than four families when the dwelling is occupied, entirely or in part, by the borrower and that loan was in fact used to pay all or part of the purchase price of that dwelling.

(f) The validity of a waiver executed before January 1, 1997, shall be determined by the application of the law that existed on the date that the waiver was executed.

SEC. 3. It is the intent of the Legislature that the types of waivers described in Section 2856 of the Civil Code do not violate the public policy of this state. Additionally, the Legislature, by enacting subdivisions (b), (c), and (d) of Section 2856 of the Civil Code, does not intend to address the legal requirements for waivers in a guaranty or other suretyship contract in connection with the types of transactions described in subdivision (e) of Section 2856 of the Civil Code. No inference of any kind should be drawn from the exclusion of these transactions from the application of subdivisions (b), (c), and (d) of Section 2856 of the Civil Code. These amendments are not intended to limit or otherwise affect any rights or protections currently afforded to borrowers under Section 580a, 580b, 580d, or 726 of the Code of Civil Procedure.

CHAPTER 1014

An act to add Section 511 to the Business and Professions Code, to amend Section 1367.10 of, and to add Section 1348.6 to, the Health and Safety Code, and to add Section 10175.5 to the Insurance Code, relating to health coverage.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 511 is added to the Business and Professions Code, to read:

511. (a) No subcontract between a physician and surgeon, physician and surgeon group, or other licensed health care practitioner who contracts with a health care service plan or health insurance carrier, and another physician and surgeon, physician and surgeon group, or licensed health care practitioner, shall contain any incentive plan that includes a specific payment made, in any type or form, to a physician and surgeon, physician and surgeon group, or other licensed health care practitioner as an inducement to deny, reduce, limit, or delay specific, medically necessary, and appropriate services covered under the contract with the health care service plan or health insurance carrier and provided with respect to a specific enrollee or groups of enrollees with similar medical conditions.

(b) Nothing in this section shall be construed to prohibit subcontracts that contain incentive plans that involve general payments such as capitation payments or shared risk agreements that are not tied to specific medical decisions involving specific enrollees or groups of enrollees with similar medical conditions.

SEC. 2. Section 1348.6 is added to the Health and Safety Code, to read:

1348.6. (a) No contract between a health care service plan and a physician, physician group, or other licensed health care practitioner shall contain any incentive plan that includes specific payment made directly, in any type or form, to a physician, physician group, or other licensed health care practitioner as an inducement to deny, reduce, limit, or delay specific, medically necessary, and appropriate services provided with respect to a specific enrollee or groups of enrollees with similar medical conditions.

(b) Nothing in this section shall be construed to prohibit contracts that contain incentive plans that involve general payments, such as capitation payments, or shared-risk arrangements that are not tied to specific medical decisions involving specific enrollees or groups of enrollees with similar medical conditions. The payments rendered or to be rendered to physicians, physician groups, or other licensed health care practitioners under these arrangements shall be deemed confidential information in accordance with subdivision (d) of Section 1351.

SEC. 3. Section 1367.10 of the Health and Safety Code is amended to read:

1367.10. Every health care service plan that will affect the choice of physician, hospital, or other health care providers shall include within its disclosure form and within its evidence or certificate of coverage a statement clearly describing how participation in the plan may affect the choice of physician, hospital, or other health care providers, the basic method of reimbursement, and whether

financial bonuses or incentives are used. The plan shall clearly inform prospective enrollees that participation in that plan will affect the person's choice of provider in this regard by placing the following statement in a conspicuous place on all material required to be given to prospective enrollees including promotional and descriptive material, disclosure forms, and certificates and evidences of coverage:

PLEASE READ THE FOLLOWING INFORMATION SO YOU WILL KNOW FROM WHOM OR WHAT GROUP OF PROVIDERS HEALTH CARE MAY BE OBTAINED

It is not the intent of this section to require that the names of individual health care providers be enumerated to prospective enrollees.

SEC. 3.5. Section 1367.10 of the Health and Safety Code is amended to read:

1367.10. Every health care service plan that will affect the choice of physician, hospital, or other health care providers shall include within its disclosure form and within its evidence or certificate of coverage a statement clearly describing how participation in the plan may affect the choice of physician, hospital, or other health care providers, the basic method of reimbursement, and whether financial bonuses or incentives are used. The plan shall clearly inform prospective enrollees that participation in that plan will affect the person's choice of provider in this regard by placing the following statement in a conspicuous place on all material required to be given to prospective enrollees including promotional and descriptive material, disclosure forms, and certificates and evidences of coverage:

PLEASE READ THE FOLLOWING INFORMATION SO YOU WILL KNOW FROM WHOM OR WHAT GROUP OF PROVIDERS HEALTH CARE MAY BE OBTAINED

It is not the intent of this section to require that the names of individual health care providers be enumerated to prospective enrollees.

If the health care service plan provides a list of providers to patients or contracting providers, the plan shall include within the provider listing a notification that enrollees may contact the plan in order to obtain a list of the facilities with which the health care service plan is contracting for subacute care and/or transitional inpatient care.

SEC. 4. Section 10175.5 is added to the Insurance Code, to read:

10175.5. (a) No disability insurance contract with a physician and surgeon, physician and surgeon group, or other licensed health care practitioner shall contain any incentive plan that includes specific payment made in any type or form, to a physician and

surgeon, physician and surgeon group, or other licensed health care practitioner as an inducement to deny, reduce, limit, or delay specific, medically necessary, and appropriate services provided with respect to specific insureds or groups of insureds with similar medical conditions.

(b) Nothing in this section shall be construed to prohibit payment arrangements that are not tied to specific medical decisions involving specific insureds or group of insureds with similar medical conditions.

SEC. 5. Section 3.5 of this bill incorporates amendments to Section 1367.10 of the Health and Safety Code proposed by both this bill and SB 1547. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1367.10 of the Health and Safety Code, and (3) this bill is enacted after SB 1547, in which case Section 3 of this bill shall not become operative.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 1015

An act to add Section 11462.06 to the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 11462.06 is added to the Welfare and Institutions Code, to read:

11462.06. (a) For purposes of the administration of this article, including the setting of group home rates, the department shall deem the reasonable costs of affiliated leases for shelter care for foster children to be allowable costs. Reimbursement of shelter costs shall not exceed 12 percent of the fair market value of owned, leased, or rented buildings, exclusive of idle capacity and capacity used for nongroup home programs and activities. Shelter costs shall be

considered reasonable in relation to the fair market value limit as described in subdivision (c). Allowable costs of affiliated leases shall be subject to a review by the Charitable Trust Section of the Department of Justice as specified by Chapter 15 (commencing with Section 999) of Division 1 of Title 11 of the California Code of Regulations.

(b) Effective July 1, 1998, an approval letter from the Charitable Trust Section of the Department of Justice shall be required for approval of shelter costs that result from self-dealing transactions, as defined in Section 5233 of the Corporations Code.

(c) For purposes of this section, fair market value of leased property shall be determined by either of the following methods, as chosen by the provider:

(1) The market value shown on the last tax bill for the cost reporting period.

(2) The market value determined by an independent appraisal. The appraisal shall be performed by a qualified, professional appraiser who, at a minimum, meets standards for appraisers as specified in Chapter 6.5 (commencing with Section 3500) of Title 10 of the California Code of Regulations. The appraisal shall not be deemed independent if performed under a less-than-arms-length agreement, or if performed by a person or persons employed by, or under contract with, the group home for purposes other than performing appraisals, or by a person having a material interest in any group home which receives foster care payments. If the department believes an appraisal does not meet these standards, the department shall give its reasons in writing to the provider and provide an opportunity for appeal.

CHAPTER 1016

An act to amend Section 1529.2 of the Health and Safety Code, relating to community care facilities.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 1529.2 of the Health and Safety Code is amended to read:

1529.2. (a) In addition to the foster parent training provided pursuant to Section 903.7 of the Welfare and Institutions Code, foster family agencies shall supplement the community college training by providing a program of training for their certified foster families.

(b) (1) Every licensed foster parent shall complete a minimum of 12 hours of foster parent training, as prescribed in paragraph (3),

before the placement of any foster children with the foster parent. In addition, a foster parent shall complete a minimum of eight hours of foster parent training annually as prescribed in paragraph (4). No child shall be placed in a foster family home unless these requirements are met by the persons in the home who are serving as the foster parents.

(2) (A) Upon the request of the foster parent for a hardship waiver from the postplacement training requirement or a request for an extension of the deadline, the county may, at its option, on a case-by-case basis, waive the postplacement training requirement or extend any established deadline for a period not to exceed one year, if the postplacement training requirement presents a severe and unavoidable obstacle to continuing as a foster parent. Obstacles for which a county may grant a hardship waiver or extension are:

(i) Lack of access to training due to the cost or travel required.

(ii) Family emergency.

(B) Before a waiver or extension may be granted, the foster parent should explore the opportunity of receiving training by video or written materials.

(3) The initial preplacement training shall include, but not be limited to, training courses that cover all of the following:

(A) An overview of the child protective system.

(B) The effects of child abuse and neglect on child development.

(C) Positive discipline and self-esteem.

(D) Health issues in foster care.

(E) Accessing education and health services available to foster children.

(4) The postplacement annual training shall include, but not be limited to, training courses that cover all of the following:

(A) Age-appropriate child development.

(B) Health issues in foster care.

(C) Emancipation and independent living skills if a foster parent is caring for youth.

(5) Foster parent training may be attained through a variety of sources, including community colleges, counties, hospitals, foster parent associations, the California State Foster Parent Association's Conference, adult schools, and certified foster parent instructors.

(6) A candidate for placement of foster children shall submit a certificate of training to document completion of the training requirements. The certificate shall be submitted with the initial consideration for placements and provided at the time of the annual visit by the licensing agency thereafter.

(c) Nothing in this section shall preclude a county from requiring county-provided preplacement or postplacement foster parent training in excess of the requirements in this section.

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CHAPTER 1017

An act to add Section 14087.316 to, and to add and repeal Section 14087.315 of, the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 14087.315 is added to the Welfare and Institutions Code, to read:

14087.315. (a) (1) At any time during the three year period described in subdivision (a) of Section 14094.3, the department shall approve, implement, and evaluate a pilot project in Tulare County, if requested by Tulare County, under the jurisdiction of the special commission established pursuant to Section 14087.31 or the contract specified in Section 14087.3, to test alternative managed care models tailored to the special health care needs of children under the California Children's Services Program.

(2) The pilot project shall maintain and follow the standards of care established by the California Children's Services Program, including the use of paneled providers and California Children's Services-approved special care centers and shall follow treatment plans for the California Children's Services Program, including specified services and providers of services pursuant to Section 14094.1, and adhere to all regulations or additional standards developed by the department for implementation of the program under Section 14094.1.

(3) The department shall require the pilot project serving children with conditions eligible under the California Children's Services Program to report expenditures and savings separately for services covered by the California Children's Services Program and children eligible under that program.

(4) The pilot project authorized by this section shall meet all requirements established by the department for California Children's Services Program pilot projects pursuant to Section 14094.3, including, but not limited to, program requirements outlined in the pilot project request for applications and the submission of information or documentation, or both, as required by the department.

(b) (1) The department shall submit to the appropriate committees of the Legislature an evaluation of the pilot project provided for pursuant to subdivision (a), based upon at least one full year of operation.

(2) The evaluation required pursuant to paragraph (1) shall address the impact of the pilot project on outcomes and, in addition, shall assess the extent to which:

(A) All children participating in the pilot project are referred in a timely fashion for appropriate health care.

(B) All children participating in the pilot project have access to coordinated care that includes primary care services in their own community.

(C) California Children's Services Program standards are being adhered to.

(3) The pilot program shall furnish to the department, in a format prescribed by the department, any statistical data or any other information necessary to complete the evaluation required pursuant to paragraph (1).

(c) (1) Prior to implementation of the pilot project provided for pursuant to subdivision (a), the department and the special commission authorized by Section 14087.31 shall agree on an appropriate capitation rate for services covered under the California Children's Services Program that is in compliance with federal and state laws and regulations governing these rates and is cost-neutral to the General Fund. If a capitation rate cannot be agreed upon, the county shall not be required to implement the pilot project provided for pursuant to subdivision (a).

(2) For purposes of this section, services covered by the California Children's Services Program, provided through the Tulare County Children's Services Program pilot program shall be defined as all medically necessary services required to treat the enrollee's condition on which eligibility for the California Children's Services Program is based pursuant to Section 123840 of the Health and Safety Code, and in accordance with all California Children's Services Program standards and guidelines and California Children's Services project requirements established by the department.

(d) The county shall obtain reinsurance to ensure that no child who is eligible to receive California Children's Services Program services will be denied those services.

(e) The special commission authorized by Section 14087.31 shall refer all children newly diagnosed with suspected CCS-eligible conditions to the county CCS program for determination of CCS medical eligibility and for assurance of continuity of services if a child becomes ineligible for Medi-Cal.

(f) This section is not intended to authorize, and shall not be interpreted to permit, any reduction in benefits or eligibility levels under the California Children's Services.

(g) In order to ensure that California Children's Services Program benefits are provided to enrollees with a condition eligible under the California Children's Services Program according to California Children's Services Program standards, in addition to the compliance monitoring and other state or federal oversight required under the

county's Medi-Cal managed care contract, there shall be oversight by the state and local California Children's Services Program for services covered by the contract authorized by this section.

(h) This section shall remain operative only until July 1, 1999, shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 2. Section 14087.316 is added to the Welfare and Institutions Code, to read:

14087.316. (a) In lieu of establishing the special commission authorized by Section 14087.31, the county may, itself, negotiate with the department the contract specified in Section 14087.3 and arrange for the provision of health care services provided pursuant to this chapter. If the county elects to exercise this option, subdivisions (p), (q), (t), (u), (v), (w), (x), and (z), of Section 14087.31 shall apply with equal force and effect to the County of Tulare, its board of supervisors and its members, and any advisory commission and its members appointed by the board of supervisors to assist with the provision of health care services provided pursuant to this section.

(b) The Tulare County Board of Supervisors shall establish and maintain an advisory commission. The advisory commission shall have a membership that includes beneficiaries, representatives of the community clinics, representatives of hospitals, and physicians. Physician membership shall be nominated by the Tulare County Medical Society.

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

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

CHAPTER 1018

An act to add Section 65584.6 to the Government Code, relating to housing.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

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

(a) In order to fulfill the purposes of Sections 65583 and 65584, housing should be developed in the jurisdictions to which the housing need is allocated.

(b) Due to circumstances unique to Napa County, and in order to provide additional and new housing for low- and moderate-income households, the county may meet a portion of its fair share housing needs allocation in one or more cities only within the county.

(c) Among the circumstances making it appropriate for Napa County to undertake this authority are both of the following:

(1) The county has 35,000 acres of world-famous vineyards and unincorporated area. The county's tourism industry relies on the vineyards and devotes its significant economic interests on those vineyards.

(2) The county has adopted a Housing Trust Fund program for residential development and a fee on industrial, commercial, and viticultural development in its unincorporated areas. The Housing Trust Fund currently generates approximately five hundred fifty thousand dollars ($550,000) per year to further affordable goals and strategies of the county's general plan, and these moneys can be effectively invested in partnership with the cities in the county in order to address affordable housing needs of county residents.

SEC. 2. Section 65584.6 is added to the Government Code, to read:

65584.6. (a) The County of Napa may, during its current housing element planning period, identified in Section 65588, meet up to 15 percent of its existing share of the regional housing need for lower income households, as defined in Section 65584, by committing funds for the purpose of constructing affordable housing units, and constructing those units in one or more cities within the county, only after all of the following conditions are met:

(1) An agreement has been executed between the county and the receiving city or cities, following a public hearing held by the county.

(2) The council of governments that assigned the county's share approves the request to meet up to 15 percent of the county's fair share housing allocation within one or more of the cities within the county.

(3) The city or cities in which the units are developed agree not to count the units towards their share of the region's affordable housing need.

(4) The county and the receiving city or cities find as follows:

(A) Adequate sites with appropriate zoning exist. The agreement shall demonstrate that the city or cities have identified sufficient sites in their housing elements to meet their existing share of regional housing need, as allocated by the council of governments pursuant

to subdivision (a) of Section 65584, in addition to the sites needed to construct the units pursuant to this section.

(B) If needed, additional subsidy or financing for the construction of the units is available.

(C) The receiving city or cities have housing elements that have been found by the Department of Housing and Community Development to be in compliance with this article.

(b) The county shall only receive credit after the units have been constructed.

(c) Concurrent with the review by the council of governments prescribed by this section, the Department of Housing and Community Development shall evaluate the agreement to determine whether the city or cities are in substantial compliance with this section. If the council of governments or the department fails to satisfy this requirement within 30 days following a request by the county or receiving city or cities, the agreement shall be deemed approved by that entity.

(d) If at the end of the five-year period identified in subdivision (c) of Section 65583, any percentage of the regional share allocation has not been constructed as provided pursuant to subdivision (a), the council of governments shall add the unbuilt units to Napa County's regional share allocation for the planning period of the next periodic update of the housing element.

(e) Napa County shall not meet a percentage of its share of the regional share pursuant to subdivision (a) on or after June 30, 2004, unless a later enacted statute, that is enacted before June 30, 2004, deletes or extends that date.

SEC. 3. The Legislature finds and declares that, because of the unique circumstances applicable to the County of Napa, as regards the availability of locations for affordable housing within the county, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution.

CHAPTER 1019

An act to amend Section 647 of the Penal Code, and to add Section 13201.5 to, and to amend and repeal Section 22659.5 of, the Vehicle Code, relating to prostitution.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. This act shall be known and may be cited as the "Prostitution Abatement and Neighborhood Protection Act of 1996."

SEC. 2. Section 647 of the Penal Code is amended to read:

647. Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

(a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

(b) Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

(c) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms.

(d) Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.

(e) Who loiters or wanders upon the streets or from place to place without apparent reason or business and who refuses to identify himself or herself and to account for his or her presence when requested by any peace officer so to do, if the surrounding circumstances would indicate to a reasonable person that the public safety demands this identification.

(f) Who is found in any public place under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, controlled substance, or toluene, in such a condition that he or she is unable to exercise care for his or her own safety or the safety of others, or by reason of his or her being under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, or toluene, interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way.

(g) When a person has violated subdivision (f) of this section, a peace officer, if he or she is reasonably able to do so, shall place the person, or cause him or her to be placed, in civil protective custody. The person shall be taken to a facility, designated pursuant to Section 5170 of the Welfare and Institutions Code, for the 72-hour treatment and evaluation of inebriates. A peace officer may place a person in civil protective custody with that kind and degree of force which would be lawful were he or she effecting an arrest for a misdemeanor without a warrant. No person who has been placed in civil protective custody shall thereafter be subject to any criminal prosecution or

juvenile court proceeding based on the facts giving rise to this placement. This subdivision shall not apply to the following persons:

(1) Any person who is under the influence of any drug, or under the combined influence of intoxicating liquor and any drug.

(2) Any person who a peace officer has probable cause to believe has committed any felony, or who has committed any misdemeanor in addition to subdivision (f) of this section.

(3) Any person who a peace officer in good faith believes will attempt escape or will be unreasonably difficult for medical personnel to control.

(h) Who loiters, prowls, or wanders upon the private property of another, at any time, without visible or lawful business with the owner or occupant. As used in this subdivision, "loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.

(i) Who, while loitering, prowling, or wandering upon the private property of another, at any time, peeks in the door or window of any inhabited building or structure, without visible or lawful business with the owner or occupant.

(j) Who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it.

(k) Anyone who looks through a hole into a bathroom with the intent to invade the privacy of persons inside.

In any accusatory pleading charging a violation of subdivision (b), if the defendant has been once previously convicted of a violation of that subdivision, the previous conviction shall be charged in the accusatory pleading. If the previous conviction is found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or is admitted by the defendant, the defendant shall be imprisoned in a county jail for a period of not less than 45 days and shall not be eligible for release upon completion of sentence, on probation, on parole, on work furlough or work release, or on any other basis until he or she has served a period of not less than 45 days in a county jail. In all cases in which probation is granted, the court shall require as a condition thereof that the person be confined in a county jail for at least 45 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 45 days in confinement in a county jail.

In any accusatory pleading charging a violation of subdivision (b), if the defendant has been previously convicted two or more times of a violation of that subdivision, each such previous conviction shall be charged in the accusatory pleading. If two or more of these previous convictions are found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or are admitted by the defendant, the defendant shall be imprisoned in a county jail for a period of not less than 90 days and shall not be eligible for release upon completion of

sentence, on probation, on parole, on work furlough or work release, or on any other basis until he or she has served a period of not less than 90 days in a county jail. In all cases in which probation is granted, the court shall require as a condition thereof that the person be confined in a county jail for at least 90 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 90 days in confinement in a county jail.

In addition to any punishment prescribed by this section, a court may suspend, for not more than 30 days, the privilege of the person to operate a motor vehicle pursuant to Section 13201.5 of the Vehicle Code for any violation of subdivision (b) that was committed within 1,000 feet of a private residence and with the use of a vehicle.

SEC. 2.5. Section 647 of the Penal Code is amended to read:

647. Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

(a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

(b) Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

(c) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms.

(d) Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.

(e) Who loiters or wanders upon the streets or from place to place without apparent reason or business and who refuses to identify himself or herself and to account for his or her presence when requested by any peace officer so to do, if the surrounding circumstances would indicate to a reasonable person that the public safety demands this identification.

(f) Who is found in any public place under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, controlled substance, or toluene, in such a condition that he or she is unable to exercise care for his or her own safety or the safety of others, or by reason of his or her being under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating

liquor, drug, or toluene, interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way.

(g) When a person has violated subdivision (f) of this section, a peace officer, if he or she is reasonably able to do so, shall place the person, or cause him or her to be placed, in civil protective custody. The person shall be taken to a facility, designated pursuant to Section 5170 of the Welfare and Institutions Code, for the 72-hour treatment and evaluation of inebriates. A peace officer may place a person in civil protective custody with that kind and degree of force which would be lawful were he or she effecting an arrest for a misdemeanor without a warrant. No person who has been placed in civil protective custody shall thereafter be subject to any criminal prosecution or juvenile court proceeding based on the facts giving rise to this placement. This subdivision shall not apply to the following persons:

(1) Any person who is under the influence of any drug, or under the combined influence of intoxicating liquor and any drug.

(2) Any person who a peace officer has probable cause to believe has committed any felony, or who has committed any misdemeanor in addition to subdivision (f) of this section.

(3) Any person who a peace officer in good faith believes will attempt escape or will be unreasonably difficult for medical personnel to control.

(h) Who loiters, prowls, or wanders upon the private property of another, at any time, without visible or lawful business with the owner or occupant. As used in this subdivision, "loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.

(i) Who, while loitering, prowling, or wandering upon the private property of another, at any time, peeks in the door or window of any inhabited building or structure, without visible or lawful business with the owner or occupant.

(j) Who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it.

(k) Anyone who looks through a hole or opening into, or otherwise views, by means of any instrumentality, including, but limited to, a periscope, telescope, binoculars, camera, or camcorder, the interior of a bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside.

In any accusatory pleading charging a violation of subdivision (b), if the defendant has been once previously convicted of a violation of that subdivision, the previous conviction shall be charged in the accusatory pleading. If the previous conviction is found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or is admitted by the defendant, the defendant shall be imprisoned in a

county jail for a period of not less than 45 days and shall not be eligible for release upon completion of sentence, on probation, on parole, on work furlough or work release, or on any other basis until he or she has served a period of not less than 45 days in a county jail. In all cases in which probation is granted, the court shall require as a condition thereof that the person be confined in a county jail for at least 45 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 45 days in confinement in a county jail.

In any accusatory pleading charging a violation of subdivision (b), if the defendant has been previously convicted two or more times of a violation of that subdivision, each such previous conviction shall be charged in the accusatory pleading. If two or more of these previous convictions are found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or are admitted by the defendant, the defendant shall be imprisoned in a county jail for a period of not less than 90 days and shall not be eligible for release upon completion of sentence, on probation, on parole, on work furlough or work release, or on any other basis until he or she has served a period of not less than 90 days in a county jail. In all cases in which probation is granted, the court shall require as a condition thereof that the person be confined in a county jail for at least 90 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 90 days in confinement in a county jail.

In addition to any punishment prescribed by this section, a court may suspend, for not more than 30 days, the privilege of the person to operate a motor vehicle pursuant to Section 13201.5 of the Vehicle Code for any violation of subdivision (b) that was committed within 1,000 feet of a private residence and with the use of a vehicle.

SEC. 3. Section 13201.5 is added to the Vehicle Code, to read:

13201.5. A court may suspend, for not more than 30 days, the privilege of any person to operate a motor vehicle upon conviction of subdivision (b) of Section 647 of the Penal Code where the violation was committed within 1,000 feet of a private residence and with the use of a vehicle.

SEC. 4. Section 22659.5 of the Vehicle Code is amended to read:

22659.5. (a) Notwithstanding any other provision of law, the County of Alameda, any city in that county, the County of Contra Costa, any city in that county, the County of Kern, any city in that county, the County of San Diego, any city in that county, the County of Sacramento, any city in that county, the City and County of San Francisco, the City of Signal Hill, the City of Long Beach, and the City of Los Angeles with respect to that portion of that city situated in the San Fernando Valley statistical area, as described in subdivision (c) of Section 11093 of the Government Code, may adopt an ordinance establishing a five-year pilot program which implements procedures for declaring any motor vehicle a public nuisance when the vehicle is used in the commission of an act in violation of Section 266h or 266i

of the Penal Code or subdivision (b) of Section 647 of that code, and there is a conviction of Section 266h or 266i of the Penal Code or subdivision (b) of Section 647 of that code, or a provision involving any lesser included offense to which the defendant enters a plea of guilty or nolo contendere as part of a plea agreement subsequent to the defendant having been charged with a violation of Section 266h or 266i of the Penal Code or subdivision (b) of Section 647 of that code.

(b) In addition to the authority provided by subdivision (h) of Section 22651, the ordinance may also include procedures to enjoin and abate the declared nuisance by ordering the defendant not to use the vehicle again for purposes of violating Section 266h or 266i of the Penal Code or subdivision (b) of Section 647 of that code and authorizing the temporary impoundment of the vehicle that the court has declared a nuisance if the defendant violates the order. The impoundment shall not exceed 48 hours.

(c) The only action that may be taken to enjoin and abate the declared nuisance are those actions specified in subdivision (b).

(d) Any procedures implemented pursuant to this section shall ensure that no vehicle shall be declared a nuisance if the vehicle is stolen, unless it is not possible to reasonably ascertain the identity of any owner of the vehicle.

(e) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1999, deletes or extends that date.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

SEC. 6. Section 2.5 of this bill incorporates amendments to Section 647 of the Penal Code proposed by both this bill and AB 2051. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 647 of the Penal Code, and (3) this bill is enacted after AB 2051, in which case Section 2 of this bill shall not become operative.

CHAPTER 1020

An act to amend Section 647 of the Penal Code, relating to crimes.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 647 of the Penal Code is amended to read:

647. Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

(a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

(b) Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

(c) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms.

(d) Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.

(e) Who loiters or wanders upon the streets or from place to place without apparent reason or business and who refuses to identify himself or herself and to account for his or her presence when requested by any peace officer so to do, if the surrounding circumstances are such as to indicate to a reasonable person that the public safety demands this identification.

(f) Who is found in any public place under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, controlled substance, or toluene, in such a condition that he or she is unable to exercise care for his or her own safety or the safety of others, or by reason of his or her being under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, or toluene, interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way.

(g) When a person has violated subdivision (f) of this section, a peace officer, if he or she is reasonably able to do so, shall place the person, or cause him or her to be placed, in civil protective custody. The person shall be taken to a facility, designated pursuant to Section 5170 of the Welfare and Institutions Code, for the 72-hour treatment and evaluation of inebriates. A peace officer may place a person in civil protective custody with that kind and degree of force which would be lawful were he or she effecting an arrest for a misdemeanor without a warrant. No person who has been placed in civil protective custody shall thereafter be subject to any criminal prosecution or juvenile court proceeding based on the facts giving rise to this placement. This subdivision shall not apply to the following persons:

(1) Any person who is under the influence of any drug, or under the combined influence of intoxicating liquor and any drug.

(2) Any person who a peace officer has probable cause to believe has committed any felony, or who has committed any misdemeanor in addition to subdivision (f) of this section.

(3) Any person who a peace officer in good faith believes will attempt escape or will be unreasonably difficult for medical personnel to control.

(h) Who loiters, prowls, or wanders upon the private property of another, at any time, without visible or lawful business with the owner or occupant thereof. As used in this subdivision, "loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.

(i) Who, while loitering, prowling, or wandering upon the private property of another, at any time, peeks in the door or window of any inhabited building or structure located thereon, without visible or lawful business with the owner or occupant thereof.

(j) Who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control thereof.

(k) Anyone who looks through a hole or opening, into, or otherwise views, by means of any instrumentality, including, but not limited to, a periscope, telescope, binoculars, camera, or camcorder, the interior of a bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons therein. This subdivision shall not apply to those areas of a private business used to count currency or other negotiable instruments.

In any accusatory pleading charging a violation of subdivision (b), if the defendant has been once previously convicted of a violation of that subdivision, the previous conviction shall be charged in the accusatory pleading. If the previous conviction is found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or is admitted by the defendant, the defendant shall be imprisoned in the

county jail for a period of not less than 45 days and shall not be eligible for release upon completion of sentence, on probation, on parole, on work furlough or work release, or on any other basis until he or she has served a period of not less than 45 days in the county jail. In all cases in which probation is granted, the court shall require as a condition thereof that the person be confined in the county jail for at least 45 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 45 days in confinement in the county jail.

In any accusatory pleading charging a violation of subdivision (b), if the defendant has been previously convicted two or more times of a violation of that subdivision, each such previous conviction shall be charged in the accusatory pleading. If two or more of these previous convictions are found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or are admitted by the defendant, the defendant shall be imprisoned in the county jail for a period of not less than 90 days and shall not be eligible for release upon completion of sentence, on probation, on parole, on work furlough or work release, or on any other basis until he or she has served a period of not less than 90 days in the county jail. In all cases in which probation is granted, the court shall require as a condition thereof that the person be confined in the county jail for at least 90 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 90 days in confinement in the county jail.

SEC. 2. Section 647 of the Penal Code is amended to read:

647. Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:

(a) Who solicits anyone to engage in or who engages in lewd or dissolute conduct in any public place or in any place open to the public or exposed to public view.

(b) Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

(c) Who accosts other persons in any public place or in any place open to the public for the purpose of begging or soliciting alms.

(d) Who loiters in or about any toilet open to the public for the purpose of engaging in or soliciting any lewd or lascivious or any unlawful act.

(e) Who loiters or wanders upon the streets or from place to place without apparent reason or business and who refuses to identify himself or herself and to account for his or her presence when requested by any peace officer so to do, if the surrounding circumstances would indicate to a reasonable person that the public safety demands this identification.

(f) Who is found in any public place under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, controlled substance, or toluene, in such a condition that he or she is unable to exercise care for his or her own safety or the safety of others, or by reason of his or her being under the influence of intoxicating liquor, any drug, controlled substance, toluene, or any combination of any intoxicating liquor, drug, or toluene, interferes with or obstructs or prevents the free use of any street, sidewalk, or other public way.

(g) When a person has violated subdivision (f) of this section, a peace officer, if he or she is reasonably able to do so, shall place the person, or cause him or her to be placed, in civil protective custody. The person shall be taken to a facility, designated pursuant to Section 5170 of the Welfare and Institutions Code, for the 72-hour treatment and evaluation of inebriates. A peace officer may place a person in civil protective custody with that kind and degree of force which would be lawful were he or she effecting an arrest for a misdemeanor without a warrant. No person who has been placed in civil protective custody shall thereafter be subject to any criminal prosecution or juvenile court proceeding based on the facts giving rise to this placement. This subdivision shall not apply to the following persons:

(1) Any person who is under the influence of any drug, or under the combined influence of intoxicating liquor and any drug.

(2) Any person who a peace officer has probable cause to believe has committed any felony, or who has committed any misdemeanor in addition to subdivision (f) of this section.

(3) Any person who a peace officer in good faith believes will attempt escape or will be unreasonably difficult for medical personnel to control.

(h) Who loiters, prowls, or wanders upon the private property of another, at any time, without visible or lawful business with the owner or occupant. As used in this subdivision, "loiter" means to delay or linger without a lawful purpose for being on the property and for the purpose of committing a crime as opportunity may be discovered.

(i) Who, while loitering, prowling, or wandering upon the private property of another, at any time, peeks in the door or window of any inhabited building or structure, without visible or lawful business with the owner or occupant.

(j) Who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it.

(k) Anyone who looks through a hole or opening, into, or otherwise views, by means of any instrumentality, including, but not limited to, a periscope, telescope, binoculars, camera, or camcorder, the interior of a bathroom, changing room, fitting room, dressing room, or tanning booth, or the interior of any other area in which the occupant has a reasonable expectation of privacy, with the intent to invade the privacy of a person or persons inside. This subdivision shall not apply to those areas of a private business used to count currency or other negotiable instruments.

In any accusatory pleading charging a violation of subdivision (b), if the defendant has been once previously convicted of a violation of that subdivision, the previous conviction shall be charged in the accusatory pleading. If the previous conviction is found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or is admitted by the defendant, the defendant shall be imprisoned in a county jail for a period of not less than 45 days and shall not be eligible for release upon completion of sentence, on probation, on parole, on work furlough or work release, or on any other basis until he or she has served a period of not less than 45 days in a county jail. In all cases in which probation is granted, the court shall require as a condition thereof that the person be confined in a county jail for at least 45 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 45 days in confinement in a county jail.

In any accusatory pleading charging a violation of subdivision (b), if the defendant has been previously convicted two or more times of a violation of that subdivision, each such previous conviction shall be charged in the accusatory pleading. If two or more of these previous convictions are found to be true by the jury, upon a jury trial, or by the court, upon a court trial, or are admitted by the defendant, the defendant shall be imprisoned in a county jail for a period of not less than 90 days and shall not be eligible for release upon completion of sentence, on probation, on parole, on work furlough or work release, or on any other basis until he or she has served a period of not less than 90 days in a county jail. In all cases in which probation is granted, the court shall require as a condition thereof that the person be confined in a county jail for at least 90 days. In no event does the court have the power to absolve a person who violates this subdivision from the obligation of spending at least 90 days in confinement in a county jail.

In addition to any punishment prescribed by this section, a court may suspend, for not more than 30 days, the privilege of the person to operate a motor vehicle pursuant to Section 13201.5 of the Vehicle Code for any violation of subdivision (b) that was committed within 1,000 feet of a private residence and with the use of a vehicle.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction,

eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

SEC. 4. Section 2 of this bill incorporates amendments to Section 647 of the Penal Code proposed by both this bill and AB 2949. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 647 of the Penal Code, and (3) this bill is enacted after AB 2949, in which case Section 1 of this bill shall not become operative.

CHAPTER 1021

An act to amend Section 30054 of, and to add Section 30055 to, the Government Code, relating to taxation.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 30054 of the Government Code is amended to read:

30054. (a) For the 1993–94, 1994–95, and 1995–96 fiscal years only, the amounts allocated pursuant to Sections 30052 and 30053 shall be available only for public safety services, and shall be allocated in each qualified county to local agencies as provided in subdivision (b).

(b) (1) Each county shall create a Public Safety Augmentation Fund that shall consist of all revenues received by the county as a result of the allocations pursuant to Sections 30052 and 30053.

(2) Except as provided in paragraph (3) or (4), for each of the 1993–94, 1994–95, and 1995–96 fiscal years only, the augmentation fund described in paragraph (1) shall be allocated among the county and each city in the county that provides public safety services as follows:

(A) The auditor shall determine an allocation factor for each city within the county, the numerator of which shall be the amount of revenue shifted from that city to the Educational Revenue Augmentation Fund pursuant to Section 97.3 of the Revenue and Taxation Code for the 1993–94 fiscal year less the amount of vehicle license fee revenues allocated to the city pursuant to Section 11005.4 of the Revenue and Taxation Code for the 1993–94 fiscal year and the denominator of which shall be the amount of revenue shifted from

all cities in the county and from the county to the Educational Revenue Augmentation Fund pursuant to Section 97.3 of the Revenue and Taxation Code for the 1993–94 fiscal year less the amount of vehicle license fee revenues allocated to the county and all cities in the county pursuant to Section 11005.4 of the Revenue and Taxation Code for the 1993–94 fiscal year.

(B) The auditor shall multiply the amount in the augmentation fund by the allocation factor determined in subparagraph (A) for each city.

(C) The allocation factor to be used for each city for the 1993–94 fiscal year shall not result in an allocation that exceeds 50 percent of the difference between the following:

(i) The amount by which the city's allocation of property tax revenues was reduced pursuant to Section 97.035 of the Revenue and Taxation Code for the 1993–94 fiscal year.

(ii) The amount of vehicle license fee revenues allocated to the city pursuant to Section 11005.4 of the Revenue and Taxation Code for the 1993–94 fiscal year.

(D) The allocation factor determined pursuant to this paragraph for the 1993–94 fiscal year shall also be applied in each fiscal year thereafter.

(3) Notwithstanding paragraph (2), for each of the 1993–94, 1994–95, and 1995–96 fiscal years only, the amount in the augmentation fund established pursuant to paragraph (1) of each county described in subparagraph (C) shall be allocated to the cities in the county that provide public safety services as follows:

(A) The auditor shall determine an allocation factor for each city within the county, the numerator of which shall be the amount of the revenue shifted from that city to the Educational Revenue Augmentation Fund pursuant to Section 97.3 of the Revenue and Taxation Code for the 1993–94 fiscal year, and the denominator of which shall be the amount of revenue shifted from all cities in the county to the Educational Revenue Augmentation Fund pursuant to Section 97.3 of the Revenue and Taxation Code for the 1993–94 fiscal year.

(B) The auditor shall multiply 5 percent of the amount in the augmentation fund established pursuant to paragraph (1) by the allocation factor determined for each city in subparagraph (A). The amount so computed for each city shall be allocated to that city.

(C) This paragraph applies only to the Counties of Fresno, Kings, Merced, San Bernardino, San Diego, San Joaquin, Solano, and Yolo.

(D) This paragraph shall apply to a particular county described in subparagraph (C) only if the total amount allocated under this paragraph to all of the cities therein that provide public safety services is less than the amount that would otherwise be allocated to all of those cities pursuant to paragraph (2).

(4) Notwithstanding paragraph (2), for each of the 1993–94, 1994–95, and 1995–96 fiscal years only, the amount in the

augmentation fund established pursuant to paragraph (1) for the County of Alameda shall be allocated to the cities in the County of Alameda that provide public safety services as follows:

(A) The auditor shall determine an allocation factor for each city within the county, the numerator of which shall be the amount of the revenue shifted from that city to the Educational Revenue Augmentation Fund pursuant to Section 97.3 of the Revenue and Taxation Code for the 1993–94 fiscal year, and the denominator of which shall be the amount of revenue shifted from all cities in the County of Alameda to the Educational Revenue Augmentation Fund pursuant to Section 97.3 of the Revenue and Taxation Code for the 1993–94 fiscal year.

(B) The auditor shall multiply 6.1 percent of the amount in the augmentation fund established pursuant to paragraph (1) by the allocation factor determined for each city in subparagraph (A). The amount so computed for each city shall be allocated to that city.

(5) All moneys in the Public Safety Augmentation Fund not allocated to any city within the county pursuant to paragraph (2), (3), or (4) shall be allocated to the county.

SEC. 2. Section 30055 is added to the Government Code, to read:

30055. For the 1996–97 fiscal year and each fiscal year thereafter, each county shall establish a Public Safety Augmentation Fund in the county treasury to receive those revenues allocated to the county pursuant to Sections 30052 and 30053. Amounts deposited in this fund shall be expended exclusively to fund public safety services, and for that purpose shall be allocated among the county and the cities in the county that provide public safety services, as follows:

(a) For purposes of determining the amounts to be allocated to cities, the auditor shall, except as otherwise provided in subdivision (b), (c), or (d), multiply the monthly amount allocated to the county pursuant to subdivision (a) of Section 30053 by an allocation factor for each city, calculated as follows:

(1) The numerator shall be 50 percent of the difference between the amount of ad valorem property tax revenue shifted from that city to the county's Educational Revenue Augmentation Fund pursuant to Section 97.3 of the Revenue and Taxation Code for the 1993–94 fiscal year, and the amount of vehicle license fee revenues allocated to the city pursuant to Section 11005.4 of the Revenue and Taxation Code for the 1993–94 fiscal year.

(2) The denominator shall be the amount of ad valorem property tax revenue shifted from the county and all cities in the county to the county's Educational Revenue Augmentation Fund pursuant to Section 97.3 of the Revenue and Taxation Code for the 1993–94 fiscal year, less the amount of vehicle license fee revenues allocated to the county and all cities in the county pursuant to Section 11005.4 of the Revenue and Taxation Code for the 1993–94 fiscal year.

(b) Notwithstanding subdivision (a), the amount in the augmentation fund established pursuant to this section in each

county described in paragraph (3) shall be allocated to the cities in that county that provide public safety services, as follows:

(1) The auditor shall determine an allocation factor for each city within the county, the numerator of which shall be the amount of the revenue shifted from that city to the Educational Revenue Augmentation Fund pursuant to Section 97.3 of the Revenue and Taxation Code for the 1993–94 fiscal year, and the denominator of which shall be the amount of revenue shifted from all cities in the county to the Educational Revenue Augmentation Fund pursuant to Section 97.3 of the Revenue and Taxation Code for the 1993–94 fiscal year.

(2) The auditor shall multiply 5 percent of the amount in the augmentation fund established pursuant to this section by the allocation factor determined for each city in paragraph (1). The amount so computed for each city shall be allocated to that city.

(3) This subdivision applies only to the Counties of Fresno, Kings, Merced, San Bernardino, San Joaquin, Solano, and Yolo.

(4) This subdivision shall apply to a particular county described in paragraph (3) only if the total amount allocated under this paragraph to all of the cities therein that provide public safety services is less than the amount that would otherwise be allocated to all of those cities pursuant to subdivision (a).

(c) Notwithstanding subdivision (a), the amount in the augmentation fund established pursuant to this section for the County of Alameda shall be allocated to the cities in the County of Alameda that provide public safety services as follows:

(1) The auditor shall determine an allocation factor for each city within the county, the numerator of which shall be the amount of the revenue shifted from that city to the Educational Revenue Augmentation Fund pursuant to Section 97.3 of the Revenue and Taxation Code for the 1993–94 fiscal year, and the denominator of which shall be the amount of revenue shifted from all cities in the County of Alameda to the Educational Revenue Augmentation Fund pursuant to Section 97.3 of the Revenue and Taxation Code for the 1993–94 fiscal year.

(2) The auditor shall multiply 6.1 percent of the amount in the augmentation fund established pursuant to this section by the allocation factor determined for each city in paragraph (1). The amount so computed for each city shall be allocated to that city.

(d) Notwithstanding subdivision (a), for the 1997–98 fiscal year and each fiscal year thereafter, the auditor in the County of San Diego shall allocate to each eligible city in the county that provides public safety services, from the county's Public Safety Augmentation Fund created pursuant to paragraph (1), an amount obtained by multiplying the amount in the Public Safety Augmentation Fund by the allocation factor listed below for each city:

Carlsbad	0.3582694
Chula Vista	0.3126700
Coronado	0.1205707
Del Mar	0.0266781
El Cajon	0.1479797
Escondido	0.2874369
Imperial Beach	0.0543447
La Mesa	0.1035164
Lemon Grove	0.0151415
National City	0.0569347
Oceanside	0.6955004
San Diego	3.1831131
San Marcos	0.0585130
Vista	0.2269571

(e) All moneys in the Public Safety Augmentation Fund not allocated to any city within the county pursuant to subdivision (a), (b), (c), or (d) shall be allocated to the county.

SEC. 3. If both this bill and AB 1191 are enacted and become effective on or before January 1, 1997, and both bills amend Section 30054 of, and add Section 30055 to, the Government Code, the provisions of this bill shall become operative and shall supersede the provisions of AB 1191 that amend Section 30054 of, and add Section 30055 to, the Government Code, and those provisions of AB 1191 shall not become operative.

SEC. 4. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the uniquely severe fiscal difficulties being suffered by the cities in San Diego County in their attempts to provide essential public safety services.

SEC. 5. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

CHAPTER 1022

An act relating to fish and wildlife, and making an appropriation therefor.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

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

(a) The property known as the South Spit of Humboldt Bay, including five miles from Table Bluff County Park to the south jetty separating south Humboldt Bay from the Pacific Ocean, contains several species of rare or endangered plants and animals.

(b) Lack of proper management of the South Spit of Humboldt Bay has negatively affected the wetland and dune resources of Humboldt Bay, including essential habitat for migratory water birds and the brant and snowy plover, and has placed at risk valuable cultural resources of the Wiyot people.

(c) Current illegal camping on the South Spit of Humboldt Bay negatively affects natural or cultural activities, such as hiking, sportfishing, hunting, appropriate off-highway vehicle use, Native American gatherings and cultural protection.

(d) Public ownership of the South Spit of Humboldt Bay is desirable to ensure that it is properly managed and its natural and cultural resources can be restored and protected.

(e) Expansion of existing publicly owned wildlife habitat and refuge will enhance wildlife habitat protection, is desirable, and can be most effectively accomplished by engaging in cooperative management with various state and federal agencies.

SEC. 2. Due to the impact of unmanaged public use of the South Spit of Humboldt Bay on its natural and cultural resources, after the removal of any illegal encampment, debris, and other environmental hazards by the current property owners, the State Coastal Conservancy and the Wildlife Conservation Board may acquire the south spit area. The State Coastal Conservancy, in consultation with the Department of Parks and Recreation, the Attorney General, the State Lands Commission, and Humboldt County, may prepare a management plan for the south spit area. It is the intent of the Legislature that the management plan be based on a site that has been cleared of illegal encampments, debris, and other environmental hazards. It is the intent of the Legislature that the management plan be completed and submitted to the Legislature on or before June 30, 1997, and that it include, but not be limited to, the following minimum standards:

(a) The property shall have controlled access.

(b) Rare species of plants and animals shall be protected, and their habitats, including dunes and wetlands, shall be restored where appropriate and feasible.

(c) Access corridors shall be specified.

(d) Cultural resources shall be protected through a cooperative arrangement with the representative of the Wiyot people.

(e) Uses shall be strictly limited and controlled, consistent with habitat requirements, public safety, and maintenance of public facilities, including the public jetty.

(f) Off-highway vehicle use shall be limited to the waveslope on the west side of the South Jetty Road, bounded by Table Bluff County Park to the south and the South Jetty to the north.

(g) Vehicular access on the east side of South Jetty Road shall be limited by special permission only as required for access for hunting, gathering, wildlife management, or traditional uses of the Wiyot people.

(h) Vehicle turnouts and pedestrian access shall be allowed only at designated corridors.

(i) Identification of potential state, local, and federal funding sources necessary to implement the plan.

SEC. 3. There is hereby appropriated from the Public Resources Account in the Cigarette and Tobacco Products Surtax Fund to the State Coastal Conservancy the sum of one hundred thousand dollars ($100,000) for the acquisition of, and planning for, the South Spit of Humboldt Bay pursuant to Section 2 of this act.

CHAPTER 1023

An act to amend Sections 690, 1244, 1271, 1300.1, 1320, 2252, 2253, 2254, 2257, 2543, 2812, 4009, 4084.5, 4084.6, 4148, 4160, 4211.5, 4228, 4240, 7649, 9744, 12240, 17577.2, and 22955 of the Business and Professions Code, to amend Sections 56.17, 56.30, 1714.25, and 1940 of the Civil Code, to amend Section 564 of the Code of Civil Procedure, to amend Sections 8208, 32064, 32065, 32241, 32243, 33319, 44978, 46010, 46010.5, 48213, 48931, 49452.5, 87408.6, and 87781 of the Education Code, to amend Sections 359, 1852, 6925, 7571, and 7639 of the Family Code, to amend Section 5655 of the Fish and Game Code, to amend Sections 11408, 12533, 12846, 12982, 14505, 14904, 18694, 18813, 18849, 18850, 18851, 19260, 41302, 41332, 41581, 46000, 46002, 46003, 46003.5, 46004, 46005, 46006, 46007, 46008, 46009, 46010, 46012, 46014, 46015, 55861.7, 56571.7, and 58108 of the Food and Agricultural Code, to amend Sections 6103.4, 7575, 7901, 8607.2, 8610.5, 8870.95, 8894.1, 11121, 14964, 15438, 15438.1, 24306.5, 25852, 26857, 26859, 27491.41, 27504.1, 33202, 54985, 65352, 65352.5, 65962.5, and 66013 of the Government Code, to amend Section 784 of the Harbors and Navigation Code, to amend Sections 1201, 1205.5, 1212, 1250.1, 1250.4,

1250.8, 1251.3, 1253.1, 1255, 1268, 1271.1, 1339.5, 1339.8, 1339.30, 1395, 1403.1, 1569.691, 1569.692, 1596.813, 1603.3, 1603.4, 1616.5, 1619, 1729.1, 1797.98e, 1797.189, 1797.221, 1799.54, 2202, 2317, 2805, 6542, 7025, 7054, 7054.6, 7117, 8961.5, 11026, 11122, 11150, 11210, 11250, 11251, 11758.54, 17961, 24174, 24177, 25143.10, 25163, 25174.7, 25187, 25198, 25208.17, 25249.11, 25298.5, 25358.4, 32121, 32127.2, 32132, 32221, 38072, 38079, 39660.5, 100125, 100450, 100700, 100725, 100865, 100880, 101095, 101140, 101185, 101225, 101275, 101280, 101300, 101310, 101325, 101405, 101425, 101460, 101625, 101800, 101805, 101815, 101820, 102310, 102585, 102960, 103175, 104420, 104580, 105250, 106690, 113200, 113270, 113275, 113280, 120250, 120295, 121575, 123400, 127015, 127020, 127040, 127045, 127580, 127760, 127780, 128030, 128782, 129295, 129725, 129730, 129787, 129895, and 129905, to amend the heading of Article 3.8 (commencing with Section 349.100) of Chapter 2 of Part 1 of Division 1 of, to amend the heading of Article 12 (commencing with Section 429) of Chapter 2 of Division 1 of, to amend the heading of Article 3 (commencing with Section 3396) of Chapter 7 of Division 4 of, to amend the headings of Article 2 (commencing with Section 115725) of, and Article 3 (commencing with Section 115775) of, Chapter 4 of Part 10 of Division 104 of, to amend the heading of Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of, to amend the heading of Chapter 4 of Part 10 of Division 104 of, to amend the heading of Chapter 8 (commencing with Section 108800) of Part 3 of Division 104 of, to amend the heading of Chapter 3 (commencing with Section 120750) of Part 3 of Division 105 of, to amend and renumber Sections 27, 113, 199.65, 199.66, 199.67, 199.68, 305, 319.50, 319.55, 330.10, 330.15, 330.20, 330.25, 330.30, 330.35, 349.100, 349.101, 349.102, 349.103, 349.104, 349.105, 349.106, 349.107, 349.108, 349.109, 412, 429, 429.14, 429.82, 429.83, 429.84, 443.26, 443.37, 443.46, 1250.9, 3381, 3396, 4010.1, 4010.35, 4017, 4026.7, 4026.8, 4049.54, 10605, 15097.105, 24425, 25020.5, 25021.9, 25022.8, 25023.2, 25023.8, 25024, 25025.9, 25027, 25027.5, 25030.5, 25041, 25055, 25061, 25062.5, 25063, 25070.4, 25080, 25081, 25088, 25090, 25090.5, 25090.6, 25673.1, 26569.22, 26569.30, 27508, 27510, 27511, 27512, 27512.5, 27514, 27514.1, 27514.2, 27517, 27518.5, 27519, 27519.1, 27519.2, 27523, 27523.1, 27523.2, 27523.3, 27523.4, 27523.8, 27525.1, 27531, 27531.5, 27533.5, 27534, 27535, 27536.3, 27550, 27560, 27601, 27601.5, 27602.3, 27602.4, 27606, 27612, 27612.1, 27613, 27614, 27621, 27622, 27622.5, 27623, 27625, 27627, 27629, 27632, 27675, 27677, 27791, 27832, 27844, 27845, 27849, 114363, 123227, 128525, 128530, and 129880 of, to amend and renumber the headings of Article 3.35 (commencing with Section 319.50) and Article 3.55 (commencing with Section 330.10) of Chapter 2 of Part 1 of Division 1 of, to amend and renumber the heading of Article 2 of Chapter 4 of Part 3 of Division 107 of, to amend and renumber the heading of Chapter 1.155 (commencing with Section 199.65) of Part 1 of Division 1 of, to amend and renumber the heading of Chapter 4 (commencing with Section 101800) of Part 4 of Division 101 of, to amend, renumber, and add Sections 114360 and 114365 of, to add Sections 100333, 101565,

106865, 109277, 109282, 110597, 110956, 110957, 110958, 110970, 111912, 113732, 113923, 114361, 114364, 114366, 115091, 115092, 115093, 116379, 117657, 117924, 118027, 118029, 128440, 128445, 128450, and 128455 to, to add a heading as Article 4 (commencing with Section 100921) to Chapter 4 of Part 1 of Division 101 of, to add Article 5 (commencing with Section 101150) to Chapter 2 of Part 3 of Division 101 of, to add Article 5 (commencing with Section 101480) to Chapter 4 of Part 2 of Division 101 of, to add a heading as Article 10 (commencing with Section 110970) to Chapter 5 of Part 5 of Division 104 of, to add Article 20 (commencing with Section 114460) to Chapter 4 of Part 7 of Division 104 of, to add Article 5 (commencing with Section 114680) and Article 6 (commencing with Section 114685) to Chapter 4 of Part 9 of Division 104 of, to add Article 2 (commencing with Section 127340) to Chapter 2 of Part 2 of Division 107 of, to add Article 1 (commencing with Section 128330) to Chapter 5 of Part 3 of Division 107 of, to add a heading as Chapter 6 (commencing with Section 124250) of Part 2 of Division 106 of, to add a heading as Chapter 4 (commencing with Section 127620) of Part 2 of Division 107 of, to add Chapter 4 (commencing with Section 128200) to Part 3 of Division 107 of, to add a heading as Part 5 (commencing with Section 101800) of Division 101 of, to add a heading as Part 4 (commencing with Section 128525) to Division 107 of, to add Part 9.5 (commencing with Section 115700) to Division 104 of, to repeal Sections 101500, 110185, 110195, 111600, 113300, 113305, 114770, and 116335 of, to repeal Article 1.5 (commencing with Section 447) of Part 1.95 of, and Article 4.2 (commencing with Section 512) of Chapter 1 of Part 2 of, Division 1 of, to repeal Article 1 (commencing with Section 115700) of Chapter 4 of Part 10 of Division 104 of, to repeal Article 6 (commencing with Section 114690) of Chapter 4 of Part 9 of Division 104 of, to repeal Article 1 of Chapter 5 of Part 3 of Division 107 of, to repeal Chapter 7 (commencing with Section 1000) of Part 2 of Division 1 of, to repeal Part 1.98 (commencing with Section 449.10) of Division 1 of, and to repeal Part 6.5 (commencing with Section 1189) of Division 1 of, and to repeal and add Article 4 (commencing with Section 114675) of Chapter 4 of Part 9 of Division 104 of, the Health and Safety Code, to amend Sections 799.02, 799.10, 10123.35, 10140.1, and 11512.965 of the Insurance Code, to amend Sections 147.2, 2441, 2807, 5205, 6712, and 6717 of the Labor Code, to amend Sections 187, 193.8, 274, 275, 276, 803, 830.3, 1202.1, 1202.6, 1524.1, 3405, 4028, 6031.1, 7504, 11105, 11165.13, and 14202 of the Penal Code, to amend Sections 2356, 3211, and 5144 of the Probate Code, to amend Sections 5099.7, 21151.1, 40191, 42290, 43020, 43210, 43211, 43308, and 44103 of the Public Resources Code, to amend Sections 770, 12814, and 12821 of the Public Utilities Code, to amend Sections 6074, 30461.6, 43012, 43056, 43057, 43101, 43152.13, and 43152.14 of the Revenue and Taxation Code, to amend Sections 165.5, 353, 2401.1, 2452, 20017, 27903, and 33000 of the Vehicle Code, to amend Sections 10617, 13050, 13176, 13281, 13755, 13813, 13819, 13820, 13824, 13837,

13855, 13861, 13868.5, 13880, 13882, 13886, 13895.3, 13895.9, 13896, 13896.4, 14003, 14011, 14012, 14016, 14952, 22264, and 36153 of the Water Code, and to amend Sections 220, 729.8, 903, 1715, 1768.9, 1773, 4134, 4472, 4780, 5328, 5717, 9390.5, 11330.8, 11333, 14021.7, 14081.5, 14087.6, 14094.3, 14103.8, 14105.5, 14126.25, 14126.40, 14132.22, 14132.77, 14138, 14139, 14148.3, 14163, 14503.5, 14683, 16604.5, 16702, 16702.1, 16800.7, 16908.5, 16920, 16921, 16931.5, 16934, 16953, 16961, 16970, 16990.9, 16996.2, 17602, 17605, 18966, 18966.1, 18968, 18968.5, 18969, and 18970 of the Welfare and Institutions Code, relating to reorganization of the Health and Safety Code, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 690 of the Business and Professions Code is amended to read:

690. (a) Except as provided in Section 4601 of the Labor Code and Section 2627 of the Unemployment Insurance Code, neither the administrators, agents, or employees of any program supported, in whole or in part, by funds of the State of California, nor any state agency, county, or city of the State of California, nor any officer, employee, agent, or governing board of a state agency, county, or city in the performance of its, his, or her duty, duties, function or functions, shall prohibit any person, who is entitled to vision care that may be rendered by either an optometrist or a physician and surgeon within the scope of his or her license, from selecting a duly licensed member of either profession to render the service, provided the member has not been removed or suspended from participation in the program for cause.

(b) Whenever any person has engaged, or is about to engage, in any acts or practices that constitute, or will constitute, a violation of this section, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining the conduct on application of the Attorney General, the district attorney of the county, or any person aggrieved.

For purposes of this subdivision, "person aggrieved" means the person who seeks the particular medical or optometric services mentioned herein, or the holder of any certificate who is discriminated against in violation of this section.

(c) Nothing contained in this section shall prohibit any agency operating a program of services, including, but not limited to, a program established pursuant to Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety

Code or Chapter 10.5 (commencing with Section 6971), Chapter 11 (commencing with Section 7001), or Chapter 11.5 (commencing with Section 7041) of Division 6 of the Education Code, from preparing lists of healing arts licensees and requiring patients to select a licensee on the list as a condition to payment by the program for the services, except that if the lists are established and a particular service may be performed by either a physician and surgeon or an optometrist the list shall contain a sufficient number of licensees so as to assure the patients an adequate choice.

SEC. 2. Section 1244 of the Business and Professions Code is amended to read:

1244. (a) Nothing in this chapter shall restrict, limit, or prevent a program of nondiagnostic general health assessment provided that:

(1) The purpose of the program is to refer individuals to licensed sources of care as indicated.

(2) The program utilizes only those devices that comply with all of the following:

(A) Meet all applicable state and federal performance standards pursuant to Section 111245 of the Health and Safety Code.

(B) Are not adulterated as specified in Article 2 (commencing with Section 111250) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code.

(C) Are not misbranded as specified in Article 3 (commencing with Section 111330) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code.

(D) Are not new devices unless they meet the requirements of Section 111550 of the Health and Safety Code.

(3) The program maintains a supervisory committee consisting of, at a minimum, a licensed physician and surgeon and a laboratory technologist licensed pursuant to this chapter.

(4) The supervisory committee for the program adopts written protocols that shall be followed in the program and that shall contain all of the following:

(A) Provision of written information to individuals to be assessed that shall include, but not be limited to, the following:

(i) The potential risks and benefits of assessment procedures to be performed in the program.

(ii) The limitations, including the nondiagnostic nature, of assessment examinations of biological specimens performed in the program.

(iii) Information regarding the risk factors or markers targeted by the program.

(iv) The need for followup with licensed sources of care for confirmation, diagnosis, and treatment as appropriate.

(B) Proper use of each device utilized in the program including the operation of analyzers, maintenance of equipment and supplies, and performance of quality control procedures including the determination of both accuracy and reproducibility of measurements

in accordance with instructions provided by the manufacturer of the assessment device used.

(C) Proper procedures to be employed when drawing blood, if blood specimens are to be obtained.

(D) Proper procedures to be employed in handling and disposing of all biological specimens to be obtained and material contaminated by those biological specimens.

(E) Proper procedures to be employed in response to fainting, excessive bleeding, or other medical emergencies.

(F) Reporting of assessment results to the individual being assessed.

(G) Referral and followup to licensed sources of care as indicated.

The written protocols adopted by the supervisory committee shall be maintained for at least one year following completion of the assessment program during which period they shall be subject to review by department personnel and the local health officer or his or her designee, including the public health laboratory director.

(b) If skin puncture to obtain a blood specimen is to be performed in a program of nondiagnostic general health assessment, the individual performing the skin puncture shall be either:

(1) Authorized to perform skin puncture under this chapter.

(2) Any person who possesses a statement signed by a licensed physician and surgeon that attests that the named person has received adequate training in the proper procedure to be employed in skin puncture.

(c) A program of nondiagnostic general health assessment that fails to meet the requirements set forth in subdivisions (a) and (b) shall not operate.

(d) For purposes of this section, "skin puncture" means the collection of a blood specimen by the finger prick method only and does not include venipuncture, arterial puncture, or any other procedure for obtaining a blood specimen.

(e) Nothing in this chapter shall be interpreted as prohibiting a licensed clinical laboratory from operating a program of nondiagnostic general health assessment provided that the clinical laboratory complies with the requirements of this section.

SEC. 3. Section 1271 of the Business and Professions Code is amended to read:

1271. (a) A cytotechnologist shall not examine more than 80 gynecologic slides in a 24-hour period.

(b) The maximum workload limit in subdivision (a) is the maximum number of gynecologic slides that a cytotechnologist shall examine in a 24-hour period without regard to the number of clinical laboratories or other persons for which the work is performed. Cytotechnologists who examine both gynecologic and nongynecologic slides shall do so on a pro rata basis so that the maximum workload limit in subdivision (a) is not exceeded, and so that the number of gynecologic slides examined is reduced

proportionally if both gynecologic and nongynecologic slides are examined in a 24-hour period.

(c) The maximum workload limit in subdivision (a) is for a cytotechnologist who has no duties other than the evaluation of gynecological slides. Cytotechnologists who have other duties, including, but not limited to, the preparation and staining of cytologic slides, shall decrease on a pro rata basis the number of slides examined.

(d) All cytologic slides shall be examined in a clinical laboratory that has been licensed by the department, or in a municipal or county laboratory established under Section 101150 of the Health and Safety Code. All slides examined under the name of a clinical laboratory shall be examined on the premises of that laboratory.

(e) Each clinical laboratory shall maintain records of the number of cases and slides for gynecologic and nongynecologic samples examined on a monthly and annual basis.

(f) Each cytotechnologist shall maintain current records in a form prescribed by the department of hours worked and the names and addresses of the clinical laboratories or other persons for whom slides are examined.

(g) Each clinical laboratory shall retain all cytology slides and cell blocks examined for a minimum of five years and all cytology reports for a minimum of 10 years.

(h) The presence of any factor that would prohibit the proper examination of a cytologic slide, including, but not limited to, damaged slides or inadequate specimens, as determined by the director of the laboratory, shall result in the issuance of a statement of inadequacy to the referring physician and no report of cytologic findings shall be issued on that slide.

(i) Each clinical laboratory shall maintain records of the number of cases and slides for gynecologic and nongynecologic slides each cytotechnologist in the laboratory reads each 24-hour period, the number of hours devoted during each 24-hour period to screening cytology slides by each individual, and shall determine weekly and cumulatively the frequency of abnormal slides found by each cytotechnologist employed.

(j) Ten percent of the negative or normal slides examined by each cytotechnologist employed by a clinical laboratory shall be rescreened at least weekly by a cytopathologist or supervising cytotechnologist other than the original examiner.

SEC. 4. Section 1300.1 of the Business and Professions Code is amended to read:

1300.1. The application and renewal fees for clinical laboratory licenses specified in Section 1300 shall be adjusted annually in the manner specified in Section 100450 of the Health and Safety Code. The adjustments shall be rounded off to the nearest whole dollar amount.

SEC. 5. Section 1320 of the Business and Professions Code, as amended by Chapter 510 of the Statutes of 1995, is amended to read:

1320. The department may deny, suspend, or revoke any license or registration issued under this chapter for any of the following reasons:

(a) Conduct involving moral turpitude or dishonest reporting of tests.

(b) Violation by the applicant, licensee, or registrant of this chapter or any rule or regulation adopted pursuant thereto.

(c) Aiding, abetting, or permitting the violation of this chapter, the rules or regulations adopted under this chapter or the Medical Practice Act, Chapter 5 (commencing with Section 2000) of Division 2.

(d) Permitting a licensed trainee to perform tests or procure specimens unless under the direct and responsible supervision of a person duly licensed under this chapter or physician and surgeon other than another licensed trainee.

(e) Violation of any provision of this code governing the practice of medicine and surgery.

(f) Proof that an applicant, licensee, or registrant has made false statements in any material regard on the application for a license, registration, or renewal issued under this chapter.

(g) Conduct inimical to the public health, morals, welfare, or safety of the people of the State of California in the maintenance or operation of the premises or services for which a license or registration is issued under this chapter.

(h) Proof that the applicant or licensee has used any degree, or certificate, as a means of qualifying for licensure that has been purchased or procured by barter or by any unlawful means or obtained from any institution that at the time the degree, certificate, or title was obtained was not recognized or accredited by the department of education of the state where the institution is or was located to give training in the field of study in which the degree, certificate, or title is claimed.

(i) Violation of any of the prenatal laws or regulations pertaining thereto in Chapter 2 (commencing with Section 120675) of Part 3 of Division 105 of the Health and Safety Code and Article 1 (commencing with Section 1125) of Group 4 of Subchapter 1 of Chapter 2 of Part 1 of Title 17 of the California Code of Regulations.

(j) Knowingly accepting an assignment for clinical laboratory tests or specimens from and the rendering of a report thereon to persons not authorized by law to submit those specimens or assignments.

(k) Rendering a report on clinical laboratory work actually performed in another clinical laboratory without designating clearly the name and address of the laboratory in which the test was performed.

(*l*) Conviction of a felony or of any misdemeanor involving moral turpitude under the laws of any state or of the United States arising out of or in connection with the practice of clinical laboratory technology. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

(m) Unprofessional conduct.

(n) The use of drugs or alcoholic beverages to the extent or in a manner as to be dangerous to a person licensed under this chapter, or any other person to the extent that that use impairs the ability of the licensee to conduct with safety to the public the practice of clinical laboratory technology.

(o) Misrepresentation in obtaining a license or registration.

(p) Performance of, or representation of the laboratory as entitled to perform, a clinical laboratory test or examination or other procedure that is not within the specialties or subspecialties, or category of laboratory procedures authorized by the license or registration.

(q) Refusal of a reasonable request of HCFA, a HCFA agent, the department, or any employee, agent or contractor of the department, for permission to inspect, pursuant to this chapter, the laboratory and its operations and pertinent records during the hours the laboratory is in operation.

(r) Failure to comply with reasonable requests of the department for any information, work, or materials that the department concludes is necessary to determine the laboratory's continued eligibility for its license or registration, or its continued compliance with this chapter or the regulations adopted under this chapter.

(s) Failure to comply with a sanction imposed under Section 1310.

SEC. 6. Section 2252 of the Business and Professions Code is amended to read:

2252. The violation of Chapter 4 (commencing with Section 109250) of Part 4 of Division 104 of the Health and Safety Code, or any violation of an injunction or cease and desist order issued under those provisions, relating to the treatment of cancer, constitutes unprofessional conduct.

SEC. 7. Section 2253 of the Business and Professions Code is amended to read:

2253. The procuring or aiding, abetting, attempting, agreeing, or offering to procure an illegal abortion constitutes unprofessional conduct, unless the act is done in compliance with the Therapeutic Abortion Act (Article 2 (commencing with Section 123400) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code).

SEC. 8. Section 2254 of the Business and Professions Code is amended to read:

2254. The violation of Section 123440 of the Health and Safety Code, relating to research on aborted products of human conception, constitutes unprofessional conduct.

SEC. 9. Section 2257 of the Business and Professions Code is amended to read:

2257. The violation of Section 109275 of the Health and Safety Code, relating to informed consent for the treatment of breast cancer, constitutes unprofessional conduct.

SEC. 10. Section 2543 of the Business and Professions Code is amended to read:

2543. The right to dispense, sell or furnish prescription lenses at retail or to the person named in a prescription is limited exclusively to licensed physicians and surgeons, licensed optometrists, and registered dispensing opticians as provided in this division. This section shall not be construed to affect licensing requirements pursuant to Section 111615 of the Health and Safety Code.

SEC. 11. Section 2812 of the Business and Professions Code is amended to read:

2812. Within 10 days after the beginning of each month, the board shall report to the State Controller the amount and source of all collections made under this chapter. At the same time, all amounts shall be paid into the State Treasury, where they shall be placed to the credit of the Board of Registered Nursing Fund and to the Registered Nurse Education Fund, as specified in Section 128400 of the Health and Safety Code.

SEC. 12. Section 4009 of the Business and Professions Code is amended to read:

4009. The board may institute any action or actions as may be provided by law and that, in its discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not conform to the standard and tests as to quality and strength, provided in the latest edition of the United States Pharmacopoeia or the National Formulary, or that violate any provision of the Sherman Food, Drug, and Cosmetic Law (Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code).

SEC. 13. Section 4084.5 of the Business and Professions Code is amended to read:

4084.5. No person acting as principal or agent for any out-of-state manufacturer, wholesaler, or pharmacy who has not obtained a certificate, license, permit, registration, or exemption from the board, and who sells or distributes drugs in this state that are not obtained through a wholesaler who has obtained a certificate, license, permit, registration, or exemption, pursuant to this chapter or that are not obtained through a selling or distribution outlet of an out-of-state manufacturer that is licensed as a wholesaler pursuant to this chapter, shall conduct the business of selling or distributing these drugs within this state without registering with the board.

Registration of persons under this section shall be made on a form furnished by the board. The board may require any information the board deems is reasonably necessary to carry out the purposes of this section, including, but not limited to, the name and address of the

registrant and the name and address of the manufacturer whose drugs he or she is selling or distributing.

The board may deny, revoke, or suspend the person's registration for any violation of this chapter or for any violation of Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code. The board may deny, revoke, or suspend the person's registration if the manufacturer, whose drugs he or she is selling or distributing, violates any provision of this chapter or any provision of Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code. The registration shall be renewed annually on or before the first day of January of each year.

SEC. 14. Section 4084.6 of the Business and Professions Code is amended to read:

4084.6. No out-of-state manufacturer, wholesaler, or pharmacy doing business in this state who has not obtained a certificate, license, permit, registration, or exemption from the board and who sells or distributes drugs in this state through any person or media other than a wholesaler who has obtained a certificate, license, permit, registration, or exemption pursuant to this chapter or through a selling or distribution outlet that is licensed as a wholesaler pursuant to this chapter, shall conduct the business of selling or distributing drugs in this state without obtaining an out-of-state drug distributor's license from the board or registering as a nonresident pharmacy.

Applications for an out-of-state drug distributor's license or a nonresident pharmacy registration, under this section shall be made on a form furnished by the board. The board may require any information the board deems is reasonably necessary to carry out the purposes of the section.

The board may deny, revoke, or suspend the out-of-state distributor's license for any violation of this chapter or for any violation of Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code. The license or nonresident pharmacy registration shall be renewed annually on or before the first day of January of each year.

The Legislature, by enacting this section, does not intend a license or nonresident pharmacy registration issued to any out-of-state manufacturer, wholesaler, or pharmacy pursuant to this section to change or affect the tax liability imposed by Chapter 3 (commencing with Section 23501) of Part 11 of Division 2 of the Revenue and Taxation Code on any out-of-state manufacturer, wholesaler, or pharmacy.

The Legislature, by enacting this section, does not intend a license or nonresident pharmacy registration, issued to any out-of-state manufacturer, wholesaler, or pharmacy pursuant to this section to serve as any evidence that the out-of-state manufacturer, wholesaler, or pharmacy is doing business within this state.

SEC. 15. Section 4148 of the Business and Professions Code is amended to read:

4148. Any hypodermic needle or syringe that is to be disposed of, shall be contained, treated, and disposed of, pursuant to Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code.

SEC. 16. Section 4160 of the Business and Professions Code, as amended by Chapter 938 of the Statute of 1995, is amended to read:

4160. (a) The California Hazardous Substances Act, Chapter 4 (commencing with Section 108100) of Part 3 of Division 104 of the Health and Safety Code, applies to pharmacies and pharmacists and any other person or place subject to the jurisdiction of the board.

(b) The board may enforce that act when necessary for the protection of the health and safety of the public if prior regulatory notice is given in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Board enforcement shall focus on those hazardous substances that relate significantly to or overlap the practice of pharmacy.

(c) "Poison," as used elsewhere in this chapter, shall reference a category of hazardous substances defined in Section 108125 of the Health and Safety Code that the board may by regulation make more specific.

SEC. 17. Section 4211.5 of the Business and Professions Code is amended to read:

4211.5. (a) As used in this section, "DMSO" means dimethyl sulfoxide.

(b) A licensed physician and surgeon shall, prior to treating a patient with a DMSO preparation, inform the patient in writing if DMSO has not been approved as a treatment or cure by the Food and Drug Administration for the disorder for which it is being prescribed.

(c) If DMSO is prescribed for any purpose other than for those purposes approved pursuant to Section 111550 of the Health and Safety Code, informed consent shall first be obtained from the patient.

As used in this subdivision, "informed consent" means the authorization given by the patient for treatment with DMSO after each of the following conditions have been satisfied:

(1) The patient is informed verbally in nontechnical terms about all of the following:

(A) A description of treatment procedures to be used in administering the DMSO.

(B) A description of any attendant discomfort and risks to the patient that can be reasonably expected from treatment with DMSO.

(C) An explanation of any benefits to the patient that can be reasonably expected.

(D) An explanation of any appropriate alternative procedures, drugs, or devices that might be advantageous to the patient, and their relative risks and benefits.

(E) An offer to answer any inquiries concerning the treatment or the procedures involved.

(2) The patient signs and dates a written consent form acknowledging that disclosure has been given pursuant to paragraph (1), and acknowledging consent to treatment with DMSO pursuant to this section.

The patient shall be provided with a copy of the signed and dated consent form.

(d) An organized health care system may require that the administration of DMSO within the organized health care system be performed pursuant to standardized procedures developed by the organized health care system through collaboration among administrators and health professionals.

(e) The following notification shall be affixed to all quantities of DMSO prescribed by a licensed physician and surgeon, or dispensed by a pharmacy pursuant to the order of a licensed physician and surgeon in California: "Warning: DMSO may be hazardous to your health. Follow the directions of the physician who prescribed the DMSO for you."

(f) The label of any retail package of DMSO shall include appropriate precautionary measures for proper handling and first aid treatment and a warning statement to keep the product out of reach of children.

SEC. 18. Section 4228 of the Business and Professions Code is amended to read:

4228. (a) Except as provided in subdivisions (b) and (c), no person shall dispense any dangerous drug upon prescription except in a container correctly labeled with the information required by Sections 4047.5 and 4048.

(b) Physicians, dentists, podiatrists, and veterinarians may personally furnish any dangerous drug prescribed by them to the patient for whom prescribed, provided that the drug is properly labeled to show all information required in Sections 4047.5 and 4048 except the prescription number.

(c) Devices which bear the legend "Caution: federal law restricts this device to sale by or on the order of a _____," or words of similar meaning, are exempt from the requirements of Sections 4047.5 and 4048, and Section 111480 of the Health and Safety Code, when provided to patients in skilled nursing facilities or intermediate care facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

SEC. 19. Section 4240 of the Business and Professions Code is amended to read:

4240. The board, in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), may adopt regulations consistent with this chapter and Section 111485 of the Health and Safety Code or regulations adopted thereunder, limiting

or restricting the furnishing of a particular drug upon a finding that the otherwise unrestricted retail sale of the drug pursuant to Section 4052 is dangerous to the public health or safety. Any knowing or willful violation of the regulations shall be subject to punishment in the same manner as is provided in Sections 4234 and 4382.

SEC. 20. Section 7649 of the Business and Professions Code is amended to read:

7649. Except as provided in Section 103050 of the Health and Safety Code, whenever the name of any licensed embalmer is subscribed to any certificate, indicating that he or she has performed any act mentioned in the certificate, the licensed embalmer shall actually sign his or her name thereto.

SEC. 21. Section 9744 of the Business and Professions Code is amended to read:

9744. Each cremated remains disposer shall provide the person authorizing the scattering of the cremated human remains with a copy of the completed permit for disposition of human remains pursuant to Chapter 8 (commencing with Section 103050) of Part 1 of Division 102 of the Health and Safety Code within 60 days of the date scattering was authorized.

SEC. 22. Section 12240 of the Business and Professions Code is amended to read:

12240. (a) Except as otherwise provided in this section, the board of supervisors may, by ordinance, charge an annual device registration fee, not to exceed the county's total cost of actually inspecting or testing the devices as required by law, to recover the costs of inspecting or testing weighing and measuring devices required of the county sealer pursuant to Section 12210, and to recover the cost of carrying out Section 12211.

(b) Except as otherwise provided in this section, the device registration fee shall not exceed the amount prescribed in the Table of Maximum Annual Charges set forth in subdivision (f).

(c) The county may collect the fees biennially, in that case they shall not exceed twice the amount of an annual fee. The ordinance shall be adopted pursuant to Article 7 (commencing with Section 25120) of Chapter 1 of Part 2 of Division 2 of Title 2 of the Government Code.

(d) Retail gasoline pump meters, for which the above fees are assessed, shall be inspected as frequently as required by regulation, but not less than once every two years.

(e) Livestock scales, animal scales and scales used primarily for weighing feed and seed, for which the above fees are assessed, shall be inspected as frequently as required by regulation.

(f) Table of Maximum Annual Charges:

Number of Devices		Charge Per Location
1 to 3	.....	$ 40

4 to 9	.....	$ 80
10 to 19	.....	$120
20 to 25	.....	$160
Over 25	.....	$200

(g) For mobilehome parks, recreational vehicle parks, and apartment complexes, where the owner of the park or complex owns and is responsible for the utility meters, the annual fee shall not exceed sixty dollars ($60) per park or complex, and a fee of up to two dollars ($2) per device per space or apartment. Mobilehome parks, recreational vehicle parks, and apartment complexes for which the above fees are assessed, shall be inspected and tested as frequently as required by regulation.

(h) For weighing devices, other than livestock and motor truck scales, with capacities of 20,000 pounds or greater, the registration fee shall be two hundred dollars ($200) per device.

(i) For motor truck scales, the registration fee shall be one hundred dollars ($100) per device.

(j) This section does not apply to farm milk tanks.

(k) A scale or device used in a certified farmers' market, as defined by Section 113745 of the Health and Safety Code, is not required to be registered in the county where the market is conducted, if the scale or device has an unexpired seal for the current year, issued by a licensed California county sealer.

(*l*) For livestock scales with capacities of 20,000 pounds or more, the registration fee shall be one hundred dollars ($100) per device, except that the fee for not more than three devices at a single location shall be one hundred dollars ($100).

SEC. 23. Section 17577.2 of the Business and Professions Code is amended to read:

17577.2. It is unlawful for any person to do any of the following in connection with the sale, lease, rental, offer to sell, lease, rent, or other disposition of water treatment devices:

(a) Make any untrue or misleading oral or written statements regarding the presence of one or more contaminants in water, or the performance of water treatment devices, including, but not limited to, the following oral or written statements:

(1) (A) Any contaminant exists in the water of any person to whom the statement is directed unless the statement is true, is reasonably based on factual data, and at least a written summary of the factual data, that has been prepared or approved by the source of the factual data, is disclosed to the person to whom the statement is directed before that person executes any contract for the purchase, lease, or rental of a water treatment device.

(B) Any contaminant may exist in the water of any person to whom the statement is directed unless the statement is true and is reasonably based on factual data.

(2) A relationship between water quality and acute or chronic illness exists as a scientific certainty unless that statement is true.

(3) The public water system, utility, or treatment plant that supplies water to the person to whom the statement is directed does not test, treat, or remove particular substances from water treated by it unless the statement is true.

(4) A water treatment device removes particular contaminants or other substances from water unless the statement is true, is reasonably based on factual data in existence at the time the statement is made, and the requirements of subparagraphs (A) through (C) are satisfied.

(A) If the particular contaminants or other substances mentioned in the statement described in paragraph (4) are not necessarily in the water of the person to whom the statement is made, the following disclosure or its equivalent must be clearly and conspicuously made: "The contaminants or other substances removed or reduced by this water treatment device are not necessarily in your water."

(B) If the statement described in paragraph (4) is oral, the disclosure described in subparagraph (A) shall be made orally and shall immediately follow the statement. If the statement is in writing, the disclosure shall be in writing and shall be placed immediately next to the written statement.

(C) Notwithstanding subparagraph (A), no statement about the ability of a water treatment device to remove particular contaminants or other substances shall be used to imply falsely that any of those contaminants or other substances are present in the water of the person to whom the statement is made.

(5) Use news events, reports, or descriptions of water quality problems or health hazards associated with water systems or suppliers different from the systems or suppliers of the intended consumer unless, at the same time, the seller sets forth conspicuously and prominently a statement, if true, that the seller has no information that the intended consumer's water supply has the water quality problems or health hazards referred to in the news events, reports, or descriptions.

(6) A water treatment device would provide a health benefit or diminish a health risk unless it would do so.

(7) A water treatment device will solve or contribute to the solution of any problem unless the statement is true.

(b) Perform precipitation tests of the individual consumer's drinking water without also clearly informing the consumer of the results, scope, and limits of the test. Precipitation tests may only be used to demonstrate the hardness or other nonhealth-related characteristics of the water being tested.

(c) Notwithstanding subdivision (a), make product performance claims or product benefit claims that the device affects health or the safety of drinking water, unless the device has been certified by the State Department of Health Services pursuant to Article 3

(commencing with Section 116825) of Chapter 5 of Part 12 of Division 104 of the Health and Safety Code. This subdivision does not apply to the making of truthful and nonmisleading claims regarding the removal or reduction of contaminants for which certification is not available pursuant to Article 3 (commencing with Section 116825) of Chapter 5 of Part 12 of Division 104 of the Health and Safety Code.

This subdivision shall become operative one year after the effective date of the regulations adopted pursuant to Section 116830 of the Health and Safety Code.

(d) Use pictures, exhibits, graphs, charts, other graphic portrayals, endorsements, or testimonials in any untrue or misleading manner.

(e) Fail to disclose clearly and conspicuously, in writing, to the purchaser, lessee, or renter, prior to the time of purchase, lease, or rent, the importance of maintaining the water treatment device according to the manufacturer's instructions, including, if applicable, replacement of screens and filters. In addition, a separate printed gummed label, tag, or other convenient form of reminder of the importance of proper maintenance shall be provided to the purchaser, lessee, or renter.

SEC. 24. Section 22955 of the Business and Professions Code is amended to read:

22955. Agents of the state department, while conducting enforcement activities pursuant to this division, are peace officers and are subject to all of the powers and immunities granted to Food and Drug Section inspectors pursuant to Section 106500 of the Health and Safety Code in the same manner as are any Food and Drug Section inspectors of the state department.

SEC. 25. Section 56.17 of the Civil Code, as amended by Chapter 695 of the Statutes of 1995, is amended to read:

56.17. (a) This section shall apply to the disclosure of genetic test results contained in an applicant or enrollee's medical records by a health care service plan.

(b) Any person who negligently discloses results of a test for a genetic characteristic to any third party, in a manner that identifies or provides identifying characteristics, of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), shall be assessed a civil penalty in an amount not to exceed one thousand dollars ($1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully discloses the results of a test for a genetic characteristic to any third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), shall be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and no more than five

thousand dollars ($5,000) plus court costs, as determined by the court which penalty and costs shall be paid to the subject of the test.

(d) Any person who willfully or negligently discloses the results of a test for a genetic characteristic to a third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), that results in economic, bodily, or emotional harm to the subject of the test, is guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars ($10,000).

(e) In addition to the penalties listed in subdivisions (b) and (c), any person who commits any act described in subdivision (b) or (c) shall be liable to the subject for all actual damages, including damages or economic, bodily, or emotional harm which is proximately caused by the act.

(f) Each disclosure made in violation of this section is a separate and actionable offense.

(g) The applicant's "written authorization," as used in this section, shall satisfy the following requirements:

(1) Is written in plain language.

(2) Is dated and signed by the individual or a person authorized to act on behalf of the individual.

(3) Specifies the types of persons authorized to disclose information about the individual.

(4) Specifies the nature of the information authorized to be disclosed.

(5) States the name or functions of the persons or entities authorized to receive the information.

(6) Specifies the purposes for which the information is collected.

(7) Specifies the length of time the authorization shall remain valid.

(8) Advises the person signing the authorization of the right to receive a copy of the authorization. Written authorization is required for each separate disclosure of the test results.

(h) This section shall not apply to disclosures required by the Department of Health Services necessary to monitor compliance with the Hereditary Disorders Act (subdivision (b) of Section 27 of the Health and Safety Code), and Sections 125000 and 125070 of the Health and Safety Code, nor to disclosures required by the Department of Corporations necessary to administer and enforce compliance with Section 1374.7 of the Health and Safety Code.

SEC. 26. Section 56.30 of the Civil Code is amended to read:

56.30. The disclosure and use of the following medical information shall not be subject to the limitations of this part:

(a) (Mental health and developmental disabilities) Information and records obtained in the course of providing services under Division 4 (commencing with Section 4001), Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with

Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100) of the Welfare and Institutions Code.

(b) (Public social services) Information and records that are subject to Sections 10850, 14124.1, and 14124.2 of the Welfare and Institutions Code.

(c) (State health services, communicable diseases, developmental disabilities) Information and records maintained pursuant to former Chapter 2 (commencing with Section 200) of Part 1 of Division 1 of the Health and Safety Code and pursuant to the Communicable Disease Prevention and Control Act (subdivision (a) of Section 27 of the Health and Safety Code).

(d) (Licensing and statistics) Information and records maintained pursuant to Division 2 (commencing with Section 1200) and Part 1 (commencing with Section 102100) of the Health and Safety Code; pursuant to Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code; and pursuant to Section 8608, 8706, 8817, or 8909 of the Family Code.

(e) (Medical survey, workers' safety) Information and records acquired and maintained or disclosed pursuant to Sections 1380 and 1382 of the Health and Safety Code and pursuant to Division 5 (commencing with Section 6300) of the Labor Code.

(f) (Industrial accidents) Information and records acquired, maintained, or disclosed pursuant to Division 1 (commencing with Section 50), Division 4 (commencing with Section 3201), Division 4.5 (commencing with Section 6100), and Division 4.7 (commencing with Section 6200) of the Labor Code.

(g) (Law enforcement) Information and records maintained by a health facility which are sought by a law enforcement agency under Chapter 3.5 (commencing with Section 1543) of Title 12 of Part 2 of the Penal Code.

(h) (Investigations of employment accident or illness) Information and records sought as part of an investigation of an on-the-job accident or illness pursuant to Division 5 (commencing with Section 6300) of the Labor Code or pursuant to Section 105200 of the Health and Safety Code.

(i) (Alcohol or drug abuse) Information and records subject to the federal alcohol and drug abuse regulations (Part 2 (commencing with Section 2.1) of subchapter A of Chapter 1 of Title 42 of the Code of Federal Regulations) or to Section 11977 of the Health and Safety Code dealing with narcotic and drug abuse.

(j) (Patient discharge data) Nothing in this part shall be construed to limit, expand, or otherwise affect the authority of the California Health Facilities Commission to collect patient discharge information from health facilities pursuant to Section 441.18 of the Health and Safety Code.

(k) Medical information and records disclosed to, and their use by, the Insurance Commissioner, the Commissioner of Corporations, the

Division of Industrial Accidents, the Workers' Compensation Appeals Board, the Department of Insurance, or the Department of Corporations.

SEC. 27. Section 1714.25 of the Civil Code is amended to read:

1714.25. (a) Except for injury resulting from negligence or a willful act in the preparation or handling of donated food, no food facility that donates any food that is fit for human consumption at the time it was donated to a nonprofit charitable organization or a food bank shall be liable for any damage or injury resulting from the consumption of the donated food.

The immunity from civil liability provided by this subdivision applies regardless of compliance with any laws, regulations, or ordinances regulating the packaging or labeling of food, and regardless of compliance with any laws, regulations, or ordinances regulating the storage or handling of the food by the donee after the donation of the food.

(b) A nonprofit charitable organization or a food bank that, in good faith, receives and distributes food without charge that is fit for human consumption at the time it was distributed is not liable for an injury or death due to the food unless the injury or death is a direct result of the negligence, recklessness, or intentional misconduct of the organization.

(c) For the purposes of this section:

(1) "Nonprofit charitable organization" has the meaning defined in Section 114440 of the Health and Safety Code.

(2) "Food bank" has the meaning defined in Section 114445 of the Health and Safety Code.

SEC. 28. Section 1940 of the Civil Code is amended to read:

1940. (a) Except as provided in subdivision (b), this chapter shall apply to all persons who hire dwelling units located within this state including tenants, lessees, boarders, lodgers, and others, however denominated.

(b) The term "persons who hire" shall not include a person who maintains either of the following:

(1) Transient occupancy in a hotel, motel, residence club, or other facility when the transient occupancy is or would be subject to tax under Section 7280 of the Revenue and Taxation Code. The term "persons who hire" shall not include a person to whom this paragraph pertains if the person has not made valid payment for all room and other related charges owing as of the last day on which his or her occupancy is or would be subject to tax under Section 7280 of the Revenue and Taxation Code.

(2) Occupancy at a hotel or motel where the innkeeper retains a right of access to and control of the dwelling unit and the hotel or motel provides or offers all of the following services to all of the residents:

(A) Facilities for the safeguarding of personal property pursuant to Section 1860.

(B) Central telephone service subject to tariffs covering the same filed with the California Public Utilities Commission.

(C) Maid, mail, and room services.

(D) Occupancy for periods of less than seven days.

(E) Food service provided by a food establishment, as defined in Section 113780 of the Health and Safety Code, located on or adjacent to the premises of the hotel or motel and owned or operated by the innkeeper or owned or operated by a person or entity pursuant to a lease or similar relationship with the innkeeper or person or entity affiliated with the innkeeper.

(c) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by one person who maintains a household or by two or more persons who maintain a common household.

(d) Nothing in this section shall be construed to limit the application of any provision of this chapter to tenancy in a dwelling unit unless the provision is so limited by its specific terms.

SEC. 29. Section 564 of the Code of Civil Procedure, as amended by Chapter 384 of the Statutes of 1995, is amended to read:

564. (a) A receiver may be appointed, in the manner provided in this chapter, by the court in which an action or proceeding is pending in any case in which the court is empowered by law to appoint a receiver.

(b) In superior court a receiver may be appointed by the court in which an action or proceeding is pending, or by a judge thereof, in the following cases:

(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to the creditor's claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

(2) In an action by a secured lender for the foreclosure of the deed of trust or mortgage and sale of the property upon which there is a lien under a deed of trust or mortgage, where it appears that the property is in danger of being lost, removed, or materially injured, or that the condition of the deed of trust or mortgage has not been performed, and that the property is probably insufficient to discharge the deed of trust or mortgage debt.

(3) After judgment, to carry the judgment into effect.

(4) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or pursuant to Title 9 (commencing with Section 680.010) (enforcement of judgments), or after sale of real property pursuant to a decree of foreclosure, during the redemption period, to collect,

expend, and disburse rents as directed by the court or otherwise provided by law.

(5) In the cases when a corporation has been dissolved, or is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

(6) In an action of unlawful detainer.

(7) At the request of the Public Utilities Commission pursuant to Section 855 of the Public Utilities Code.

(8) In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

(9) At the request of the Office of Statewide Health Planning and Development, or the Attorney General, pursuant to Section 129173 of the Health and Safety Code.

(10) In an action by a secured lender for specific performance of an assignment of rents provision in a deed of trust, mortgage, or separate assignment document. In addition, that appointment may be continued after entry of a judgment for specific performance in that action, if appropriate to protect, operate, or maintain real property encumbered by the deed of trust or mortgage or to collect the rents therefrom while a pending nonjudicial foreclosure under power of sale in the deed of trust or mortgage is being completed.

(c) A receiver may be appointed, in the manner provided in this chapter, including, but not limited to, Section 566, by the superior court in an action brought by a secured lender to enforce the rights provided in Section 2929.5 of the Civil Code, to enable the secured lender to enter and inspect the real property security for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any hazardous substance into, onto, beneath, or from the real property security. The secured lender shall not abuse the right of entry and inspection or use it to harass the borrower or tenant of the property. Except in case of an emergency, when the borrower or tenant of the property has abandoned the premises, or if it is impracticable to do so, the secured lender shall give the borrower or tenant of the property reasonable notice of the secured lender's intent to enter and shall enter only during the borrower's or tenant's normal business hours. Twenty-four hours' notice shall be presumed to be reasonable notice in the absence of evidence to the contrary.

(d) Any action by a secured lender to appoint a receiver pursuant to this section shall not constitute an action within the meaning of subdivision (a) of Section 726.

(e) For purposes of this section:

(1) "Borrower" means the trustor under a deed of trust, or a mortgagor under a mortgage, where the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation. The term includes any successor-in-interest of the trustor or mortgagor to the real property security before the deed of

trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(2) "Hazardous substance" means (A) any "hazardous substance" as defined in subdivision (f) of Section 25281 of the Health and Safety Code as effective on January 1, 1991, or as subsequently amended, (B) any "waste" as defined in subdivision (d) of Section 13050 of the Water Code as effective on January 1, 1991, or as subsequently amended, or (C) petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.

(3) "Real property security" means any real property and improvements, other than a separate interest and any related interest in the common area of a residential common interest development, as the terms "separate interest," "common area," and "common interest development" are defined in Section 1351 of the Civil Code, or real property consisting of one acre or less which contains 1 to 15 dwelling units.

(4) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of hazardous substances into, onto, or through soil, surface water, or groundwater.

(5) "Secured lender" means the beneficiary under a deed of trust against the real property security, or the mortgagee under a mortgage against the real property security, and any successor-in-interest of the beneficiary or mortgagee to the deed of trust or mortgage.

SEC. 30. Section 8208 of the Education Code, as amended by Chapter 204 of the Statutes of 1996, is amended to read:

8208. As used in this chapter:

(a) "Assigned reimbursement rate" is that rate established by the contract with the agency and is derived by dividing the total dollar amount of the contract by the minimum child day of average daily enrollment level of service required.

(b) "Alternative payments" includes payments that are made by one child care agency to another agency or child care provider for the provision of child care and development services, and payments that are made by an agency to a parent for the parent's purchase of child care and development services.

(c) "Applicant or contracting agency" means a school district, community college district, college or university, county superintendent of schools, county, city, public agency, private non-tax-exempt agency, private tax-exempt agency, or other entity that is authorized to establish, maintain, or operate services pursuant to this chapter. Private agencies and parent cooperatives, duly licensed by law, shall receive the same consideration as any other authorized entity with no loss of parental decisionmaking prerogatives as consistent with this chapter.

(d) "Attendance" means the number of children present at a child care and development facility. "Attendance," for the purposes of reimbursement, includes excused absences by children because of illness, quarantine, illness or quarantine of their parent, family emergency, or to spend time with a parent or other relative as required by a court of law or that is clearly in the best interest of the child.

(e) "Capital outlay" means the amount paid for the renovation and repair of child care and development facilities to comply with state and local health and safety standards, and the amount paid for the state purchase of relocatable child care and development facilities for lease to qualifying contracting agencies.

(f) "Caregiver" means a person who provides direct care, supervision, and guidance to children in a child care and development facility.

(g) "Child care and development facility" means any residence or building or part thereof in which child care and development services are provided.

(h) "Child care and development programs" means those programs that offer a full range of services for children from infancy to 14 years of age, for any part of a day, by a public or private agency, in centers and family child care homes. These programs include, but are not limited to, all of the following:

(1) Campus child care and development.
(2) General child care and development.
(3) Intergenerational child care and development.
(4) Migrant child care and development.
(5) Schoolage parenting and infant development.
(6) State preschool.
(7) Resource and referral.
(8) Severely handicapped.
(9) Family day care.
(10) Alternative payment.
(11) Child abuse protection and prevention services.
(12) Schoolage community child care.

(i) "Short-term respite child care" means child care service to assist families whose children have been identified through written referral from a legal, medical, or social service agency, or emergency shelter as being neglected, abused, exploited, or homeless, or at risk of being neglected, abused, exploited, or homeless. Child care is provided for less than 24 hours per day in child care centers, treatment centers for abusive parents, family child care homes, or in the child's own home.

(j) "Child care and development services" means those services designed to meet a wide variety of needs of children and their families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services include direct care and supervision, instructional activities,

resource and referral programs, and alternative payment arrangements.

(k) "Children at risk of abuse, neglect, or exploitation" means children who are so identified in a written referral from a legal, medical, or social service agency, or emergency shelter.

(*l*) "Children with exceptional needs" means children who have been determined to be eligible for special education and related services by an individualized education program team according to the special education requirements contained in Part 30 (commencing with Section 56000), and meeting eligibility criteria described in Section 56026 and Sections 56333 to 56338, inclusive, and Sections 3030 and 3031 of Title 5 of the California Code of Regulations. These children have an active individualized education program, and are receiving appropriate special education and services, unless they are under three years of age and permissive special education programs are available. These children may be mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multihandicapped, or children with specific learning disabilities, who require the special attention of adults in a child care setting.

(m) "Children with special needs" includes infants and toddlers under the age of three years; limited-English-speaking-proficient children; children with exceptional needs; limited-English-proficient handicapped children; and children at risk of neglect, abuse, or exploitation.

(n) "Closedown costs" means reimbursements for all approved activities associated with the closing of operations at the end of each growing season for migrant child development programs only.

(o) "Cost" includes, but is not limited to, expenditures that are related to the operation of child development programs. "Cost" may include a reasonable amount for state and local contributions to employee benefits, including approved retirement programs, agency administration, and any other reasonable program operational costs. "Reasonable and necessary costs" are costs that, in nature and amount, do not exceed what an ordinary prudent person would incur in the conduct of a competitive business.

(p) "Elementary school," as contained in Section 425 of Title 20 of the United States Code (the National Defense Education Act of 1958, Public Law 85-864, as amended), includes early childhood education programs and all child development programs, for the purpose of the cancellation provisions of loans to students in institutions of higher learning.

(q) "Severely handicapped children" are children who require instruction and training in programs serving pupils with the following profound disabilities: autism, blindness, deafness, severe orthopedic impairments, serious emotional disturbance, or severe mental retardation. These children, ages birth to 21 years, inclusive,

may be assessed by public school special education staff, regional center staff, or another appropriately licensed clinical professional.

(r) "Health services" includes, but is not limited to, all of the following:

(1) Referral, whenever possible, to appropriate health care providers able to provide continuity of medical care.

(2) Health screening and health treatment, including a full range of immunization recorded on the appropriate state immunization form to the extent provided by the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code) and the Child Health and Disability Prevention Program (Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code), but only to the extent that ongoing care cannot be obtained utilizing community resources.

(3) Health education and training for children, parents, staff, and providers.

(4) Followup treatment through referral to appropriate health care agencies or individual health care professionals.

(s) "Higher educational institutions" means the Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Community Colleges, and the governing bodies of any accredited private nonprofit institution of postsecondary education.

(t) "Intergenerational staff" means persons of various generations.

(u) "Limited-English-speaking-proficient and non-English-speaking-proficient children" means children who are unable to benefit fully from an English-only child care and development program as a result of either of the following:

(1) Having used a language other than English when they first began to speak.

(2) Having a language other than English predominantly or exclusively spoken at home.

(v) "Parent" means any person living with a child who has responsibility for the care and welfare of the child.

(w) "Program director" means a person who, pursuant to Sections 8244 and 8360.1, is qualified to serve as a program director.

(x) A "proprietary child care agency" means an organization or facility providing child care, which is operated for profit.

(y) "Resource and referral programs" means programs that provide information to parents, including referrals and coordination of community resources for parents and public or private providers of care. Services frequently include, but are not limited to: technical assistance for providers, toy-lending libraries, equipment-lending libraries, toy- and equipment-lending libraries, staff development programs, health and nutrition education, and referrals to social services.

(z) "Site supervisor" means a person who, regardless of his or her title, has operational program responsibility for a child care and development program at a single site. A site supervisor shall hold a regular children's center instructional permit, and shall have completed not less than six units of administration and supervision of early childhood education or child development, or both. The Superintendent of Public Instruction may waive the requirements of this subdivision if the superintendent determines that the existence of compelling need is appropriately documented.

In respect to state preschool programs, a site supervisor may qualify under any of the provisions in this subdivision, or may qualify by holding an administrative credential or an administrative services credential. A person who meets the qualifications of a site supervisor under both Section 8244 and subdivision (e) of Section 8360.1 is also qualified under this subdivision.

(aa) "Standard reimbursement rate" means that rate established by the Superintendent of Public Instruction pursuant to Section 8265.

(bb) "Startup costs" means those expenses an agency incurs in the process of opening a new or additional facility prior to the full enrollment of children.

(cc) "State preschool services" means part-day educational programs for low-income or otherwise disadvantaged prekindergarten-age children.

(dd) "Support services" means those services that, when combined with child care and development services, help promote the healthy physical, mental, social, and emotional growth of children. Support services include, but are not limited to: protective services, parent training, provider and staff training, transportation, parent and child counseling, child development resource and referral services, and child placement counseling.

(ee) "Teacher" means a person with the appropriate certificate who provides program supervision and instruction which includes supervision of a number of aides, volunteers, and groups of children.

(ff) "Workday" means the time that the parent requires temporary care for a child for any of the following reasons:

(1) To undertake training in preparation for a job.

(2) To undertake or retain a job.

(3) To undertake other activities that are essential to maintaining or improving the social and economic function of the family, are beneficial to the community, or are required because of health problems in the family.

SEC. 31. Section 32064 of the Education Code is amended to read:

32064. (a) For the 1987–88 academic year and for each academic year thereafter, no art or craft material that is deemed by the State Department of Health Services to contain a toxic substance, as defined by the California Hazardous Substance Act, Chapter 4 (commencing with Section 108100) of Part 3 of Division 104 of the Health and Safety Code, or a toxic substance causing chronic illness,

as defined in this article, shall be ordered or purchased by any school, school district, or governing authority of a private school in California for use by students in kindergarten and grades 1 to 6, inclusive.

(b) Commencing June 1, 1987, any substance that is defined in subdivision (a) as a toxic substance causing chronic illness shall not be purchased or ordered by a school, school district, or governing authority of a private school for use by students in grades 7 to 12, inclusive, unless it meets the labeling standards specified in Section 32065.

(c) If the State Department of Health Services finds that, because the chronically toxic, carcinogenic, or radioactive substances contained in an art or craft product cannot be ingested, inhaled, or otherwise absorbed into the body during any reasonably foreseeable use of the product in a way that could pose a potential health risk, the department may exempt the product from these requirements to the extent it determines to be consistent with adequate protection of the public health and safety.

(d) For the purposes of this article, an art or craft material shall be presumed to contain an ingredient that is a toxic substance causing chronic illness if the ingredient, whether an intentional ingredient or an impurity, is 1 percent or more by weight of the mixture or product, or if the State Department of Health Services determines that the toxic or carcinogenic properties of the art or craft material are such that labeling is necessary for the adequate protection of the public health and safety.

SEC. 32. Section 32065 of the Education Code is amended to read:

32065. Warning labels for substances specified in Section 32064 shall meet all of the following standards:

(a) The warning label shall be affixed in a conspicuous place and shall contain the signal word "WARNING," to alert users of potential adverse health effects.

(b) The warning label shall contain information on the health-related dangers of the art or craft material.

(1) If the product contains a human carcinogen, the warning shall contain the statement: "CANCER HAZARD! Overexposure may create cancer risk."

(2) If the product contains a potential human carcinogen, and does not contain a human carcinogen, the warning shall contain the statement: "POSSIBLE CANCER HAZARD! Overexposure might create cancer risk."

(3) If the product contains a toxic substance causing chronic illness, the warning shall contain, but not be limited to, the following statement or statements where applicable:

(A) May cause sterility or damage to reproductive organs.

(B) May cause birth defects or harm to developing fetus.

(C) May be excreted in human milk causing harm to a nursing infant.

(D) May cause central nervous system depression or injury.

(E) May cause numbness or weakness in the extremities.

(F) Overexposure may cause damage to (specify organ).

(G) Heating above (specify degrees) may cause hazardous decomposition products.

(4) If a product contains more than one chronically toxic substance, or if a single substance can cause more than one chronic health effect, the required statements may be combined into one warning statement.

(c) The warning label shall contain a list of ingredients that are toxic substances causing chronic illness.

(d) The warning label shall contain a statement or statements of safe use and storage instructions, conforming to the following list. The label shall contain, but not be limited to, as many of the following risk statements as are applicable:

(1) Keep out of reach of children.

(2) When using, do not eat, drink, or smoke.

(3) Wash hands after use and before eating, drinking, or smoking.

(4) Keep container tightly closed.

(5) Store in well ventilated area.

(6) Avoid contact with skin.

(7) Wear protective clothing (specify type).

(8) Wear NIOSH certified masks for dust, mists, or fumes.

(9) Wear NIOSH certified respirator with appropriate cartridge for (specify type).

(10) Wear NIOSH certified supplied air respirator.

(11) Use window exhaust fan to remove vapors and assure adequate ventilation (specify explosion proof if necessary).

(12) Use local exhaust hood (specify type).

(13) Do not heat above (specify degrees) without adequate ventilation.

(14) Do not use/mix with (specify material).

(e) The warning label shall contain a statement on where to obtain more information, such as, "Call your local poison control center for more health information."

(f) The warning label, or any other label on the substance, shall contain the name and address of the manufacturer or repackager.

(g) If all of the above information cannot fit on the package label, a package insert shall be required to convey all the necessary information to the consumer. In this event, the label shall contain a statement to refer to the package insert, such as "CAUTION: See package insert before use." For purposes of this section, "package insert" means a display of written, printed, or graphic matter upon a leaflet or suitable material accompanying the art supply. The language on this insert shall be nontechnical and nonpromotional in tone and content.

The requirements set forth in subdivisions (a) to (g), inclusive, shall not be considered to be complied with unless the required words, statements, or other information appear on the outside

container or wrapper, or on a package insert that is easily legible through the outside container or wrapper and is painted in a color in contrast with the product or the package containing the product.

An art or craft material shall be considered to be in compliance with this section if Article 6 (commencing with Section 108500) of Chapter 4 of Part 3 of Division 104 of the Health and Safety Code requires labeling of the art or craft material, and if the material is in compliance with that article.

The manufacturer of any art or craft material sold, distributed, offered for sale, or exposed for sale in this state shall supply upon request to the State Department of Health Services any information required by the department in order to perform its duties under this article.

SEC. 33. Section 32241 of the Education Code is amended to read:

32241. (a) The State Department of Health Services shall conduct a sample survey of schools in this state for the purpose of developing risk factors to predict lead contamination in public schools. The survey shall include schools that are representative of the state by geographical region and size of enrollment. The schools to be surveyed shall be selected on the basis of their ability to provide data necessary to make scientifically valid estimates of the nature and extent of lead hazards. Risk factors shall include, but are not limited to, location in relation to high-risk areas, age of the facility, likely use of lead paint in or around the facility, numbers of children enrolled under the age of six, and results of lead screening programs established pursuant to Chapter 5 (commencing with Section 105275) of Part 5 of Division 103 of the Health and Safety Code.

(b) For purposes of this article, "schools" mean public elementary schools, public preschools, and public day care facilities.

(c) For purposes of this article, "public preschools" and "public day care facilities" mean preschools and day care facilities, respectively, located on public school property.

SEC. 34. Section 32243 of the Education Code is amended to read:

32243. (a) When a school subject to this article has been determined to have significant risk factors for lead, the school shall be advised of this finding, and the school shall notify parents of the provisions of the Childhood Lead Poisoning Prevention Act of 1991 (pursuant to Chapter 5 (commencing with Section 105275) of Part 5 of Division 103 of the Health and Safety Code). Within 45 days of receiving this finding, the school principal or the director of the schoolsite shall notify the teachers, other personnel, and the parents of the finding.

(b) Subsequent to the implementation by the state of a certification and training program for environmental lead testing and abatement, any school that undertakes any action to abate existing risk factors for lead shall utilize trained and state certified contractors, inspectors, and workers.

SEC. 35. Section 33319 of the Education Code is amended to read:

33319. The State Department of Education shall encourage and assist school districts to improve and monitor the health of their pupils. The department shall provide guidance and assist school districts to secure the voluntary assistance of local health professionals, schools of medicine, schools of public health, schools of nursing, voluntary health agencies, and other appropriate entities in order to provide pupil health screening and appropriate medical referrals as well as to provide valuable health information to pupils and their parents. The department shall encourage school districts to contact and cooperate with the State Maternal, Child, and Adolescent Health Board, with local maternal, child, and adolescent health boards, and child health and disability prevention programs established pursuant to Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code.

As part of this assistance, the State Department of Education shall provide information and guidance to schools that request the information and guidance, to establish "Health Days" in order to provide screenings for common health problems among pupils as well as to provide information to pupils and parents on prevention of illness, proper nutrition, and other aspects of good health. The Health Days should be organized and staffed by school nurses working in cooperation with volunteers from schools of medicine, schools of public health, schools of nursing, voluntary health agencies, health professionals, local maternal, child, and adolescent health boards, and other appropriate entities. All medical screenings and services conducted pursuant to this section shall be conducted in accordance with Chapter 9 (commencing with Section 49400) of Part 27.

SEC. 36. Section 44978 of the Education Code is amended to read:

44978. Every certificated employee employed five days a week by a school district shall be entitled to 10 days' leave of absence for illness or injury and additional days in addition thereto as the governing board may allow for illness or injury, exclusive of all days he or she is not required to render service to the district, with full pay for a school year of service. A certificated employee employed for less than five schooldays a week shall be entitled, for a school year of service, to that proportion of 10 days' leave of absence for illness or injury as the number of days he or she is employed per week bears to five and is entitled to additional days in addition thereto as the governing board may allow for illness or injury to certificated employees employed for less than five schooldays a week. Pay for any day of this absence shall be the same as the pay that would have been received had the employee served during the day. Credit for leave of absence need not be accrued prior to taking the leave by the employee and the leave of absence may be taken at any time during the school year. If the employee does not take the full amount of leave allowed in any school year under this section the amount not taken

shall be accumulated from year to year with additional days as the governing board may allow.

The governing board of each school district shall adopt rules and regulations requiring and prescribing the manner of proof of illness or injury for the purposes of this section. The rules and regulations shall not discriminate against evidence of treatment and the need therefor by the practice of the religion of any well-recognized church or denomination.

Nothing in this section shall be deemed to modify or repeal any provision of law contained in Chapter 3 (commencing with Section 120175) of Part 1 of Division 105 of the Health and Safety Code.

Section 44977 relating to compensation, shall not apply to the first 10 days of absence on account of illness or accident of the employee employed five days a week or to the proportion of 10 days of absence to which the employee employed less than five days a week is entitled hereunder on account of illness or accident or to additional days granted by the governing board. Any employee shall have the right to utilize sick leave provided for in this section and the benefit provided by Section 44977 for absences necessitated by pregnancy, miscarriage, childbirth, and recovery therefrom.

SEC. 37. Section 46010 of the Education Code is amended to read:

46010. (a) The total days of attendance of a pupil upon the schools and classes maintained by a school district, or schools or classes maintained by the county superintendent of schools during the fiscal year shall be the number of days school was actually taught for not less than the minimum schooldays during the fiscal year less the sum of his or her absences.

(b) The absence of a pupil from school or class shall be excused for the purposes of Section 48260 and shall not, in any county office of education or school district that has not had a request pursuant to Section 2550.4 or 42238.8, respectively, to calculate its days of attendance as provided in Section 46010.2 approved, be deemed an absence in computing the attendance of a pupil if that absence was:

(1) Due to his or her illness.

(2) Due to quarantine under the direction of a county or city health officer.

(3) For the purpose of having medical, dental, optometrical, or chiropractic services rendered.

(4) For the purpose of attending the funeral services of a member of his or her immediate family, so long as the absence is not more than one day if the service is conducted in California and not more than three days if the service is conducted outside California.

(5) For the purpose of jury duty in the manner provided for by law.

(6) Due to exclusion from school pursuant to Section 120335 of the Health and Safety Code, so long as the absence is not more than five schooldays pursuant to Section 46010.5.

"Immediate family," as used in this subdivision, has the same meaning as that set forth in Section 45194 except that references therein to "employee" shall be deemed to be references to "pupil."

This subdivision shall not apply in the case of pupils attending summer school, adult schools, and classes, or regional occupational centers and programs other than pupils concurrently enrolled in a regular high school program and a regional occupational center or program.

(c) For purposes of reporting pupil attendance for any purpose to an agency of the federal government, the phrase "total days of attendance of a pupil" shall be defined only as set forth in subdivision (a).

SEC. 38. Section 46010.5 of the Education Code is amended to read:

46010.5. The county office of education or the governing board of the school district of attendance shall exclude any pupil who has not been immunized properly pursuant to Chapter 1 (commencing with Section 120325) of Part 2 of Division 105 of the Health and Safety Code. In any county office of education or school district that has not had a request pursuant to Section 2550.4 or Section 42238.8, respectively, to calculate its days of instruction as provided in Section 46010.2 approved, the first five schooldays of the exclusion shall not be deemed an absence in computing average daily attendance if the following conditions are complied with:

(a) The governing board of the district notifies the parent or guardian of the pupil that they have two weeks to supply evidence either that the pupil has been properly immunized, or that the pupil is exempted from the immunization requirement pursuant to Section 120365 or 120370 of the Health and Safety Code.

(b) The governing board of the district, in that notice, refers the parent or guardian of the pupil to the pupil's usual source of medical care to obtain the immunization, or if no usual source exists, either refers the parent or guardian to the county health department, or notifies the parent that the immunizations will be administered at a school of the district.

SEC. 39. Section 48213 of the Education Code is amended to read:

48213. Prior to excluding a child from attendance pursuant to Section 48211 or Section 48212, the governing board shall send a notice to the parent or guardian of the child. The notice shall contain each of the following:

(a) A statement of the facts leading to a decision to propose exclusion of the child.

(b) A statement that the parent or guardian of the child has a right to meet with the governing board to discuss the proposed exclusion.

(c) A statement that at any meeting with the governing board held to discuss the proposed exclusion, the parent or guardian shall have an opportunity to inspect all documents that the governing board relied on in its decision to propose exclusion of the child; to

challenge any evidence and to confront and question any witness presented by the governing board; and to present oral and documentary evidence on the child's behalf, including witnesses. The statement shall also include notice that the parent or guardian may designate one or more representatives to be present with the parent or guardian at the meeting.

(d) A statement that the decision to exclude the child is subject to periodic review and a statement of the procedures set by the governing board for the periodic review.

If a child is excluded from attendance pursuant to Section 120230 of the Health and Safety Code or Section 49451 of this code, or when a principal or his or her designee determines that the continued presence of the child would constitute a clear and present danger to the life, safety, or health of pupils or school personnel, the governing board shall not be required to send prior notice of the exclusion to the parent or guardian of the child as required in this section. The governing board shall send a notice as required by this section as soon as is reasonably possible after the exclusion.

SEC. 40. Section 48931 of the Education Code is amended to read:

48931. The governing board of any school district or any county office of education may authorize any pupil or adult entity or organization to sell food on school premises, subject to policy and regulations of the State Board of Education. The State Board of Education shall develop policy and regulations for the sale of food by any pupil or adult entity or organization, or any combination thereof, which shall ensure optimum participation in the school district's or the county office of education's nonprofit food service programs and shall be in consideration of all programs approved by the governing board of any school district or any county office of education. The policy and regulations shall be effective the first of the month following adoption by the State Board of Education.

Nothing in this section shall be construed as exempting from the California Uniform Retail Food Facilities Law (Chapter 4 (commencing with Section 113700) of Part 7 of Division 104 of the Health and Safety Code), food sales that are authorized pursuant to this section and that would otherwise be subject to the California Uniform Retail Food Facilities Law.

SEC. 41. Section 49452.5 of the Education Code is amended to read:

49452.5. The governing board of any school district shall, subject to Section 49451 and in addition to the physical examinations required pursuant to Sections 100275, 124035, and 124090 of the Health and Safety Code, provide for the screening of every female pupil in grade 7 and every male pupil in grade 8 for the condition known as scoliosis. The screening shall be in accord with standards established by the State Department of Education. The screening shall be supervised only by qualified supervisors of health as specified in Sections 44871 to 44878, inclusive, and Section 49422, or by school

nurses employed by the district or the county superintendent of schools, or pursuant to contract with an agency authorized to perform these services by the county superintendent of schools of the county in which the district is located pursuant to Sections 1750 to 1754, inclusive, and Section 49402 of this code, Section 101425 of the Health and Safety Code, and guidelines established by the State Board of Education. The screening shall be given only by individuals who supervise, or who are eligible to supervise, the screening, or licensed chiropractors, or by certificated employees of the district or of the county superintendent of schools who have received in-service training, pursuant to rules and regulations adopted by the State Board of Education, to qualify them to perform these screenings. It is the intent of the Legislature that these screenings be performed, at no additional cost to the state, the school district, or the parent or guardian, during the regular schoolday and that any staff time devoted to these activities be redirected from other ongoing activities not related to the pupil's health care.

In-service training may be conducted by orthopedic surgeons, physicians, registered nurses, physical therapists, and chiropractors, who have received specialized training in scoliosis detection.

Pupils suspected of having scoliosis during the initial screening shall be rescreened by an orthopedic surgeon when there will be no cost to the state, the school district, or the parent or guardian.

No person screening pupils for scoliosis pursuant to this section shall solicit, encourage, or advise treatment or consultation by that person, or any entity in which that person has a financial interest, for scoliosis or any other condition discovered in the course of the screening.

The governing board of any school district shall provide for the notification of the parent or guardian of any pupil suspected of having scoliosis. The notification shall include an explanation of scoliosis, the significance of treating it at an early age, and the public services available, after diagnosis, for treatment. Referral of the pupil and the pupil's parent or guardian to appropriate community resources shall be made pursuant to Sections 49426 and 49456.

No action of any kind in any court of competent jurisdiction shall lie against any individual, authorized by this section to supervise or give a screening, by virtue of this section.

In enacting amendments to this section, it is the intent of the Legislature that no participating healing arts licentiate use the screening program for the generation of referrals or for his or her financial benefit. The Legislature does not intend to deny or limit the freedom of choice in the selection of an appropriate health care provider for treatment or consultation.

SEC. 42. Section 87408.6 of the Education Code is amended to read:

87408.6. (a) Except as provided in subdivision (h), no person shall be initially employed by a community college district in an

academic or classified position unless the person has submitted to an examination within the past 60 days to determine that he or she is free of active tuberculosis, by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code. This examination shall consist of an X-ray of the lungs, or an approved intradermal tuberculin test, that, if positive, shall be followed by an X-ray of the lungs.

The X-ray film may be taken by a competent and qualified X-ray technician if the X-ray film is subsequently interpreted by a physician and surgeon licensed under Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

The district superintendent, or his or her designee, may exempt, for a period not to exceed 60 days following termination of the pregnancy, a pregnant employee from the requirement that a positive intradermal tuberculin test be followed by an X-ray of the lungs.

(b) Thereafter, employees who are skin test negative shall be required to undergo the foregoing examination at least once each four years or more often if directed by the governing board upon recommendation of the local health officer for so long as the employee remains skin test negative. Once an employee has a documented positive skin test that has been followed by an X-ray, the foregoing examinations shall no longer be required and referral shall be made within 30 days of completion of the examination to the local health officer to determine the need for followup care.

(c) After the examination, each employee shall cause to be on file with the district superintendent a certificate from the examining physician and surgeon showing the employee was examined and found free from active tuberculosis. "Certificate," as used in this subdivision, means a certificate signed by the examining physician and surgeon or a notice from a public health agency or unit of the American Lung Association that indicates freedom from active tuberculosis. The latter, regardless of form, will constitute evidence of compliance with this section.

(d) This examination is a condition of initial employment and the expense incident thereto shall be borne by the applicant unless otherwise provided by rules of the governing board. However, the board may, if an applicant is accepted for employment, reimburse the person in a like manner prescribed for employees in subdivision (e).

(e) The governing board of each district shall reimburse the employee for the cost, if any, of this examination. The board may provide for the examination required by this section or may establish a reasonable fee for the examination that is reimbursable to employees of the district complying with this section.

(f) At the discretion of the governing board, this section shall not apply to those employees not requiring certification qualifications who are employed for any period of time less than a college year

whose functions do not require frequent or prolonged contact with students.

The governing board may, however, require the examination and may, as a contract condition, require the examination of persons employed under contract, other than those persons specified in subdivision (a), if the board believes the presence of these persons in and around college premises would constitute a health hazard to students.

(g) If the governing board of a community college district determines by resolution, after hearing, that the health of students in the district would not be jeopardized thereby, this section shall not apply to any employee of the district who files an affidavit stating that he or she adheres to the faith or teachings of any well-recognized religious sect, denomination, or organization and in accordance with its creed, tenets, or principles depends for healing upon prayer in the practice of religion and that to the best of his or her knowledge and belief he or she is free from active tuberculosis. If at any time there should be probable cause to believe that the affiant is afflicted with active tuberculosis, he or she may be excluded from service until the governing board of the employing district is satisfied that he or she is not so afflicted.

(h) A person who transfers his or her employment from one campus or community college district to another shall be deemed to meet the requirements of subdivision (a) if the person can produce a certificate that shows that he or she was examined within the past four years and was found to be free of communicable tuberculosis, or if it is verified by the college previously employing him or her that it has a certificate on file that contains that showing.

A person who transfers his or her employment from a private or parochial elementary school, secondary school, or nursery school to the community college district subject to this section shall be deemed to meet the requirements of subdivision (a) if the person can produce a certificate as provided for in Section 121525 of the Health and Safety Code that shows that he or she was examined within the past four years and was found to be free of communicable tuberculosis, or if it is verified by the school previously employing him or her that it has the certificate on file.

(i) Any governing board of a community college district providing for the transportation of students under contract shall require as a condition of the contract the examination for active tuberculosis, as provided in subdivision (a) of this section, of all drivers transporting the students, provided that privately contracted drivers who transport the students on an infrequent basis, not to exceed once a month, shall be excluded from this requirement.

(j) Examinations required pursuant to subdivision (i) shall be made available without charge by the local health officer.

SEC. 43. Section 87781 of the Education Code, as amended by Chapter 758 of the Statutes of 1995, is amended to read:

87781. Every academic employee employed five days a week by a community college district shall be entitled to 10 days' leave of absence for illness or injury and any additional days in addition thereto that the governing board may allow for illness or injury, exclusive of all days he or she is not required to render service to the district, with full pay for a college year of service. An employee employed for less than five schooldays a week shall be entitled, for a college year of service, to that proportion of 10 days' leave of absence for illness or injury as the number of days he or she is employed per week bears to five and is entitled to those additional days in addition thereto as the governing board may allow for illness or injury to certificated employees employed for less than five schooldays a week; pay for any day of those absences shall be the same as the pay that would have been received had the employee served during the day. Credit for leave of absence need not be accrued prior to taking leave by the employee and the leave of absence may be taken at any time during the college year. If the employee does not take the full amount of leave allowed in any school year under this section, the amount not taken shall be accumulated from year to year with additional days as the governing board may allow.

The governing board of each community college district shall adopt rules and regulations requiring and prescribing the manner of proof of illness or injury for the purposes of this section. These rules and regulations shall not discriminate against evidence of treatment and the need therefor by the practice of the religion of any well-recognized church or denomination.

Nothing in this section shall be deemed to modify or repeal any provision in Chapter 3 (commencing with Section 120175) of Part 1 of Division 105 of the Health and Safety Code.

Section 87780 does not apply to the first 10 days of absence on account of illness or accident of any employee employed five days a week or to the proportion of 10 days of absence to which the employee employed less than five days a week is entitled hereunder on account of illness or accident or to additional days granted by the governing board. Any employee shall have the right to utilize sick leave provided for in this section and the benefit provided by Section 87780 for absences necessitated by pregnancy, miscarriage, childbirth, and recovery therefrom.

SEC. 44. Section 359 of the Family Code is amended to read:

359. (a) Applicants for a marriage license shall obtain from the county clerk issuing the license, a certificate of registry of marriage.

(b) The contents of the certificate of registry are as provided in Part 1 (commencing with Section 102100) of Division 102 of the Health and Safety Code.

(c) The certificate of registry shall be filled out by the applicants, in the presence of the county clerk issuing the marriage license, and shall be presented to the person solemnizing the marriage.

(d) The person solemnizing the marriage shall complete the certificate of registry and shall cause to be entered on the certificate of registry the signature and address of one witness to the marriage ceremony.

(e) The certificate of registry shall be returned by the person solemnizing the marriage to the county recorder of the county in which the license was issued within 30 days after the ceremony.

(f) As used in this division, "returned" means presented to the appropriate person in person, or postmarked, before the expiration of the specified time period.

SEC. 45. Section 1852 of the Family Code is amended to read:

1852. Funds collected by the state pursuant to subdivision (c) of Section 103625 of the Health and Safety Code, subdivision (a) of Section 26832 of the Government Code, and grants, gifts, or devises made to the state from private sources to be used for the purposes of this part shall be deposited into the General Fund and shall only be used for the purposes of this part. No funds other than those so deposited shall be used for those purposes. That money shall be appropriated to the Judicial Council for the support of the programs authorized by this part as provided by the Legislature in the annual Budget Act. The Judicial Council may utilize funds to provide staffing as may be necessary to carry out the purposes of this part. In order to defray the costs of collection of these funds, the local registrar, county clerk, or county recorder may retain a percentage of the funds collected, not to exceed 10 percent of the fee payable to the state pursuant to subdivision (c) of Section 103625 of the Health and Safety Code.

SEC. 46. Section 6925 of the Family Code is amended to read:

6925. (a) A minor may consent to medical care related to the prevention or treatment of pregnancy.

(b) This section does not authorize a minor:

(1) To be sterilized without the consent of the minor's parent or guardian.

(2) To receive an abortion without the consent of a parent or guardian other than as provided in Section 123450 of the Health and Safety Code.

SEC. 47. Section 7571 of the Family Code is amended to read:

7571. (a) On and after January 1, 1995, upon the event of a live birth, prior to an unmarried mother leaving any hospital, clinic, or birthing center that is licensed to provide obstetric services, the person responsible for registering live births under Sections 102405 and 102415 of the Health and Safety Code shall provide to the natural mother and shall attempt to provide, at the place of birth, to the man identified by the natural mother as the natural father, a declaration for completion that meets the requirements of Section 7574. The person responsible for registering the birth shall file the declaration, if completed, with the birth certificate, and, if requested, shall transmit a copy of the declaration to the district attorney of the

county where the birth occurred. A copy of the declaration shall be made available to each of the attesting parents.

(b) No health care provider shall be subject to any civil, criminal, or administrative liability for any negligent act or omission relative to the accuracy of the information provided, or for filing the declaration with the appropriate state or local agencies.

(c) The district attorney shall pay to the hospital, clinic, or other place of birth that files the completed declaration with the birth certificate, as set forth in this subdivision, the sum of ten dollars ($10) for each declaration filed by it.

(d) Except as provided in Section 7575, the child of a woman and a man executing a declaration of paternity under this chapter, that meets the requirements of Section 7574, is conclusively presumed to be the man's child. The presumption under this section has the same force and effect as the presumption under Section 7540.

(e) A voluntary declaration of paternity that meets the requirements of Section 7574 shall be recognized as the basis for the establishment of an order for child custody or support.

(f) In any action to rebut the presumption created by this subdivision, a voluntary declaration of paternity that meets the requirements of Section 7574 shall be admissible as evidence to determine paternity of the child named in the voluntary declaration of paternity.

SEC. 48. Section 7639 of the Family Code is amended to read:

7639. If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that a new birth certificate be issued as prescribed in Article 2 (commencing with Section 102725) of Chapter 5 of Part 1 of Division 102 of the Health and Safety Code.

SEC. 49. Section 5655 of the Fish and Game Code, as amended by Chapter 720 of the Statutes of 1995, is amended to read:

5655. (a) In addition to the responsibilities imposed pursuant to Section 5651, the department may clean up or abate, or cause to be cleaned up or abated, the effects of any petroleum or petroleum product deposited or discharged in the waters of this state or deposited or discharged in any location onshore or offshore where the petroleum or petroleum product is likely to enter the waters of this state, order any person responsible for the deposit or discharge to clean up the petroleum or petroleum product or abate the effects of the deposit or discharge, and recover any costs incurred as a result of the cleanup or abatement from the responsible party.

(b) No order shall be issued pursuant to this section for the cleanup or abatement of petroleum products in any sump, pond, pit, or lagoon used in conjunction with crude oil production that is in compliance with all applicable state and federal laws and regulations.

(c) The department may issue an order pursuant to this section only if there is an imminent and substantial endangerment to human health or the environment and the order shall remain in effect only

until any cleanup and abatement order is issued pursuant to Section 13304 of the Water Code. A regional water quality control board shall incorporate the department's order into the cleanup and abatement order issued pursuant to Section 13304 of the Water Code, unless the department's order is inconsistent with any more stringent requirement established in the cleanup and abatement order. Any action taken in compliance with the department's order is not a violation of any subsequent regional water quality control board cleanup and abatement order issued pursuant to Section 13304 of the Water Code.

(d) For purposes of this section, "petroleum product" means oil in any kind or form, including, but not limited to, fuel oil, sludge, oil refuse, and oil mixed with waste other than dredged spoil. "Petroleum product" does not include any pesticide that has been applied for agricultural, commercial, or industrial purposes or has been applied in accordance with a cooperative agreement authorized by Section 116180 of the Health and Safety Code, that has not been discharged accidentally or for purposes of disposal, and whose application was in compliance with all applicable state and federal laws and regulations.

SEC. 50. Section 11408 of the Food and Agricultural Code is amended to read:

11408. "Agricultural use" means the use of any pesticide or method or device for the control of plant or animal pests, or any other pests, or the use of any pesticide for the regulation of plant growth or defoliation of plants. It excludes the sale or use of pesticides in properly labeled packages or containers that are intended for any of the following:

(a) Home use.

(b) Use in structural pest control.

(c) Industrial or institutional use.

(d) The control of an animal pest under the written prescription of a veterinarian.

(e) Local districts or other public agencies that have entered into and operate under a cooperative agreement with the State Department of Health Services pursuant to Section 116180 of the Health and Safety Code, provided that any exemption under this subdivision is subject to the approval of the director as being required to carry out the purposes of this division.

SEC. 51. Section 12533 of the Food and Agricultural Code is amended to read:

12533. Nothing in this chapter repeals or amends any of the provisions of Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code.

SEC. 52. Section 12846 of the Food and Agricultural Code is amended to read:

12846. The Food Safety Account is hereby created in the Department of Food and Agriculture Fund to be used, upon

appropriation, for purposes of Sections 12535, 12797, 12798, 12979, 13060, and 13061 of this code and Section 110495 of the Health and Safety Code.

SEC. 53. Section 12982 of the Food and Agricultural Code is amended to read:

12982. The director and the commissioner of each county under the direction and supervision of the director, shall enforce the provisions of this article and the regulations adopted pursuant to it. The local health officer may assist the director and the commissioner in the enforcement of the provisions of this article and any regulations adopted pursuant to it. The local health officer shall investigate any condition where a health hazard from pesticide use exists, and shall take necessary action, in cooperation with the commissioner, to abate the condition. The local health officer may call upon the State Department of Health Services for assistance pursuant to Section 105210 of the Health and Safety Code.

SEC. 54. Section 14505 of the Food and Agricultural Code is amended to read:

14505. Agricultural products derived from municipal sewage sludge shall be regulated as a fertilizing material pursuant to this chapter, and when used in general commerce, these products are not subject to regulation as a hazardous substance pursuant to Section 108130) of the Health and Safety Code and are not subject to regulation as a waste under Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

SEC. 55. Section 14904 of the Food and Agricultural Code is amended to read:

14904. The director shall adopt and enforce regulations for the manufacture, distribution, and labeling of feed used in connection with the production of food sold as organic pursuant to Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code which shall be consistent with the requirements of that article.

SEC. 56. Section 18694 of the Food and Agricultural Code is amended to read:

18694. This chapter applies to any person, establishment, animal, or article regulated under the federal acts only to the extent provided for in the federal acts. The exemptions provided in the federal acts are, however, applicable to this chapter insofar as they are not contrary to this division and Chapter 10 (commencing with Section 113025) of Part 6 of Division 104 of the Health and Safety Code.

SEC. 57. Section 18813 of the Food and Agricultural Code is amended to read:

18813. The director shall not provide inspection under this chapter at any establishment for the slaughter of livestock or poultry or the preparation of any livestock product or poultry product that is not intended for use as human food. The product, unless naturally inedible by humans, shall be denatured or otherwise identified as

prescribed by the director, prior to being offered for sale or transportation in intrastate commerce, to prevent its use as human food, and shall be in compliance with Chapter 5 (commencing with Section 19200) of this part and Chapter 10 (commencing with Section 113025) of Part 6 of Division 104 of the Health and Safety Code.

SEC. 58. Section 18849 of the Food and Agricultural Code is amended to read:

18849. It is unlawful for any person to sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcass of any horse, mule, or other equine, or any part of the carcass, or any meat or meat food product thereof, unless it is plainly and conspicuously marked, labeled, or otherwise identified as required by regulations of the director to indicate the animal from which it was derived, and is in compliance with Chapter 5 (commencing with Section 19200) of this part and Chapter 10 (commencing with Section 113025) of Part 6 of Division 104 of the Health and Safety Code.

SEC. 59. Section 18850 of the Food and Agricultural Code is amended to read:

18850. It is unlawful for any person to buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce, any livestock product or poultry product that is not intended for use as human food, unless it is denatured or otherwise identified as required by the regulations of the director or is naturally inedible by humans, and is in compliance with Chapter 5 (commencing with Section 19200) of this part and Chapter 10 (commencing with Section 113025) of Part 6 of Division 104 of the Health and Safety Code.

SEC. 60. Section 18851 of the Food and Agricultural Code is amended to read:

18851. It is unlawful for any person engaged in the business of buying, selling, or transporting, in intrastate commerce, dead, dying, disabled, or diseased animals, or any parts of the carcasses of any animals that died otherwise than by slaughter to buy, sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any dead, dying, disabled, or diseased livestock or poultry, or any products of the animal that died otherwise than by slaughter, unless the transaction or transportation, is made in accordance with any regulations the director may prescribe to assure that the animal, or the part or product thereof, will be prevented from being used for human food purposes, and is in compliance with Chapter 5 (commencing with Section 19200) of this part and Chapter 10 (commencing with Section 113025) of Part 6 of Division 104 of the Health and Safety Code.

SEC. 61. Section 19260 of the Food and Agricultural Code is amended to read:

19260. Every person engaged in the business of processing, packing, or preparing fresh or frozen horsemeat or any other meat

product for use as pet food of any kind, shall first obtain a license pursuant to this chapter, except those persons licensed pursuant to Chapter 10 (commencing with Section 113025) of Part 6 of Division 104 of the Health and Safety Code.

SEC. 62. Section 41302 of the Food and Agricultural Code is amended to read:

41302. Any act that is made unlawful by Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code is not made lawful by reason of this part. This part does not limit the powers of the State Department of Health Services.

SEC. 63. Section 41332 of the Food and Agricultural Code is amended to read:

41332. The State Director of Health Services, for the purpose of enforcing this chapter, may do all of the following:

(a) Enter and inspect every place within the state where canned fruits or vegetables, including olives, are canned, stored, shipped, delivered for shipment, or sold, and inspect all fruits or vegetables, including olives, and containers that are found in that place.

(b) Seize and retain possession of any canned olives or canned fruits or vegetables that are packed, shipped, delivered for shipment, or sold in violation of this chapter, and hold them pending the order of the court.

(c) Cause to be instituted and to be prosecuted in the superior court of any county of the state in which may be found canned olives or canned fruits or vegetables that are packed, shipped, delivered for shipment, or sold, in violation of this chapter, an action for the condemnation of canned olives or canned fruits or vegetables as provided by Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code.

SEC. 64. Section 41581 of the Food and Agricultural Code is amended to read:

41581. If the State Director of Health Services finds, after investigation and examination, that any canned fruits or vegetables, including olives, that are found in the possession of any person, firm, company, or corporation are misbranded or mislabeled within the meaning of this chapter, he or she may seize the canned fruits or vegetables, including olives, and tag them "embargoed." The canned fruits or vegetables, including olives, shall not thereafter be sold, removed, or otherwise disposed of pending a hearing and final disposition as provided by Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code.

SEC. 65. Section 46000 of the Food and Agricultural Code is amended to read:

46000. (a) The director and county agricultural commissioners under the supervision and direction of the director shall enforce Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code applicable to producers of food sold as organic, handlers of raw agricultural commodities sold

as organic, and eggs sold as organic, handlers and processors of meat, fowl, and dairy products sold as organic, and retailers of food sold as organic.

(b) The director shall also enforce Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code applicable to certification organizations that certify food sold as organic under the enforcement jurisdiction of the director pursuant to subdivision (a).

(c) The director may adopt any regulations reasonably necessary to implement his or her enforcement responsibilities as specified in Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code and this chapter.

SEC. 66. Section 46002 of the Food and Agricultural Code is amended to read:

46002. (a) Every person engaged in this state in the production or handling of raw agricultural commodities or eggs sold as organic, or in the production, handling, or processing of meat, fowl, or dairy products sold as organic, excluding retailers of food sold as organic, shall register with the agricultural commissioner in the county of principal operation prior to the first sale of the food, and shall thereafter annually renew the registration unless no longer engaged in the activities requiring the registration. Each registrant shall provide a complete copy of its registration to the agricultural commissioner in any county in which the registrant operates.

(b) Registration pursuant to this section shall be on a form provided by the department and shall be valid for a period of one calendar year from the date of validation by the department or county agricultural commissioner of the completed registration form. The director shall make the forms available for this purpose.

(c) The information provided on the registration form shall include all of the following:

(1) The nature of the registrant's business, including the specific commodities produced, handled, or processed that are sold as organic.

(2) For producers, a map showing the precise location and dimensions of the facility or farm where the commodities are produced. The map shall also describe the boundaries of the production area and all adjacent land uses, shall assign field numbers to distinct fields or management units, and shall describe the size of each field or management unit.

(3) Sufficient information, under penalty of perjury, to enable the director or county agricultural commissioner to verify the amount of the registration fee to be paid in accordance with subdivision (e).

(4) The names of all certification organizations or governmental entities, if any, providing certification pursuant to Sections 110850 to 110870, inclusive, of the Health and Safety Code.

(5) In the case of producers, for each field or management unit, a list of all substances applied to the crop, soil, growing medium,

growing area, irrigation or postharvest wash or rinse water, or seed, including the source of the substance, the brand name, if any, the rate of application, and the total amount applied in each calendar year, for at least the applicable time periods specified in subdivision (a) of Section 110820 of the Health and Safety Code.

(d) The registration form shall include a separate "public information sheet" that shall include:

(1) The name and address of the registrant.

(2) The nature of the registrant's business, including the specific commodities produced, handled, or processed that are sold as organic.

(3) The names of all certification organizations or governmental entities, if any, providing certification pursuant to Sections 110850 to 110870, inclusive, of the Health and Safety Code.

(e) A registration form shall be accompanied by payment of a nonrefundable registration fee by producers, handlers, and processors, which shall be based on gross sales by the registrant of food sold as organic in the calendar year that precedes the date of registration, or if no sales were made in the preceding year, then based on the expected sales during the 12 calendar months following the date of registration, according to the following schedule:

Gross Sales	Registration Fee
$ 0 – 10,000	$ 25
$ 10,001 – 25,000	$ 75
$ 25,001 – 50,000	$ 100
$ 50,001 – 100,000	$ 175
$ 100,001 – 250,000	$ 300
$ 250,001 – 500,000	$ 450
$ 500,001 – 1,000,000	$ 750
$ 1,000,001 – 2,500,000	$ 1,000
$ 2,500,001 – 5,000,000	$ 1,500
$ 5,000,001 – and above	$ 2,000

Notwithstanding the amounts specified in the above schedule, any person required to register pursuant to this section shall pay an initial registration fee equal to one and one-half times the amount specified in the above schedule. Thereafter, the annual fee shall be as specified in the above schedule.

(f) To the extent feasible, the director shall coordinate the registration and fee collection procedures of this section with similar licensing or registration procedures applicable to registrants.

(g) The director or county agricultural commissioner shall reject a registration submission that is incomplete or not in compliance with this chapter and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code.

(h) A registrant shall immediately notify the director of any change in the information reported on the registration form and shall pay any additional fee owed if that change results in a higher fee owed than that previously paid.

(i) At the request of any person, the "public information sheet" described in subdivision (d) for any registrant shall be made available for inspection and copying at the main office of the department and each county agricultural commissioner. Copies of the "public information sheet" shall also be made available by mail, upon written request. The director or commissioner may charge a reasonable fee for the cost of reproducing a "public information sheet." Except as provided in this subdivision, a registration form is exempt from Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(j) The requirements of this section do not apply to retailers of food sold as organic. The requirements of this section do not apply to persons who only transport or provide temporary storage for food sold as organic, and who do not otherwise handle that food.

(k) The director, in consultation with the Organic Food Advisory Board, may suspend the registration program set forth in this section if the director determines that income derived from registration fees is insufficient to support a registration enforcement program.

SEC. 67. Section 46003 of the Food and Agricultural Code is amended to read:

46003. (a) The director shall establish an advisory board, which shall be known as the Organic Food Advisory Board, for the purpose of advising the director with respect to his or her responsibilities under this chapter and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code.

(b) The advisory board shall be comprised of 14 members. Six members shall be producers, at least one of whom shall be a producer of meat, fowl, fish, dairy products, or eggs. Two members shall be processors, one member shall be a handler or a retailer, two members shall be consumer representatives, one member shall be an environmental representative, and two members shall be technical representatives with scientific credentials related to agricultural chemicals, toxicology, or food science. Except for the consumer, environmental, and technical representatives, the members of the advisory board shall have derived a substantial portion of their business income, wages, or salary from the production, handling, processing, or retailing of food sold as organic for at least three years preceding their appointment to the advisory board. The consumer and environmental representatives shall not have a financial interest in the organic food industry and shall be representatives of recognized nonprofit organizations whose principal purpose is the protection of consumer health or protection of the environment. The technical representatives shall not have a financial interest in the organic food industry.

(c) The members of the advisory board described in subdivision (b) shall be reimbursed for the reasonable expenses actually incurred in the performance of their duties, as determined by the advisory board and approved by the director.

(d) The State Director of Health Services, or his or her representative, and a county agricultural commissioner shall be appointed as ex officio members of the advisory board.

SEC. 68. Section 46003.5 of the Food and Agricultural Code is amended to read:

46003.5. (a) On or before July 1, 1996, the director, in consultation with the Organic Food Advisory Board, shall adopt regulations listing specific substances that are in compliance or not in compliance with the definition of "prohibited materials," as defined in subdivision (p) of Section 110815 of the Health and Safety Code, for use in the production and handling of organic foods.

Prior to the promulgation of the national materials list by the United States Department of Agriculture pursuant to the federal Organic Foods Production Act of 1990 (7 U.S.C. Secs. 6501 to 6522, incl.) the Organic Food Advisory Board, in consultation with the director, shall determine what, if any, substance may be allowed for use in the production and handling of organic foods in this state. Within 90 days of promulgation of the national materials list by the United States Department of Agriculture, the Organic Food Advisory Board, in consultation with the director, shall determine what, if any, substance allowed for use by the national materials list may be allowed for use in the production and handling of organic foods in this state.

(b) Prior to adoption of these regulations, the director shall issue administratively a preliminary, nonexhaustive list of materials that are in compliance or not in compliance with subdivision (p) of Section 110815 of the Health and Safety Code based on the listings of permitted materials published by California Certified Organic Farmers, the Organic Foods Production Association of North America, and the Departments of Agriculture of the States of Oregon and Washington.

SEC. 69. Section 46004 of the Food and Agricultural Code is amended to read:

46004. (a) Any person may file a complaint with the director concerning suspected noncompliance with this chapter or Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code by a person under the enforcement jurisdiction of the director, as provided in Section 46000.

(b) The director shall, to the extent funds are available, establish procedures for handling complaints, including provision of a written complaint form, and procedures for commencing an investigation within three working days after receiving a complaint regarding fresh food, and within seven working days for other food, and

completing an investigation and reporting findings and enforcement action taken, if any, to the complainant within 60 days thereafter.

(c) The director may establish minimum information requirements to determine the verifiability of a complaint, and may provide for rejection of a complaint that does not meet the requirements. The director shall provide written notice of the reasons for rejection to the person filing the complaint.

(d) The director shall carry out the functions and objectives of this chapter and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, to the extent funds are available for those purposes.

SEC. 70. Section 46005 of the Food and Agricultural Code is amended to read:

46005. The director and the county agricultural commissioners may conduct a program of spot inspections of persons required to register pursuant to Section 46002 to verify continuing compliance with this chapter and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, according to uniform procedures established by the director.

SEC. 71. Section 46006 of the Food and Agricultural Code is amended to read:

46006. At the request of a county agricultural commissioner, the district attorney for that county may bring an action to enforce this chapter or Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, within the enforcement jurisdiction of that commissioner.

SEC. 72. Section 46007 of the Food and Agricultural Code is amended to read:

46007. (a) In lieu of prosecution, the director or a county agricultural commissioner may levy a civil penalty against any person under the enforcement jurisdiction of the director as provided in Section 46000 who violates Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, or any regulation adopted pursuant thereto or pursuant to this chapter, in an amount not more than five thousand dollars ($5,000) for each violation. The amount of the penalty assessed for each violation shall be based upon the nature of the violation, the seriousness of the effect of the violation upon effectuation of the purposes and provisions of this chapter and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, and the impact of the penalty on the violator, including the deterrent effect on future violations.

(b) Notwithstanding the penalties prescribed in subdivision (a), if the director or county agricultural commissioner finds that a violation was not intentional, the director or county agricultural commissioner may levy a civil penalty of not more than two thousand five hundred dollars ($2,500) for each violation.

(c) For a first offense, in lieu of a civil penalty as prescribed in subdivision (a) or (b), the director or county agricultural commissioner may issue a notice of violation if he or she finds that the violation is minor.

(d) A person against whom a civil penalty is levied shall be afforded an opportunity for a hearing before the director or county agricultural commissioner, upon request made within 30 days after the issuance of the notice of penalty. At the hearing, the person shall be given the right to review the director's or commissioner's evidence of the violation and the right to present evidence on his or her own behalf. If no hearing is requested, the civil penalty shall constitute a final and nonreviewable order.

(e) If a hearing is held, review of the decision of the director or commissioner may be sought by any person pursuant to Section 1094.5 of the Code of Civil Procedure within 30 days of the date of the final order of the director or commissioner.

(f) A civil penalty levied by the director pursuant to this section may be recovered in a civil action brought in the name of the state. A civil penalty levied by a county agricultural commissioner pursuant to this section may be recovered in a civil action brought in the name of the county.

(g) The director shall maintain in a central location, and make publicly available for inspection and copying upon request, a list of all civil penalties levied by the director and by each county agricultural commissioner within the past five years, including the amount of each penalty, the person against whom the penalty was levied, and the nature of the violation. Copies of this list shall also be available by mail, upon written request and payment of a reasonable fee, as set by the director.

SEC. 73. Section 46008 of the Food and Agricultural Code is amended to read:

46008. On or before January 1, 1994, the director, in consultation with the county agricultural commissioners and in cooperation with the State Director of Health Services, shall prepare a report to the Legislature describing enforcement activities under this chapter and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, and containing recommendations regarding the need for, and means of, improved enforcement of that article and this chapter. The report shall include an analysis of the adequacy of fees collected pursuant to this chapter.

SEC. 74. Section 46009 of the Food and Agricultural Code is amended to read:

46009. (a) Effective January 1, 1993, a nongovernmental certification organization that certifies raw agricultural commodities, eggs, meat, fowl, or dairy products sold as organic shall register with the secretary and shall thereafter annually renew the registration, unless the organization is no longer engaged in the activities requiring the registration. Registration shall be on a form

provided by the secretary, shall include the filing of a certification plan as specified in Section 110865 of the Health and Safety Code, and payment of the fee specified in subdivision (b). The registration form shall contain the names of all persons involved in making certification decisions or setting certification standards for the certification organization. The secretary shall reject a registration submission that is incomplete or not in compliance with this chapter and Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code. The secretary shall make forms available for this purpose.

In lieu of registration pursuant to this subdivision, the secretary may approve a certification organization that is accredited under the federal organic foods law.

(b) Each nongovernmental certification organization shall pay an annual registration fee of five hundred dollars ($500) to the secretary. Any registration submitted by a certification organization, registered with the department, shall be made available to the public for inspection and copying. The secretary may audit the organization's certification procedures and records at any time, but any records of the certification organization not otherwise required to be disclosed shall be kept confidential by the secretary.

(c) The secretary and the county agricultural commissioners under the supervision of the secretary shall, if requested by a sufficient number of persons to cover the costs of the program in a county as determined by the secretary, establish a voluntary certification program for producers of organic food and processors of organic meat, fowl, and dairy products under the enforcement jurisdiction of the secretary. This program shall meet all of the requirements of Sections 110855 to 110870, inclusive, of the Health and Safety Code. In addition, this program shall meet all of the requirements of the federal certification program, including federal accreditation. The secretary shall establish a fee schedule for participants in this program that covers all of the department's reasonable costs of the program. A county agricultural commissioner that conducts a voluntary certification program pursuant to this section shall establish a fee schedule for participants in this program that covers all of the agricultural commissioner's reasonable costs of the program. The secretary may not expend funds obtained from registration fees collected under this chapter for the purposes of adopting or administering this program.

The certification fee authorized by this subdivision is due and payable on or before the 10th day of the month following the month in which the decision to grant the certification is issued. Any person who does not pay the amount that is due within the required period shall pay the enforcement authority providing the certificate a penalty of 10 percent of the total amount determined to be due, plus interest at the rate of $1^1/_2$ percent interest per month on the unpaid balance.

(d) This chapter applies to all food sold as organic within the state, wherever produced, handled, or processed, and to all food produced, handled, or processed in the state, wherever sold as organic, except that in lieu of registration under this chapter, the secretary may recognize a certification organization operating outside of the state that certifies raw agricultural commodities, eggs, meat, fowl, or dairy products if the secretary determines that the organization meets minimum standards substantially similar to those contained in subdivision (c) of Section 110850, and Sections 110860 to 110870, inclusive, of the Health and Safety Code. The secretary shall establish, administratively, a procedure for organizations to apply and obtain recognition.

SEC. 75. Section 46010 of the Food and Agricultural Code is amended to read:

46010. This chapter shall be interpreted in conjunction with Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code.

SEC. 76. Section 46012 of the Food and Agricultural Code is amended to read:

46012. Article 14 (commencing with Section 43031) of Chapter 2 applies to any food product that is represented as organically produced by any person who is not registered as required by this chapter or any product that is not in compliance with this chapter or Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code. The director, agricultural commissioners, and the State Director of Health Services shall be considered enforcing officers for purposes of those provisions of law under their respective jurisdiction.

SEC. 77. Section 46014 of the Food and Agricultural Code is amended to read:

46014. This chapter also applies to seed, fiber, and horticultural products. The terms "foods" and "raw agricultural commodities" as used in this chapter, and in Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, include seed, fiber, and horticultural products where the context requires to effectuate this section.

SEC. 78. Section 46015 of the Food and Agricultural Code is amended to read:

46015. Except as provided in paragraphs (1) and (2) of subdivision (b) of Section 110820 of the Health and Safety Code, it is unlawful for any person to commingle nonorganic commodities with commodities sold as organic either in the same container, as defined in Section 42506, or when displaying commodities for sale at retail.

SEC. 79. Section 55861.7 of the Food and Agricultural Code is amended to read:

55861.7. (a) Notwithstanding Section 55861.5, in addition to the fee paid pursuant to Section 55861, each applicant for a license shall

pay a 50-percent surcharge to the Director of Pesticide Regulation, in a form and manner prescribed by the director.

(b) Subdivision (a) does not apply to those applicants for licenses the Department of Pesticide Regulation determines should not be assessed due to a determination of limited applicability pursuant to Sections 12535, 12536, 12797, 12798, 12979, 13134, and 13135 of this code or Section 110455 or 110485 of the Health and Safety Code to those licenses, or because substantial economic hardship would result to individual applicants.

(c) Each applicant for a license issued pursuant to this chapter who is also registered pursuant to Article 2 (commencing with Section 110460) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code, may, at a date no later than the issuance of the license, submit a copy of the processed food registration certificate issued to that applicant by the State Department of Health Services pursuant to that Article 2 in lieu of the payment of the surcharge required pursuant to subdivision (a).

(d) Revenue received pursuant to this section shall be deposited in the Food Safety Account in the Department of Pesticide Regulation Fund. A penalty of 10 percent per month shall be added to any surcharge not paid when due.

(e) If the applicant is not issued a license, the director shall return the surcharge to the applicant, and for that purpose, notwithstanding Section 13340 of the Government Code, the amount of funds necessary to refund the surcharge is continuously appropriated, without regard to fiscal year, to the director.

SEC. 79.5. Section 56571.7 of the Food and Agricultural Code is amended to read:

56571.7. Notwithstanding Section 56571.5, in addition to the fee paid pursuant to Section 56571, each applicant for a license shall pay a 50-percent surcharge to the Director of Pesticide Regulation, in a form and manner prescribed by the director. This section shall not apply to those applicants for licenses the Department of Pesticide Regulation determines should not be assessed due to a determination of limited applicability pursuant to Sections 12535, 12536, 12797, 12798, 12979, 13134, and 13135 of this code or Section 110455 or 110485 of the Health and Safety Code to those licenses, or because substantial economic hardship would result to individual applicants. Revenue received pursuant to this section shall be deposited in the Food Safety Account in the Department of Pesticide Regulation Fund. A penalty of 10 percent per month shall be added to any surcharge not paid when due. If the applicant is not issued a license, the director shall return the surcharge to the applicant, and for that purpose, notwithstanding Section 13340 of the Government Code, the amount of funds necessary to refund the surcharge is continuously appropriated, without regard to fiscal year, to the director.

SEC. 80. Section 58108 of the Food and Agricultural Code is amended to read:

58108. If the program is established, the department shall authorize a local agency in each county to distribute nutrition coupons to all recipients, as defined by subdivision (c) of Section 123285 of the Health and Safety Code.

SEC. 81. Section 6103.4 of the Government Code is amended to read:

6103.4. Section 6103 does not apply to any fee or charge for official services required by Section 100860 of the Health and Safety Code, or Part 5 (commencing with Section 4999) of Division 2, or subdivision (d) of Section 13260, or Section 13609, of the Water Code.

SEC. 82. Section 7575 of the Government Code is amended to read:

7575. (a) (1) Notwithstanding any other provision of law, the State Department of Health Services, or any designated local agency administering the California Children's Services, shall be responsible for the provision of medically necessary occupational therapy and physical therapy, as specified by Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, by reason of medical diagnosis and when contained in the child's individualized education program.

(2) Related services or designated instruction and services not deemed to be medically necessary by the State Department of Health Services, that the individualized education program team determines are necessary in order to assist a child to benefit from special education, shall be provided by the local education agency by qualified personnel whose employment standards are covered by the Education Code and implementing regulations.

(b) The department shall determine whether a California Children's Services eligible pupil, or a pupil with a private medical referral needs medically necessary occupational therapy or physical therapy. A medical referral shall be based on a written report from a licensed physician and surgeon who has examined the pupil. The written report shall include the following:

(1) The diagnosed neuromuscular, musculoskeletal, or physical disabling condition prompting the referral.

(2) The referring physician's treatment goals and objectives.

(3) The basis for determining the recommended treatment goals and objectives, including how these will ameliorate or improve the pupil's diagnosed condition.

(4) The relationship of the medical disability to the pupil's need for special education and related services.

(5) Relevant medical records.

(c) The department shall provide the service directly or by contracting with another public agency, qualified individual, or a state-certified nonpublic nonsectarian school or agency.

(d) Local education agencies shall provide necessary space and equipment for the provision of occupational therapy and physical therapy in the most efficient and effective manner.

(e) The department shall also be responsible for providing the services of a home health aide when the local education agency considers a less restrictive placement from home to school for a pupil for whom both of the following conditions exist:

(1) The California Medical Assistance Program provides a life-supporting medical service via a home health agency during the time in which the pupil would be in school or traveling between school and home.

(2) The medical service provided requires that the pupil receive the personal assistance or attention of a nurse, home health aide, parent or guardian, or some other specially trained adult in order to be effectively delivered.

SEC. 83. Section 7901 of the Government Code is amended to read:

7901. For the purposes of Article XIII B of the California Constitution and this division:

(a) "Change in California per capita personal income" means the number resulting when the quotient of the California personal income, as published by the United States Department of Commerce in the Survey of Current Business for the fourth quarter of a calendar year divided by the civilian population of the state on January 1 of the next calendar year, as estimated by the Department of Finance, is divided by the similarly determined quotient for the next prior year. For example, the change in California per capita personal income for 1979 (to be used for computing the appropriations limit for the 1980–81 fiscal year) would equal the fourth quarter 1979 personal income divided by the January 1, 1980, population, the quotient divided by the fourth quarter 1978 personal income divided by the January 1, 1979, population.

(b) "Change in population" for a local agency for a calendar year means the number resulting when the percentage change in population between January 1 of the next calendar year and January 1 of the calendar year in question, as estimated by the Department of Finance pursuant to Section 2227 of the Revenue and Taxation Code for each city and county and Section 2228 of the Revenue and Taxation Code for each special district, plus 100, is divided by 100. For example, the change in population for 1979 would equal the percentage change in population between January 1, 1980, and January 1, 1979, plus 100, the sum divided by 100. For purposes of the state's appropriations limit, "change in population" means the number resulting when the civilian population of the state on January 1 of the next calendar year, as estimated by the Department of Finance, is divided by the similarly estimated population for January 1 of the calendar year in question. For example, the change in population for 1979 (to be used for computing the appropriations limit for the 1980–81 fiscal year) would equal the January 1, 1980, population divided by the January 1, 1979, population.

A city or special district may choose to use the change in population within its jurisdiction or within the county in which it is located. For a special district located in two or more counties, the special district may choose to use the change in population in the county in which the portion of the district is located which has the highest assessed valuation. Each city and special district shall select its change in population pursuant to this paragraph annually by a recorded vote of the governing body of the city or special district. A charter city and county may choose to use the change in population provided in this paragraph or may choose to use the change in population provided in Section 2 of Chapter 1221 of the Statutes of 1980.

A county may choose to use any one of the following:

(1) The change in population within its jurisdiction.

(2) The change in population within its jurisdiction, combined with the change in population within all counties having borders that are contiguous to that county.

(3) The change in population within the incorporated portion of the county.

(c) "Change in population" for a school district means the change in average daily attendance between the year prior to that for which the appropriations limit is being computed and the year for which the appropriations limit is being computed, using the average daily attendance as defined in Section 7906.

(d) "Change in population" for a community college district means the number resulting when the average daily attendance reported by the community college district for state apportionment funding purposes computed pursuant to Article 2 (commencing with Section 84520) of Chapter 4 of Part 50 of the Education Code is divided by the similarly computed average daily attendance for the previous year.

(e) "Local agency" means a city, county, city and county, special district, authority or other political subdivision of the state, except a school district, community college district, or county superintendent of schools. The term "special district" shall not include any district which (1) existed on January 1, 1978, and did not possess the power to levy a property tax at that time or did not levy or have levied on its behalf, an ad valorem property tax rate on all taxable property in the district on the secured roll in excess of $12^1/_2$ cents per $100 of assessed value for the 1977–78 fiscal year, or (2) existed on January 1, 1978, or was thereafter created by a vote of the people, and is totally funded by revenues other than the proceeds of taxes as defined in subdivision (c) of Section 8 of Article XIII B of the California Constitution.

If a special district levied, or had levied on its behalf, different property tax rates for the 1977–78 fiscal year depending on which area or zone within the district boundaries property was located, it shall be deemed not to have levied a secured property tax rate in excess of $12^1/_2$ cents per $100 of assessed value if the total revenue

derived from the ad valorem property tax levied by or for the district for 1977–78, divided by the total amount of taxable assessed valuation within the district's boundaries for 1977–78, does not exceed .00125.

(f) "School district" means an elementary, high school, or unified school district.

(g) "Local jurisdiction" means a local agency, school district, community college district, or county superintendent of schools.

(h) As used in Section 2 and subdivision (b) of Section 3 of Article XIII B, "revenues" means all tax revenues and the proceeds to a local jurisdiction or the state received from (1) regulatory licenses, user charges, and user fees to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service, and (2) the investment of tax revenues as described in subdivision (i) of Section 8 of Article XIII B. For a local jurisdiction, revenues and appropriations shall also include subventions, as defined in Section 7903, and with respect to the state, revenues and appropriations shall exclude those subventions.

(i) (1) "Proceeds of taxes" shall not include proceeds to a local jurisdiction or the state from regulatory licenses, user charges, or user fees except to the extent that those proceeds exceed the costs reasonably borne by that entity in providing the regulation, product, or service.

(2) "Proceeds of taxes" also does not include the proceeds received by a local jurisdiction from a license tax imposed pursuant to Section 25149.5 of the Health and Safety Code or a tax or fee imposed pursuant to Section 25173.5 of the Health and Safety Code on the operation of a hazardous waste facility, or the proceeds received by a local jurisdiction from a surcharge which is collected by a regional disposal facility, as authorized pursuant to Section 115255 of the Health and Safety Code to the extent that these proceeds of the license tax, tax, fee, or surcharge are expended for costs or increased burdens on local jurisdictions which are associated with the hazardous waste facility or regional disposal facility. These costs or burdens include, but are not limited to, general fund expenses, the improvement and maintenance of roads and bridges, fire protection, emergency medical response, law enforcement, air and groundwater monitoring, epidemiological studies, emergency response training, and equipment related to the hosting of the hazardous waste facility or regional disposal facility.

SEC. 84. Section 8607.2 of the Government Code is amended to read:

8607.2. (a) All public water systems, as defined in subdivision (f) of Section 116275 of the Health and Safety Code, with 10,000 or more service connections shall review and revise their disaster preparedness plans in conjunction with related agencies, including, but not limited to, local fire departments and the office to ensure that the plans are sufficient to address possible disaster scenarios. These plans should examine and review pumping station and distribution

facility operations during an emergency, water pressure at both pumping stations and hydrants, and whether there is sufficient water reserve levels and alternative emergency power, including, but not limited to, onsite backup generators and portable generators.

(b) All public water systems, as defined in subdivision (f) of Section 116275 of the Health and Safety Code, with 10,000 or more service connections following a declared state of emergency shall furnish an assessment of their emergency response and recommendations to the Legislature within six months after each disaster, as well as implementing the recommendations in a timely manner.

(c) By December 1, 1996, the Office of Emergency Services shall establish appropriate and insofar as practical, emergency response and recovery plans, including mutual aid plans, in coordination with public water systems, as defined in subdivision (f) of Section 116275 of the Health and Safety Code, with 10,000 or more service connections.

SEC. 85. Section 8610.5 of the Government Code is amended to read:

8610.5. (a) It is the intent of the Legislature that state and local costs which are not reimbursed by federal funds shall be borne by utilities operating nuclear powerplants with a generating capacity of 50 megawatts or more. The Public Utilities Commission shall develop and transmit to the Office of Emergency Services an equitable method of assessing the utilities operating the powerplants for their reasonable pro rata share of state agency costs. Each local government involved shall submit a statement of its costs, as required, to the Office of Emergency Services. Upon each utility's notification by the Office of Emergency Services, from time to time, of the amount of its share of the actual or anticipated state and local agency costs, the utility shall pay this amount to the Controller for deposit in the Nuclear Planning Assessment Special Account, which is hereby created in the General Fund for allocation by the Controller, upon appropriation by the Legislature, to carry out activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code. The Controller shall pay from this account the state and local costs relative to carrying out this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code, upon certification thereof by the Office of Emergency Services.

(b) (1) The total annual reimbursement of state costs from the utilities operating the nuclear powerplants within the state for activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code, shall not exceed the lesser of the actual costs or the maximum funding levels, previously established by Section 1 of Chapter 1607 of

the Statutes of 1988 as of December 31, 1993, subject to subdivisions (d), (e), (f), and (g), to be shared equally among the utilities.

(2) Of the initial amount of five hundred eighty-five thousand dollars ($585,000) for state costs, as determined in paragraph (1), for the period from January 1, 1994, to June 30, 1994, inclusive, the sum of three hundred fifty thousand five hundred dollars ($350,500) shall be in support of the Office of Emergency Services for activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code, and the sum of two hundred thirty-four thousand five hundred dollars ($234,500) shall be in support of the State Department of Health Services for activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code.

(3) Of the initial annual amount of one million two hundred seventeen thousand dollars ($1,217,000) for state costs, as determined in paragraph (1), for the 1994–95 fiscal year, the sum of seven hundred twenty-nine thousand dollars ($729,000) shall be in support of the Office of Emergency Services for activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code, and the sum of four hundred eighty-eight thousand dollars ($488,000) shall be in support of the State Department of Health Services for activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code.

(c) (1) The total reimbursement for the period from January 1, 1994, to June 30, 1994, inclusive of local costs from the utilities shall not exceed the lesser of the actual costs or the maximum funding levels, on a site basis, previously established on a per reactor basis by Section 1 of Chapter 1607 of the Statutes of 1988 as of December 31, 1993, in support of activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code. The maximum initial annual amount available for reimbursement of local costs, subject to subdivisions (d), (e), (f), and (g) of this section shall be three hundred twelve thousand dollars ($312,000) for the Diablo Canyon site and four hundred sixty-eight thousand dollars ($468,000) for the San Onofre site.

(2) The total annual fiscal year reimbursement commencing July 1, 1994, of local costs from the utilities shall not exceed the lesser of the actual costs or the maximum funding levels, on a site basis, previously established on a per reactor basis by Section 1 of Chapter 1607 of the Statutes of 1988, in support of activities pursuant to this section and Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code. The maximum initial annual amount available for reimbursement of local costs, subject to subdivisions (d), (e), (f), and (g) of this section, shall be seven hundred thousand dollars ($700,000) for the Diablo Canyon site and

nine hundred seventy-four thousand dollars ($974,000) for the San Onofre site.

(3) The amounts paid by the utilities under this section shall be allowed for ratemaking purposes by the Public Utilities Commission.

(d) The amounts available for reimbursement of state and local costs as specified in this section shall be adjusted each fiscal year by the percentage increase in the California Consumer Price Index of the previous calendar year.

(e) Through the date specified in subdivision (g), the amounts available for reimbursement of state and local costs as specified in this section shall be cumulative biennially. Any unexpended funds from the 1994–95 fiscal year shall be carried over to the 1995–96 fiscal year, and any unexpended funds from the 1996–97 fiscal year shall be carried over to the 1997–98 fiscal year.

(f) For the Diablo Canyon site, beginning July 1, 1996, the maximum annual amount for reimbursement of local costs determined pursuant to subdivision (d) shall be increased by an additional seventy-five thousand dollars ($75,000).

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

(h) Upon inoperation of this section, any amounts remaining in the special account shall be refunded pro rata to the utilities contributing thereto.

SEC. 86. Section 8870.95 of the Government Code is amended to read:

8870.95. The Building Safety Board established in Section 129925 of the Health and Safety Code shall report annually to the Seismic Safety Commission.

SEC. 87. Section 8894.1 of the Government Code is amended to read:

8894.1. This chapter shall not apply to potentially hazardous (unreinforced masonry) buildings covered under Chapter 12.2 (commencing with Section 8875), any building covered under Chapter 13.4 (commencing with Section 8893), school buildings covered under Article 3 (commencing with Section 39140) of Chapter 2 of the Education Code, hospital buildings covered under Chapter 1 (commencing with Section 129675) of Part 7 of Division 107 of the Health and Safety Code, and historical buildings covered under Part 2.7 (commencing with Section 18950) of Division 13 of the Health and Safety Code.

SEC. 88. Section 11121 of the Government Code is amended to read:

11121. As used in this article "state body" means every state board, or commission, or similar multimember body of the state that is required by law to conduct official meetings and every commission created by executive order, but does not include:

(a) State agencies provided for in Article VI of the California Constitution.

(b) Districts or other local agencies whose meetings are required to be open to the public pursuant to the Ralph M. Brown Act, (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).

(c) State agencies provided for in Article IV of the California Constitution whose meetings are required to be open to the public pursuant to the Grunsky-Burton Open Meeting Act (Sections 9027 to 9032, inclusive).

(d) State agencies when they are conducting proceedings pursuant to Section 3596.

(e) State agencies provided for in Section 109260 of the Health and Safety Code, except as provided in Section 109390 of the Health and Safety Code.

(f) State agencies provided for in Section 11770.5 of the Insurance Code.

SEC. 89. Section 14964 of the Government Code is amended to read:

14964. (a) The duties and functions formerly conducted by the Office of the State Architect and the State Fire Marshal that relate to hospital plan checking and construction inspection are hereby transferred to the Office of Statewide Health Planning and Development. These duties include, but are not limited to, those specified in Division 12.5 (commencing with Section 16000) and Chapter 1 (commencing with Section 129675) of Part 7 of Division 107 of the Health and Safety Code.

(b) The qualifications for the personnel reviewing fire and life safety aspects of schools and hospitals within the Office of the State Architect and the Office of Statewide Health Planning and Development shall be the same as those qualifications required of personnel formerly reviewing fire and life safety aspects of those facilities within the Office of the State Fire Marshal. It shall continue to be the responsibility of the State Fire Marshal to provide a high level of ongoing professional development and training for the personnel reviewing fire and life safety aspects of schools and hospitals within the Office of the State Architect and the Office of Statewide Health Planning and Development.

(c) The qualifications for the personnel reviewing and inspecting structural safety aspects of hospitals at the Office of Statewide Health Planning and Development shall be the same as those qualifications required of personnel formerly reviewing and inspecting structural safety aspects of hospitals at the Office of the State Architect.

SEC. 90. Section 15438 of the Government Code is amended to read:

15438. Subject to the conditions, restrictions, and limitations of Section 15438.1, the authority may do any of the following:

(a) Adopt bylaws for the regulation of its affairs and the conduct of its business.

(b) Adopt an official seal.

(c) Sue and be sued in its own name.

(d) Receive and accept from any agency of the United States or any agency of the State of California or any municipality, county or other political subdivision thereof, or from any individual, association, or corporation gifts, grants, or donations of moneys for achieving any of the purposes of this chapter.

(e) Engage the services of private consultants to render professional and technical assistance and advice in carrying out the purposes of this part.

(f) Determine the location and character of any project to be financed under this part, and to acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip, fund, finance, own, maintain, manage, repair, operate, lease as lessee or lessor and regulate the same, to enter into contracts for any or all of those purposes, to enter into contracts for the management and operation of a project or other health facilities owned by the authority, and to designate a participating health institution as its agent to determine the location and character of a project undertaken by that participating health institution under this chapter and as the agent of the authority, to acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip, own, maintain, manage, repair, operate, lease as lessee or lessor and regulate the same, and as the agent of the authority, to enter into contracts for any or all of those purposes, including contracts for the management and operation of that project or other health facilities owned by the authority.

(g) Acquire, directly or by and through a participating health institution as its agent, by purchase solely from funds provided under the authority of this part, or by gift or devise, and to sell, by installment sale or otherwise, any lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and other interests in lands, including lands lying under water and riparian rights, which are located within the state the authority determines necessary or convenient for the acquisition, construction, or financing of a health facility or the acquisition, construction, financing, or operation of a project, upon the terms and at the prices considered by the authority to be reasonable and which can be agreed upon between the authority and the owner thereof, and to take title thereto in the name of the authority or in the name of a participating health institution as its agent.

(h) Receive and accept from any source loans, contributions, or grants for, or in aid of, the construction, financing, or refinancing of a project or any portion of a project in money, property, labor, or other things of value.

(i) Make secured or unsecured loans to, or purchase secured or unsecured loans of, any participating health institution in connection

with the financing of a project or working capital in accordance with an agreement between the authority and the participating health institution. However, no loan to finance a project shall exceed the total cost of the project, as determined by the participating health institution and approved by the authority.

(j) Make secured or unsecured loans to, or purchase secured or unsecured loans of, any participating health institution in accordance with an agreement between the authority and the participating health institution to refinance indebtedness incurred by that participating health institution in connection with projects undertaken or for health facilities acquired or for working capital financed prior to or after January 1, 1980.

(k) Mortgage all or any portion of interest of the authority in a project or other health facilities and the property on which that project or other health facilities are located whether owned or thereafter acquired including the granting of a security interest in any property, tangible or intangible, and to assign or pledge all or any portion of the interests of the authority in mortgages, deeds of trust, indentures of mortgage or trust or similar instruments, notes, and security interests in property, tangible or intangible, of participating health institutions to which the authority has made loans, and the revenues therefrom, including payments or income from any thereof owned or held by the authority, for the benefit of the holders of bonds issued to finance the project or health facilities or issued to refund or refinance outstanding indebtedness of participating health institutions as permitted by this part.

(*l*) Lease to a participating health institution the project being financed or other health facilities conveyed to the authority in connection with that financing, upon the terms and conditions the authority determines proper, and to charge and collect rents therefor and to terminate the lease upon the failure of the lessee to comply with any of the obligations of the lease; and to include in that lease, if desired, provisions granting the lessee options to renew the term of the lease for the period or periods and at the rent, as determined by the authority, to purchase any or all of the health facilities or that upon payment of all of the indebtedness incurred by the authority for the financing of that project or health facilities or for refunding outstanding indebtedness of a participating health institution, then the authority may convey any or all of the project or the other health facilities to the lessee or lessees thereof with or without consideration.

(m) Charge and equitably apportion among participating health institutions, the administrative costs and expenses incurred by the authority in the exercise of the powers and duties conferred by this part.

(n) Obtain, or aid in obtaining, from any department or agency of the United States or of the State of California or any private company, any insurance or guarantee as to, or of, or for the payment or repayment of, interest or principal, or both, or any part thereof,

on any loan, lease, or obligation, or any instrument evidencing or securing the loan, lease, or obligation, made or entered into pursuant to this part; and notwithstanding any other provisions of this part, to enter into any agreement, contract, or any other instrument whatsoever with respect to that insurance or guarantee, to accept payment in the manner and form as provided therein in the event of default by a participating health institution, and to assign that insurance or guarantee as security for the authority's bonds.

(o) Enter into any and all agreements or contracts, including agreements for liquidity and credit enhancement, interest rate swaps or hedges, execute any and all instruments, and do and perform any and all acts or things necessary, convenient, or desirable for the purposes of the authority or to carry out any power expressly granted by this part.

(p) Invest any moneys held in reserve or sinking funds, or any moneys not required for immediate use or disbursement, at the discretion of the authority, in any obligations authorized by the resolution authorizing the issuance of the bonds secured thereof or authorized by law for the investment of trust funds in the custody of the Treasurer.

(q) Establish and maintain a reciprocal insurance company or an insurance program that shall be treated and licensed as a reciprocal insurance company for regulatory purposes under the Insurance Code on behalf of one or more participating health institutions, to provide for payment of judgments, settlement of claims, expense, loss and damage that arises, or is claimed to have arisen, from any act or omission of, or attributable to, the participating health institution or any nonprofit organization controlled by, or controlling or under common control with, the participating health institution, their employees, agents or others for whom they may be held responsible, in connection with any liability insurance (including medical malpractice); set premiums, ascertain loss experience and expenses and determine credits, refunds, and assessments; and establish limits and terms of coverage; and engage any expert or consultant it deems necessary or appropriate to manage or otherwise assist with the insurance company or program; and pay any expenses in connection therewith; and contract with the participating health institution or institutions for insurance coverage from the insurance company or program and for the payment of any expenses in connection therewith including any bonds issued to fund or finance the insurance company or program.

(r) Provide funding for self-insurance for participating health institutions. However, there shall be no pooling of liability risk among participating health institutions except as provided in subdivision (f) of Section 15438.5.

(s) (1) Make grants-in-aid to any participating small or rural hospital, as defined in Section 124840 of the Health and Safety Code, in connection with the financing of a project or for working capital

in accordance with an agreement between the authority and the hospital. However, no grant to finance a project shall exceed the total cost of the project, as determined by the hospital and approved by the authority.

(2) Make grants-in-aid to any small or rural hospital, as defined in Section 124840 of the Health and Safety Code, in accordance with an agreement between the authority and the hospital to discharge indebtedness incurred by the hospital in connection with projects undertaken, for health facilities acquired, or for working capital financed prior to the effective date of this subdivision.

(3) Grants shall be made pursuant to this subdivision only from HELP Program funds, not to exceed eight hundred seventy thousand dollars ($870,000). In consultation with representatives of the hospital industry and other affected parties, the authority shall develop a process and criteria for making grants under this subdivision, including obtaining legal opinions on appropriateness of grants to private facilities for capital outlay purposes.

SEC. 91. Section 15438.1 of the Government Code is amended to read:

15438.1. (a) No project shall be eligible for approval under this part unless a certificate of need has first been obtained pursuant to Chapter 1 (commencing with Section 127125) of Part 2 of Division 107 of the Health and Safety Code, a certificate of exemption has been obtained pursuant to those provisions, or the project is otherwise exempt from certificate of need or certificate of exemption review and approval.

(b) Notwithstanding any other provision of law, on and after January 1, 1987, subdivision (a) is indefinitely suspended. The suspension shall remain in effect for as long as the suspension specified in subdivision (a) of Section 127300 of the Health and Safety Code continues in existence.

SEC. 92. Section 24306.5 of the Government Code is amended to read:

24306.5. In any county with a population of over 1,350,000 and not over 1,420,000 as determined by the 1970 federal decennial census, the board of supervisors may consolidate pursuant to ordinance or charter two or more offices, including the office of health officer, in order to integrate the delivery of health-related services within the county. The occupant of the consolidated office need not possess any of the particular qualifications required of the occupant of any of the separate offices that are consolidated if:

(a) No qualification applies to all of the offices consolidated; and

(b) The board finds that sufficient personnel possessing the particular qualifications required are employed in the consolidated office to assure that decisions made by the occupant of the office are based upon competent professional advice. The enforcement duties described in Sections 101030 and 101040 of the Health and Safety Code shall be discharged by a licensed physician and surgeon with

the title of health officer. The health officer's enforcement responsibility is limited to decisions requiring technical medical judgments.

This section does not permit the occupant of the consolidated office to practice any profession or trade for the practice of which a license, permit or registration is required without the license, permit, or registration.

SEC. 93. Section 25852 of the Government Code is amended to read:

25852. (a) All revenues generated from the emergency mosquito abatement standby charge ordinance shall be deposited in a separate emergency mosquito abatement trust account in the county treasury, except that the county may retain an amount not to exceed the actual costs of performing the duties required by Section 25853.

(b) The trust account shall not exceed fifty thousand dollars ($50,000) or 25 percent of the county's expenditures for the operation and maintenance of its mosquito abatement program in the immediately preceding fiscal year, whichever is greater, except that the trust account may exceed these limits by the amount of interest earned.

(c) (1) The emergency mosquito abatement trust account shall be used solely for the abatement and extermination of mosquitoes, except that the county may use 50 percent of any interest earned on the trust account for its regular mosquito abatement programs. However, the board of supervisors may, on or before June 30, appropriate not more than 50 percent of any interest earned on the trust account to the Mosquitoborne Disease Surveillance Account in the General Fund, that is hereby created. Counties that agree to contribute to the Mosquitoborne Disease Surveillance Account shall enter into a cooperative agreement pursuant to subdivision (c) of Section 116180 of the Health and Safety Code. The funds deposited in the Mosquitoborne Disease Surveillance Account shall be available for expenditure, when appropriated by the Legislature, by the State Department of Health Services to support those mosquitoborne disease field and laboratory surveillance activities that are needed to carry out this article. The department shall not commit expenditures for the mosquitoborne disease field and laboratory surveillance activities unless the funds deposited in the Mosquitoborne Disease Surveillance Account are sufficient for the ensuing fiscal year.

(2) If the Department of Finance determines that the amount in the Mosquitoborne Disease Surveillance Account exceeds the amount required for the ensuing fiscal year, plus a reserve of fifty thousand dollars ($50,000), the excess shall be returned to the counties contributing the same in the proportion that the counties contributed it. The funds shall be deposited in the county emergency mosquito abatement trust account for use as otherwise provided in this article.

(3) The Legislature finds and declares that the use of county funds for mosquitoborne disease surveillance serves a public purpose of a county, as well as a public purpose of the state, within the meaning of Section 6 of Article XVI of the California Constitution.

(d) The county shall not spend any part of the principal of the emergency mosquito abatement trust account unless the State Director of Health Services has declared that the public health and safety are, or may be, threatened by an unabated outbreak of mosquitoes in a portion or all of the territory within the county, or that conditions require emergency preventive mosquito abatement work, and that the expenditure is necessary to protect the public health and safety.

(e) The department shall adopt emergency regulations to implement, interpret, or make specific the provisions of this article, including, but not limited to, conditions under which the principal of the emergency mosquito abatement trust account may be expended and criteria for determining if the county has established adequate emergency mosquito abatement procedures.

(f) Nothing in this section shall be construed as an alternative for the abatement procedures authorized by Article 4 (commencing with Section 2270) of Chapter 5 of Division 3 of the Health and Safety Code.

(g) Nothing in this section shall be construed as an alternative for the abatement procedures authorized by a county ordinance, or for an agreement for mosquito abatement between a county and a parcel owner.

SEC. 94. Section 26857 of the Government Code is amended to read:

26857. No fee shall be charged by the clerk for service rendered in any criminal action or, except as otherwise provided in Section 103730 of the Health and Safety Code, in any adoption proceeding, nor shall any fees be charged for any service to the state. No fee shall be charged by the clerk for service rendered in any juvenile court proceeding or proceeding to declare a minor free from parental custody or control. No fee shall be charged by the clerk for service rendered to any municipality or county in the state, or to the national government, nor for any service relating thereto.

SEC. 95. Section 26859 of the Government Code is amended to read:

26859. At the time of filing of each initial petition for dissolution of marriage, legal separation, or nullity, the petitioner shall pay a fee of two dollars ($2) to the county clerk for the costs of complying with Chapter 10 (commencing with Section 103200) of Part 1 of Division 102 of the Health and Safety Code.

The county clerk shall pay one-half of all those fees to the State Registrar of Vital Statistics each month. The State Registrar shall transmit those sums to the State Treasurer for deposit in the General Fund.

SEC. 96. Section 27491.41 of the Government Code is amended to read:

27491.41. (a) For purposes of this section, "sudden infant death syndrome" means the sudden death of any infant that is unexpected by the history of the infant and where a thorough postmortem examination fails to demonstrate an adequate cause of death.

(b) The Legislature finds and declares that sudden infant death syndrome (SIDS) is the leading cause of death for children under age one, striking one out of every 500 children. The Legislature finds and declares that sudden infant death syndrome is a serious problem within the State of California, and that public interest is served by research and study of sudden infant death syndrome, and its potential causes and indications.

(c) To facilitate these purposes, the coroner shall, within 24 hours, or as soon thereafter as feasible, perform an autopsy in any case where an infant has died suddenly and unexpectedly.

(d) The autopsy shall be conducted pursuant to a standardized protocol developed by the State Department of Health Services. The protocol is exempt from the procedural requirements pertaining to the adoption of administrative rules and regulations pursuant to Article 2 (commencing with Section 11342) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. The protocol shall be developed and approved by July 1, 1990.

(e) The protocol shall be followed by all coroners throughout the state when conducting the autopsies required by this section. The coroner shall state on the certificate of death that sudden infant death syndrome was the cause of death when the coroner's findings are consistent with the definition of sudden infant death syndrome specified in the standardized autopsy protocol. The protocol may include requirements and standards for scene investigations, requirements for specific data, criteria for ascertaining cause of death based on the autopsy, and criteria for any specific tissue sampling, and any other requirements. The protocol may also require that specific tissue samples must be provided to a central tissue repository designated by the State Department of Health Services.

(f) The State Department of Health Services shall establish procedures and protocols for access by researchers to any tissues, or other materials or data authorized by this section. Research may be conducted by any individual with a valid scientific interest and prior approval from the State Committee for the Protection of Human Subjects. The tissue samples, the materials, and all data shall be subject to the confidentiality requirements of Section 103850 of the Health and Safety Code.

(g) The coroner may take tissue samples for research purposes from infants who have died suddenly and unexpectedly without consent of the responsible adult if the tissue removal is not likely to result in any visible disfigurement.

(h) A coroner shall not be liable for damages in a civil action for any act or omission done in compliance with this section.

(i) No consent of any person is required prior to undertaking the autopsy required by this section. However, if the physician of record certifies the cause of death is sudden infant death syndrome and the parents object to an autopsy on religious or ethical grounds, no autopsy shall be required.

SEC. 97. Section 27504.1 of the Government Code is amended to read:

27504.1. If the findings are that the deceased met his or her death at the hands of another, the coroner shall, in addition to filing with the county clerk, transmit his or her written findings to the district attorney, the police agency wherein the dead body was recovered, and any other police agency requesting copies of the findings.

The findings and conclusions provided for in this article shall be sufficient to satisfy the cause of death information required in death certificates under Section 102875 of the Health and Safety Code.

SEC. 98. Section 33202 of the Government Code is amended to read:

33202. If the county health department or the administration of county health functions are not under the direction of the health officer, the county board of supervisors shall ensure that the health officer has sufficient authority and resources and the organizational structure does not impede the health officer from carrying out the duties required under Section 100575 of, Chapter 1 (commencing with Section 101000) of Part 3 of Division 101 of, Article 1 (commencing with Section 101025) of Chapter 2 of Part 3 of Division 101 of, Chapter 2 (commencing with Section 123150) of Part 1 of Division 106 of, and Sections 123740 and 123745 of, the Health and Safety Code.

SEC. 99. Section 54985 of the Government Code is amended to read:

54985. (a) Notwithstanding any other provision of law that prescribes an amount or otherwise limits the amount of a fee or charge that may be levied by a county, a county service area, or a county waterworks district governed by a county board of supervisors, a county board of supervisors shall have the authority to increase or decrease the fee or charge, that is otherwise authorized to be levied by another provision of law, in the amount reasonably necessary to recover the cost of providing any product or service or the cost of enforcing any regulation for which the fee or charge is levied. The fee or charge may reflect the average cost of providing any product or service or enforcing any regulation. Indirect costs that may be reflected in the cost of providing any product or service or the cost of enforcing any regulation shall be limited to those items that are included in the federal Office of Management and Budget Circular A-87 on January 1, 1984.

(b) If any person disputes whether a fee or charge levied pursuant to subdivision (a) is reasonable, the board of supervisors may request the county auditor to conduct a study and to determine whether the fee or charge is reasonable.

Nothing in this subdivision shall be construed to mean that the county shall not continue to be subject to fee review procedures required by Article XIII B of the California Constitution.

(c) This chapter shall not apply to any of the following:

(1) Any fee charged or collected by a court clerk pursuant to Section 26820.4, 26823, 26824, 26826, 26827, 26827.4, 26830, 72054, 72055, 72056, 72059, 72060, or 72061 of the Government Code or Section 103470 of the Health and Safety Code, and any other fee or charge that may be assessed, charged, collected, or levied, pursuant to law for filing judicial documents or for other judicial functions.

(2) Any fees charged or collected pursuant to Chapter 2 (commencing with Section 6100) of Division 7 of Title 1.

(3) Any standby or availability assessment or charge.

(4) Any fee charged or collected by a county agricultural commissioner.

(5) Any fee charged or collected pursuant to Article 2.1 (commencing with Section 12240) of Chapter 2 of Division 5 of the Business and Professions Code.

(6) Any fee charged or collected by a county recorder or local registrar for filing, recording, or indexing any document, performing any service, issuing any certificate, or providing a copy of any document pursuant to Section 2103 of the Code of Civil Procedure, Section 27361, 27361.1, 27361.2, 27361.3, 27361.4, 27361.8, 27364, 27365, or 27366 of the Government Code, Section 103625 of the Health and Safety Code, or Section 9407 of the Uniform Commercial Code.

(7) Any fee charged or collected pursuant to Article 7 (commencing with Section 26720) of Chapter 2 of Part 3 of Division 2 of Title 3 of the Government Code.

SEC. 100. Section 65352 of the Government Code is amended to read:

65352. (a) Prior to action by a legislative body to adopt or substantially amend a general plan, the planning agency shall refer the proposed action to all of the following entities:

(1) Any city or county, within or abutting the area covered by the proposal, and any special district that may be significantly affected by the proposed action, as determined by the planning agency.

(2) Any elementary, high school, or unified school district within the area covered by the proposed action.

(3) The local agency formation commission.

(4) Any areawide planning agency whose operations may be significantly affected by the proposed action, as determined by the planning agency.

(5) Any federal agency if its operations or lands within its jurisdiction may be significantly affected by the proposed action, as determined by the planning agency.

(6) Any public water system, as defined in Section 116275 of the Health and Safety Code, with 3,000 or more service connections, that serves water to customers within the area covered by the proposal. The public water system shall have at least 45 days to comment on the proposed plan, in accordance with subdivision (b), and to provide the planning agency with the information set forth in Section 65352.5.

(7) The Bay Area Air Quality Management District for a proposed action within the boundaries of the district.

(b) Each entity receiving a proposed general plan or amendment of a general plan pursuant to this section shall have 45 days from the date the referring agency mails it or delivers it in which to comment unless a longer period is specified by the planning agency.

(c) (1) This section is directory, not mandatory, and the failure to refer a proposed action to the other entities specified in this section does not affect the validity of the action, if adopted.

(2) To the extent that the requirements of this section conflict with the requirements of Chapter 4.4 (commencing with Section 65919), the requirements of Chapter 4.4 shall prevail.

SEC. 101. Section 65352.5 of the Government Code is amended to read:

65352.5. (a) The Legislature finds and declares that it is vital that there be close coordination and consultation between California's water supply agencies and California's land use approval agencies to ensure that proper water supply planning occurs in order to accommodate projects that will result in increased demands on water supplies.

(b) It is, therefore, the intent of the Legislature to provide a standardized process for determining the adequacy of existing and planned future water supplies to meet existing and planned future demands on these water supplies.

(c) Upon receiving, pursuant to Section 65352, notification of a city's or a county's proposed action to adopt or substantially amend a general plan, a public water system, as defined in Section 116275 of the Health and Safety Code, with 3,000 or more service connections, shall provide the planning agency with the following information, as is appropriate and relevant:

(1) The current version of its urban water management plan, adopted pursuant to Part 2.6 (commencing with Section 10610) of Division 6 of the Water Code.

(2) The current version of its capital improvement program or plan, as reported pursuant to Section 31144.73 of the Water Code.

(3) A description of the source or sources of the total water supply currently available to the water supplier by water right or contract,

taking into account historical data concerning wet, normal, and dry runoff years.

(4) A description of the quantity of surface water that was purveyed by the water supplier in each of the previous five years.

(5) A description of the quantity of groundwater that was purveyed by the water supplier in each of the previous five years.

(6) A description of all proposed additional sources of water supplies for the water supplier, including the estimated dates by which these additional sources should be available and the quantities of additional water supplies that are being proposed.

(7) A description of the total number of customers currently served by the water supplier, as identified by the following categories and by the amount of water served to each category:

(A) Agricultural users.

(B) Commercial users.

(C) Industrial users.

(D) Residential users.

(8) Quantification of the expected reduction in total water demand, identified by each customer category set forth in paragraph (7), associated with future implementation of water use reduction measures identified in the water supplier's urban water management plan.

(9) Any additional information that is relevant to determining the adequacy of existing and planned future water supplies to meet existing and planned future demands on these water supplies.

SEC. 102. Section 65962.5 of the Government Code is amended to read:

65962.5. (a) The Department of Toxic Substances Control shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all of the following:

(1) All hazardous waste facilities subject to corrective action pursuant to Section 25187.5 of the Health and Safety Code.

(2) All land designated as hazardous waste property or border zone property pursuant to Article 11 (commencing with Section 25220) of Chapter 6.5 of Division 20 of the Health and Safety Code.

(3) All information received by the Department of Toxic Substances Control pursuant to Section 25242 of the Health and Safety Code on hazardous waste disposals on public land.

(4) All sites listed pursuant to Section 25356 of the Health and Safety Code.

(5) All sites included in the Abandoned Site Assessment Program.

(b) The State Department of Health Services shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all public drinking water wells that contain detectable levels of organic contaminants and that are subject to water analysis pursuant to Section 116395 of the Health and Safety Code.

(c) The State Water Resources Control Board shall compile and update as appropriate, but at least annually, and shall submit to the Secretary for Environmental Protection, a list of all of the following:

(1) All underground storage tanks for which an unauthorized release report is filed pursuant to Section 25295 of the Health and Safety Code.

(2) All solid waste disposal facilities from which there is a migration of hazardous waste and for which a California regional water quality control board has notified the Department of Toxic Substances Control pursuant to subdivision (e) of Section 13273 of the Water Code.

(3) All cease and desist orders issued after January 1, 1986, pursuant to Section 13301 of the Water Code, and all cleanup or abatement orders issued after January 1, 1986, pursuant to Section 13304 of the Water Code, that concern the discharge of wastes that are hazardous materials.

(d) The local enforcement agency, as designated pursuant to Section 18051 of Title 14 of the California Code of Regulations, shall compile as appropriate, but at least annually, and shall submit to the California Integrated Waste Management Board, a list of all solid waste disposal facilities from which there is a known migration of hazardous waste. The California Integrated Waste Management Board shall compile the local lists into a statewide list, which shall be submitted to the Secretary for Environmental Protection and shall be available to any person who requests the information.

(e) The Secretary for Environmental Protection shall consolidate the information submitted pursuant to this section and distribute it in a timely fashion to each city and county in which sites on the lists are located. The secretary shall distribute the information to any other person upon request. The secretary may charge a reasonable fee to persons requesting the information, other than cities, counties, or cities and counties, to cover the cost of developing, maintaining, and reproducing and distributing the information.

(f) Before a lead agency accepts as complete an application for any development project which will be used by any person, the applicant shall consult the lists sent to the appropriate city or county and shall submit a signed statement to the local agency indicating whether the project and any alternatives are located on a site that is included on any of the lists compiled pursuant to this section and shall specify any list. If the site is included on a list, and the list is not specified on the statement, the lead agency shall notify the applicant pursuant to Section 65943. The statement shall read as follows:

HAZARDOUS WASTE AND SUBSTANCES STATEMENT

The development project and any alternatives proposed in this application are contained on the lists compiled pursuant to Section

65962.5 of the Government Code. Accordingly, the project applicant is required to submit a signed statement that contains the following information:

Name of applicant:
Address:
Phone number:
Address of site (street name and number if available, and ZIP Code):
Local agency (city/county):
Assessor's book, page, and parcel number:
Specify any list pursuant to Section 65962.5 of the Government Code:
Regulatory identification number:
Date of list:

_____

Applicant, Date

(g) The changes made to this section by the act amending this section, that takes effect January 1, 1992, apply only to projects for which applications have not been deemed complete on or before January 1, 1992, pursuant to Section 65943.

SEC. 103. Section 66013 of the Government Code is amended to read:

66013. (a) Notwithstanding any other provision of law, when a local agency imposes fees for water connections or sewer connections, or imposes capacity charges, those fees or charges shall not exceed the estimated reasonable cost of providing the service for which the fee or charge is imposed, unless a question regarding the amount of the fee or charge imposed in excess of the estimated reasonable cost of providing the services or materials is submitted to, and approved by, a popular vote of two-thirds of those electors voting on the issue.

(b) As used in this section:

(1) "Sewer connection" means the connection of a building to a public sewer system.

(2) "Water connection" means the connection of a building to a public water system, as defined in subdivision (f) of Section 116275 of the Health and Safety Code.

(3) "Capacity charges" means charges for facilities in existence at the time the charge is imposed or charges for new facilities to be constructed in the future that are of benefit to the person or property being charged.

(4) "Local agency" means a local agency as defined in Section 66000.

(c) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance, resolution, or motion imposing a fee or

capacity charge subject to this section shall be brought pursuant to Section 66022.

SEC. 104. Section 784 of the Harbors and Navigation Code is amended to read:

784. Nothing in this chapter is intended to affect the operation of Section 117505 of the Health and Safety Code. The state board and any regional board may also regulate nonsewage discharges excepting vessel washdown water, liquid galley, shower, or bath waste, or water discharges necessary for the propulsion or stability of a vessel.

SEC. 105. Section 27 of the Health and Safety Code, as added by Chapter 28 of the Statutes of 1995, is amended and renumbered to read:

28. For the purposes of this code, "recycled water" or "reclaimed water" has the same meaning as recycled water as defined in subdivision (n) of Section 13050 of the Water Code.

SEC. 106. Section 113 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

100425. (a) The fees or charges for the issuance or renewal of any permit, license, registration, or document pursuant to Sections 1639.5, 1676, 1677, 2202, 2805, 11887, 100720, 100860, 106700, 106890, 106925, 107080, 107090, 107095, 107160, 110210, 110470, 111130, 111140, 111630, 112405, 112510, 112750, 112755, 113060, 113065, 113845, 114056, 114065, paragraph (2), of subdivision (c) of Section 114090, 114140, subdivision (b) of Section 114290, 114367, 115035, 115065, 115080, 116205, 117923, 117995, 118045, 118210, and 118245 shall be adjusted annually by the percentage change printed in the Budget Act for those items appropriating funds to the state department. After the first annual adjustment of fees or charges pursuant to this section, the fees or charges subject to subsequent adjustment shall be the fees or charges for the prior calendar year. The percentage change shall be determined by the Department of Finance, and shall include at least the total percentage change in salaries and operating expenses of the state department. However, the total increase in amounts collected under this section shall not exceed the total increased cost of the program or service provided.

(b) The state department shall publish annually a list of the actual numerical fee charges for each permit, license, certification, or registration governed by this section. This adjustment of fees and publication of the fee list shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 107. The heading of Chapter 1.155 (commencing with Section 199.65) of Part 1 of Division 1 of the Health and Safety Code is amended and renumbered to read:

CHAPTER 10.5. AIDS EXPOSURE NOTIFICATION

SEC. 108. Section 199.65 of the Health and Safety Code is amended and renumbered to read:

121130. (a) The Legislature finds and declares all of the following:

(1) Early knowledge of HIV infection is important in order to permit exposed persons to make informed health care decisions as well as to take measures to reduce the likelihood of transmitting the infection to others.

(2) Individual health care providers, agents and employees of health care facilities and individual health care providers, and first responders, including police, firefighters, rescue personnel, and other persons who provide the first response to emergencies, frequently come into contact with the blood and other potentially infectious materials of individuals whose HIV infection status is not known.

(3) Even if these exposed individuals use universal infection control precautions to prevent HIV transmission, there will be occasions when they experience significant exposure to the blood or other potentially infectious materials of patients.

(b) Therefore, it is the intent of the Legislature to provide a narrow exposure notification and information mechanism to permit individual health care providers, the employees or contracted agents of health care facilities and individual health care providers, and first responders, who have experienced a significant exposure to the blood or other potentially infectious materials of a patient, to learn of the HIV infection status of the patient.

SEC. 109. Section 199.66 of the Health and Safety Code is amended and renumbered to read:

121132. (a) "Attending physician of the source patient" means any physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code and any person licensed pursuant to the Osteopathic Initiative Act, who provides health care services to the source patient. Notwithstanding any other provision of this subdivision to the contrary, the attending physician of the source patient shall include any of the following persons:

(1) The private physician of the source patient.

(2) The physician primarily responsible for the patient who is undergoing inpatient treatment in a hospital.

(3) A registered nurse or licensed nurse practitioner who has been designated by the attending physician of the source patient.

(b) "Available blood or patient sample" means blood or other tissue or material that was legally obtained in the course of providing health care services, and is in the possession of the physician or other health care provider of the source patient prior to the exposure incident.

(c) "Certifying physician" means any physician consulted by the exposed individual for the exposure incident. A certifying physician shall have demonstrated competency and understanding of the then applicable guidelines or standards of the Division of Occupational Safety and Health.

(d) "Exposed individual" means any individual health care provider, first responder, or any other person, including, but not limited to, any employee, volunteer, or contracted agent of any health care provider, who is exposed, within the scope of his or her employment, to the blood or other potentially infectious materials of a source patient.

(e) "Health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, any person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act, any person certified pursuant to Division 2.5 (commencing with Section 1797), any clinic, health dispensary, or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200), any employee, volunteer, or contracted agent of any group practice prepayment health care service plan regulated pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2), and any professional student of one of the clinics, health dispensaries, or health care facilities or health care providers described in this subdivision.

(f) "First responder" means police, firefighters, rescue personnel, and any other person who provides emergency response, first aid care, or other medically related assistance either in the course of the person's occupational duties or as a volunteer.

(g) "Other potentially infectious materials" means those body fluids identified by the Division of Occupational Safety and Health as potentially capable of transmitting HIV.

(h) "Significant exposure" means direct contact with blood or other potentially infectious materials of a patient in a manner that, according to the then applicable guidelines of the Division of Occupational Safety and Health, is capable of transmitting HIV.

(i) "Source patient" means any person receiving health care services whose blood or other potentially infectious material has been the source of a significant exposure to an exposed individual.

SEC. 110. Section 199.67 of the Health and Safety Code is amended and renumbered to read:

121135. Notwithstanding Chapter 7 (commencing with Section 120975) or any other provision of law, the blood or other tissue or material of a source patient may be tested, and an exposed individual may be informed of the HIV status of the patient, if the exposed individual and the health care facility, if any, have substantially complied with the then applicable guidelines of the Division of

Occupational Safety and Health and the State Department of Health Services and if the following procedure is followed:

(a) (1) Whenever an individual becomes an exposed individual by experiencing an exposure to the blood or other potentially infectious material of a patient during the course of rendering health-care-related services or occupational services, the exposed individual may request an evaluation of the exposure by a physician to determine if it is a significant exposure as defined in subdivision (h) of Section 121132. No physician or other exposed individual shall certify his or her own significant exposure. However, an employing physician may certify the exposure of one of his or her employees. Requests for certification shall be made in writing within 72 hours of the exposure.

(2) A written certification by a physician of the significance of the exposure shall be obtained within 72 hours of the request. The certification shall include the nature and extent of the exposure.

(b) (1) The exposed individual shall be counseled regarding the likelihood of transmission, the limitations of an HIV test, the need for followup testing, and the procedures that the exposed individual must follow regardless of the HIV status of the source patient. The exposed individual may be tested in accordance with the then applicable guidelines or standards of the Division of Occupational Safety and Health. The result of this test shall be confirmed as negative before available blood or other patient samples of the source patient may be tested for evidence of HIV infection without the consent of the source patient pursuant to subdivision (d).

(2) Within 72 hours of certifying the exposure as significant, the certifying physician shall provide written certification to an attending physician of the source patient that a significant exposure to an exposed individual has occurred, and shall request information on the HIV status of the source patient and the availability of blood or other patient sample. An attending physician shall respond to the request for information within three working days.

(c) If the HIV status of the source patient is already known to be positive, then, except as provided in subdivisions (b) and (c) of Section 121010 when the exposed individual is a health care provider or an employee or agent of the health care provider of the source patient, an attending physician and surgeon of the source patient shall attempt to obtain the consent of the source patient to disclose to the exposed individual the HIV status of the source patient. If the source patient cannot be contacted or refuses to consent to the disclosure, then the exposed individual may be informed of the HIV status of the source patient by an attending physician of the source patient as soon as possible after the exposure has been certified as significant, notwithstanding Section 120980 or any other provision of law.

(d) If the HIV status of the source patient is unknown to the certifying physician or an attending physician, if blood or other

patient samples are available, and if the exposed individual has tested negative on a baseline HIV test, the source patient shall be given the opportunity to give informed consent to an HIV test in accordance with the following:

(1) Within 72 hours after receiving a written certification of significant exposure, an attending physician of the source patient shall do all of the following:

(A) Make a good faith effort to notify the source patient or the authorized legal representative of the source patient about the significant exposure. A good faith effort to notify includes, but is not limited to, a documented attempt to locate the source patient by telephone or by first-class mail with certificate of mailing. An attempt to locate the source patient and the results of that attempt shall be documented in the medical record of the source patient. An inability to contact the source patient, or legal representative of the source patient, after a good faith effort to do so as provided in this subdivision, shall constitute a refusal of consent pursuant to paragraph (2).

(B) Attempt to obtain the voluntary informed consent of the source patient or the authorized legal representative of the source patient to perform an HIV test on the source patient or on any available blood or patient sample of the source patient. The voluntary informed consent shall be in writing. The source patient shall have the option not to be informed of the test result. An exposed individual shall be prohibited from attempting to obtain directly informed consent for HIV testing from the source patient. If a source patient is incapacitated and therefore is unable to provide informed consent and has no authorized legal representative, then HIV testing on the source patient or available blood or tissue of the source patient shall not be permitted.

(C) Provide the source patient with medically appropriate pretest counseling and refer the source patient to appropriate posttest counseling and followup if necessary. The source patient shall be offered medically appropriate counseling whether or not he or she consents to testing.

(2) If the source patient or the authorized legal representative of the source patient refuses to consent to an HIV test after a documented effort has been made to obtain consent, then any available blood or patient sample of the source patient may be tested. The source patient or authorized legal representative of the source patient shall be informed that an available blood sample or other tissue or material will be tested despite his or her refusal, and that the exposed individual shall be informed of the HIV test results.

(3) A source patient or the authorized legal representative of a source patient shall be advised that he or she shall be informed of the results of the HIV test only if he or she wishes to be so informed. If a patient refuses to provide informed consent to HIV testing and refuses to learn the results of HIV testing, then he or she shall sign

a form documenting this refusal. The source patient's refusal to sign this form shall be construed to be a refusal to be informed of the HIV test results. HIV test results shall only be placed in the medical record when the patient has agreed in writing to be informed of the results.

(4) Notwithstanding any other provision of law, if the source patient or authorized legal representative of a source patient refuses to be informed of the results of the test, then the HIV test results of that source patient shall only be provided to the exposed individual in accordance with the then applicable regulations established by the Division of Occupational Safety and Health.

(5) The source patient's identity shall be encoded on the HIV test result record.

(e) If an exposed individual is informed of the HIV status of a source patient pursuant to this section, the exposed individual shall be informed that he or she is subject to existing confidentiality protections for any identifying information about the HIV test results, and that HIV-related medical information of the source patient shall be kept confidential and may not be further disclosed, except as otherwise authorized by law. The exposed individual shall be informed of the penalties for which he or she would be personally liable for violation of Section 120980.

(f) The costs for the HIV test and counseling of the exposed individual, or the source patient, or both shall be borne by the employer of the exposed individual, if any. An employer who directs and controls the exposed individual shall provide the postexposure evaluation and followup required by the California Division of Occupational Safety and Health as well as the testing and counseling for source patients required under this chapter. If an exposed individual is a volunteer or a student, then the health care provider or first responder that assigned a task to the volunteer or student may pay for the costs of testing and counseling as if that volunteer or student were an employee. If an exposed individual, who is not an employee of a health facility or of another health care provider, chooses to obtain postexposure evaluation or followup counseling, or both, or treatment, then he or she shall be financially responsible for the costs thereof and shall be responsible for the costs of the testing and counseling for the source patient.

(g) Nothing in this section authorizes the disclosure of the source patient's identity.

(h) Nothing in this section shall authorize a health care provider to draw blood or other body fluids except as otherwise authorized by law.

(i) The provisions of this section are cumulative only and shall not preclude HIV testing of source patients as authorized by any other provision of law.

SEC. 111. Section 199.68 of the Health and Safety Code is amended and renumbered to read:

121140. (a) No health care provider, as defined in this chapter, shall be subject to civil or criminal liability or professional disciplinary action for performing an HIV test on the available blood or patient sample of a source patient, or for disclosing the HIV status of a source patient to the source patient, an attending physician of the source patient, the certifying physician, the exposed individual, or any attending physician of the exposed individual, if the health care provider has acted in good faith in complying with this chapter.

(b) Any health care provider or first responder, or any exposed individual, who willfully performs or permits the performance of an HIV test on a source patient, that results in economic, bodily, or psychological harm to the source patient, without adhering to the procedure set forth in this chapter is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period not to exceed one year, or a fine not to exceed ten thousand dollars ($10,000), or by both.

SEC. 112. Section 305 of the Health and Safety Code, as added by Chapter 873 of the Statutes of 1995, is amended and renumbered to read:

125107. (a) For purposes of this section, "prenatal care provider" means a licensed health care professional providing prenatal care within his or her lawful scope of practice. This definition shall not include a licensed health care professional who provides care other than prenatal care to a pregnant patient.

(b) The prenatal care provider primarily responsible for providing prenatal care to a pregnant patient shall offer human immunodeficiency virus (HIV) information and counseling to every pregnant patient. This information and counseling shall include, but shall not be limited to, all of the following:

(1) A description of the modes of HIV transmission.

(2) A discussion of risk reduction behavior modifications including methods to reduce the risk of perinatal transmission.

(3) Referral information to other HIV prevention and psychosocial services, if appropriate, including anonymous and confidential test sites approved by the Office of AIDS of the State Department of Health Services.

(c) The prenatal care provider primarily responsible for providing prenatal care to a pregnant patient shall offer an HIV test as defined in Section 120775 to every pregnant patient, unless a positive HIV test result is already documented in the patient's medical record or the patient has AIDS as diagnosed by a physician. The offering of an HIV test shall include discussion of all of the following:

(1) The purpose of the test.

(2) The risks and benefits of the test.

(3) The voluntary nature of the test.

(d) If the pregnant woman voluntarily consents to testing, the provider shall arrange for HIV testing directly or by referral,

including, but not limited to, referral to anonymous and confidential test sites approved by the Office of AIDS of the State Department of Health Services.

(e) The prenatal care provider primarily responsible for providing prenatal care to a pregnant patient shall document in the patient's medical record that HIV information and counseling has been offered. The prenatal care provider shall also document the offering of the HIV antibody test in the patient's medical record.

(f) Nothing in this section shall be construed to require testing, the documentation or disclosure of whether the patient had an HIV test, or the result of an HIV test except to the patient. Any documentation or disclosure of HIV related information shall be made in accordance with Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 regarding confidentiality and informed consent.

SEC. 113. The heading of Article 3.35 (commencing with Section 319.50) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, as added by Chapter 463 of the Statutes of 1995, is amended and renumbered to read:

Article 3. Breast Feeding

SEC. 114. Section 319.50 of the Health and Safety Code, as added by Chapter 463 of the Statutes of 1995, is amended and renumbered to read:

123360. The State Department of Health Services shall include in its public service campaign the promotion of mothers breast feeding their infants.

SEC. 115. Section 319.55 of the Health and Safety Code, as added by Chapter 463 of the Statutes of 1995, is amended and renumbered to read:

123365. (a) All general acute care hospitals, as defined in subdivision (a) of Section 1250, and all special hospitals providing maternity care, as defined in subdivision (f) of Section 1250, shall make available a breast feeding consultant or alternatively, provide information to the mother on where to receive breast feeding information.

(b) The consultant may be a registered nurse with maternal and newborn care experience, if available.

(c) The consultation shall be made available during the hospitalization associated with the delivery, or alternatively, the hospital shall provide information to the mother on where to receive breast feeding information.

(d) The patient may decline this consultation or information.

SEC. 116. The heading of Article 3.55 (commencing with Section 330.10) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, as added by Chapter 674 of the Statutes of 1995, is amended and renumbered to read:

Article 2.5. Infant Botulism Treatment and Prevention Program

SEC. 117. Section 330.10 of the Health and Safety Code, as added by Chapter 674 of the Statutes of 1995, is amended and renumbered to read:

123700. (a) Infant botulism is an acute, life-threatening paralytic disease of babies caused by a potent bacterial neurotoxin.

(b) Half of all cases of infant botulism in the United States occur in California, where the causative bacterial spores are known to be highly endemic. In any given year between 30 and 50 infants with botulism are hospitalized in California, thus qualifying infant botulism as an "orphan disease" as defined by the federal Orphan Drug Act of 1983 (P.L. 97-414, as amended).

(c) The cost of hospitalization of these afflicted babies for the five years 1988–92 were approximately fourteen million dollars ($14,000,000). Over two million seven hundred thousand dollars ($2,700,000) of these costs were paid by the State Department of Health Services through its Medi-Cal and California Children's Services programs, while over one million four hundred thousand ($1,400,000) of these costs were absorbed as operating losses by California hospitals.

(d) Hospital stay for these critically-ill infants averages five weeks and costs approximately seventy thousand dollars ($70,000) per case. In 1992 a single case was hospitalized over six months at a cost in excess of five hundred five thousand dollars ($505,000). In 1988 a single infant was hospitalized for 10 months at a cost of over six hundred thirty-five thousand dollars ($635,000).

(e) In an effort to reduce these costs, the State Department of Health Services began in early 1992 a four-year clinical trial of a potential new medicine, human Botulism Immune Globulin (BIG), specifically designed for the treatment of infant botulism. The funding for this clinical trial is being provided by the United States Food and Drug Administration.

(f) As defined in the federal Orphan Drug Act, the State Department of Health Services is the official sponsor of BIG. As such, the department is responsible for providing and distributing an ongoing supply of BIG to infant botulism patients nationwide if the clinical trial shows that BIG is safe and effective treatment for infant botulism. The clinical trial is expected to end in 1996.

(g) If human-derived BIG proves to be effective, then physicians can choose to use it to treat foodborne botulism and wound botulism, rather than using the existing horse-serum-derived botulism antitoxin, which has serious side effects. Foodborne botulism and wound botulism also qualify as "orphan diseases" under the federal Orphan Drug Act.

(h) Other scientific evidence indicates that infant botulism and related illnesses may be responsible for one of every 20 sudden infant

death cases in California. More sudden infant deaths occur in California each year than in any other state.

(i) The Legislature finds and declares that the enactment of this article is necessary for the protection of the public's health, investigations and further research into the optimal medical treatment of infant botulism, including product improvement of BIG, and into the causes and prevention of infant botulism and related sudden infant death cases, and providing expert medical consultation for the care of infants with this disease.

SEC. 118. Section 330.15 of the Health and Safety Code, as added by Chapter 674 of the Statutes of 1995, is amended and renumbered to read:

123702. (a) The State Department of Health Services shall establish an Infant Botulism Treatment and Prevention Unit. This unit shall have responsibility for ensuring the production and distribution of BIG to patients in California and nationwide suspected of having infant botulism or other forms of human botulism in accord with applicable federal law.

(b) As permitted by federal law, the state department shall charge a fee for BIG, and the fees shall be deposited in the special Infant Botulism Treatment and Prevention Fund established by Section 123709.

(c) Notwithstanding any other provision of law, the funds generated by the sale of BIG are to be expended only for the purposes authorized by this article.

(d) The amount of the fee shall be established by regulation and periodically adjusted by the State Director of Health Services in order to meet but not exceed the total costs of this article. This adjustment of fees shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except that upon adoption of the adjusted fee by the director, the provision revising the fee shall be filed with the Secretary of State and shall be printed in the California Code of Regulations.

(e) It is the intent of the Legislature that the state department consider providing BIG to low-income families at no charge.

SEC. 119. Section 330.20 of the Health and Safety Code, as added by Chapter 674 of the Statutes of 1995, is amended and renumbered to read:

123704. The Infant Botulism Treatment and Prevention Unit shall provide all the following services:

(a) Produce, or cause to have produced, and maintain, a supply of BIG sufficient to treat the expected number of annual cases of infant botulism in the United States, and to store, or arrange storage for, same.

(b) Distribute BIG to patients suspected of having infant botulism or other forms of botulism in California and in the rest of the United States on appropriate medical indications.

(c) Investigate ways to improve the treatment of infant botulism and related illness, including technical improvement of BIG, and implement them as appropriate.

(d) Provide diagnostic laboratory services and medical and public health expertise about infant botulism and related illnesses to all physicians, hospitals, laboratories, and parents statewide.

(e) Investigate all cases or suspected cases of infant botulism with both field and laboratory techniques as appropriate, in order to acquire the broadest data base for prevention and optimal treatment.

(f) Develop and implement control measures for the prevention of infant botulism and related illnesses.

(g) Share with other public health agencies the expertise gained in the development of BIG as it relates to other toxin-mediated infectious diseases of public health importance, and apply that expertise as appropriate.

(h) Establish scientific collaborations with university, forensic, hospital, public health, pharmaceutical, and biotechnology institutions, as appropriate as determined by the unit, that have resources and expertise to contribute to the study, prevention, or treatment of infant botulism and related illnesses.

SEC. 120. Section 330.25 of the Health and Safety Code, as added by Chapter 674 of the Statutes of 1995, is amended and renumbered to read:

123705. It is the intent of the Legislature that the program carried out pursuant to this article shall be fully supported from the fees collected for providing BIG to patients with suspected infant botulism or other forms of botulism and that these fees be made available for expenditure by the state department as appropriated by the Legislature in the annual Budget Act. However, it is the intent of the Legislature that until June 30, 1999, the Legislature may appropriate in the annual Budget Act the funds necessary for the support of programs authorized in this article in excess of fee revenues collected. It is, further, the intent of the Legislature that these appropriations be provided as a loan from the General Fund to be repaid with interest to the General Fund over the subsequent five years with interest at the rate earned by moneys invested in the Pooled Money Investment Account.

SEC. 121. Section 330.30 of the Health and Safety Code, as added by Chapter 674 of the Statutes of 1995, is amended and renumbered to read:

123707. (a) If the results of the clinical trial do not qualify BIG for product licensure by the United States Food and Drug Administration, then this article shall become inoperative on the date that the Commissioner of the United States Food and Drug Administration or his or her delegate so notifies the State Department of Health Services, and shall be repealed on January 1 following the receipt of the notice, unless a later enacted statute operative on or before that date deletes or extends that date. The

director shall transmit a written notice to the Secretary of the Senate and the Chief Clerk of the Assembly commemorating receipt of the notice from the commissioner.

(b) Since the incidence of infant botulism in California can vary by as much as 60 percent from year to year, and since continuity of program operations is critical to the health and well-being of these infants, any funds not expended at the end of the fiscal year shall be carried forward into the next fiscal year, notwithstanding any other provision of law.

(c) In carrying out this article, the Infant Botulism Treatment and Prevention Unit may adopt regulations, make and receive grants, and enter into contracts and interagency agreements.

SEC. 122. Section 330.35 of the Health and Safety Code, as added by Chapter 674 of the Statutes of 1995, is amended and renumbered to read:

123709. The Infant Botulism Treatment and Prevention Fund is hereby established as a special fund in the State Treasury. All moneys collected by the state department pursuant to this article shall be deposited in the Infant Botulism Treatment and Prevention Fund, and shall be made available to the state department for expenditure for the purposes of this article as appropriated by the Legislature in the annual Budget Act.

SEC. 123. The heading of Article 3.8 (commencing with Section 349.100) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code, as added by Chapter 194 of the Statutes of 1995, is amended to read:

CHAPTER 1.5. COMPREHENSIVE PERINATAL OUTREACH PROGRAM

SEC. 124. Section 349.100 of the Health and Safety Code, as added by Chapter 194 of the Statutes of 1995, is amended and renumbered to read:

104560. There is established in the state department a comprehensive perinatal outreach program.

SEC. 125. Section 349.101 of the Health and Safety Code, as added by Chapter 194 of the Statutes of 1995, is amended and renumbered to read:

104561. A county or city and county may contract with the state department to provide perinatal program coordination, patient advocacy, and expanded access services for low-income pregnant and postpartum women and women of childbearing age who are likely to become pregnant integrated with the county's perinatal program.

SEC. 126. Section 349.102 of the Health and Safety Code, as added by Chapter 194 of the Statutes of 1995, is amended and renumbered to read:

104562. A county that contracts with the state department for the provision of public health services may contract with the state department for the services described in Section 104561.

SEC. 127. Section 349.103 of the Health and Safety Code, as added by Chapter 194 of the Statutes of 1995, is amended and renumbered to read:

104563. A county contracting with the state department pursuant to this program shall supply, at a minimum, the following information:

(a) The county's perinatal statistics.

(b) A description of current outreach, coordination, antismoking, antialcohol, antidrug, and other related program activities, including those funded through the Cigarette and Tobacco Products Surtax Fund, relating to indigent pregnant women and women of childbearing age in the county.

(c) A description of the additional activities and services to be undertaken, and the number of women in each target subgroup which the county proposes to reach with these funds.

(d) The proposed measures of success and a description of how the county's overall effort, and this particular effort, will be evaluated.

SEC. 128. Section 349.104 of the Health and Safety Code, as added by Chapter 194 of the Statutes of 1995, is amended and renumbered to read:

104564. A county participating in this program shall maintain the following services, supported by this program or from other sources, to the extent funds are available:

(a) A coordinated and integrated system providing early outreach, pregnancy screening, patient advocacy, targeted case management, health education, and referral to drug and alcohol treatment and perinatal care services to pregnant women.

(b) (1) A patient advocacy and education component that will reach women from all target populations at least six months prior to, and in the earliest stages of pregnancy, and provide information, health screenings, and assistance in obtaining appropriate services.

(2) Patient advocates may arrange for prenatal care for eligible pregnant women.

(c) In developing and implementing the program described in this section each county shall obtain the involvement and participation of local community organizations, including clinics and schools with special expertise in the provision of health education, perinatal care, and alcohol and drug treatment.

SEC. 129. Section 349.105 of the Health and Safety Code, as added by Chapter 194 of the Statutes of 1995, is amended and renumbered to read:

104565. (a) Health education services shall be an integral part of each county's program pursuant to Section 104564 to provide coordinated services to pregnant and postpartum women.

(b) Services may be funded through the Unallocated Account in the Cigarette and Tobacco Surtax Fund for purposes of this chapter, including, but not limited to, all of the following:

(1) Outreach.

(2) Assessment of smoking status and exposure to secondhand smoke.

(3) Development and implementation of an individualized strategy to prevent smoking and exposure to smoke during pregnancy and the postpartum period, including counseling and advocacy services, public health nursing services, provision of motivational messages, cessation services, nonmonetary incentives to maintain a healthy lifestyle, and other cessation or tobacco use prevention activities, including child care or transportation in conjunction with those activities.

(4) Provision of followup, reassessment, maintenance, and relapse prevention services.

(c) The services provided pursuant to this section shall expand and enhance the health education services provided under the comprehensive perinatal services program and shall be coordinated with other services provided to pregnant and postpartum women.

SEC. 130. Section 349.106 of the Health and Safety Code, as added by Chapter 194 of the Statutes of 1995, is amended and renumbered to read:

104566. Funds from the Cigarette and Tobacco Products Surtax Fund may be used in combination with funds from other sources if the services provided to each person are documented and there is an auditable connection to services.

SEC. 131. Section 349.107 of the Health and Safety Code, as added by Chapter 194 of the Statutes of 1995, is amended and renumbered to read:

104567. The program shall develop protocols, procedures, instructional materials, inservice training, data collection formats and requirements, and reimbursement schedules where applicable for the provision of tobacco education to pregnant and postpartum women.

SEC. 132. Section 349.108 of the Health and Safety Code, as added by Chapter 194 of the Statutes of 1995, is amended and renumbered to read:

104568. For purposes of this chapter, "outreach" includes, but is not limited to, coordinated local systems of care-providing pregnancy testing, screening for risk factors, care coordination, referral to appropriate services, including, but not limited to, alcohol and drug treatment, transportation, child care, patient incentives, and assurance of continuous prenatal care including recruitment and retention of physicians.

SEC. 133. Section 349.109 of the Health and Safety Code, as amended by Chapter 199 of the Statutes of 1996, is amended and renumbered to read:

104569. This article shall remain operative only until July 1, 1997, shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 134. Section 412 of the Health and Safety Code, as amended by Chapter 551 of the Statutes of 1995, is amended and renumbered to read:

125275. (a) The Legislature finds that Alzheimer's disease, a devastating disease which destroys certain vital cells of the brain, affects more than 1,500,000 Americans. The Legislature also finds that Alzheimer's disease and related disorders are responsible for 50 percent of all nursing home admissions and Alzheimer's disease is the fourth leading cause of death in adults. The Legislature recognizes that the disease has serious emotional, financial, and social consequences for its victims and their families.

(b) The Legislature recognizes that the cause of Alzheimer's disease is presently unknown, and there is no established treatment which can cure, reverse, or stop the progression of Alzheimer's disease. The Legislature also recognizes that research is the only hope for victims and families. The Legislature finds that existing diagnostic and treatment centers have improved the quality of care available to the victims of Alzheimer's disease and increased knowledge with respect to Alzheimer's disease and related disorders. These centers provide clinical opportunities for research and facilitate the collection of essential data regarding Alzheimer's disease and related disorders, while at the same time providing valuable services such as information and referral, counseling, and training to victims and their families. It is the intent of the Legislature, in enacting this article, to encourage the establishment of geographically dispersed diagnostic and treatment centers for Alzheimer's disease within every postsecondary higher educational institution with a medical center, and to encourage research to discover the cause of, and a cure for, Alzheimer's disease.

(c) The functions of the diagnostic and treatment centers shall be designed to serve all of the following purposes:

(1) To provide diagnostic and treatment services and improve the quality of care to victims of Alzheimer's disease.

(2) To increase research by faculty and students in discovering the cause of, and a cure for, Alzheimer's disease.

(3) To provide training, monitoring, consultation, and continuing education to the families of those who are affected by Alzheimer's disease.

(4) To increase the training of health care professionals with respect to Alzheimer's disease and other acquired brain impairments to the extent that the centers have the requisite expertise.

(d) The diagnostic and treatment centers may collaborate with the Statewide Resources Consultant designated pursuant to Section 4364 of the Welfare and Institutions Code, to the extent that the

centers deem necessary in order to fulfill the functions set forth in subdivision (c).

SEC. 135. The heading of Article 12 (commencing with Section 429) of Chapter 2 of Division 1 of the Health and Safety Code is amended, immediately preceding Section 127620, to read:

Article 1. Rural Health Care Transition Oversight

SEC. 136. Section 429 of the Health and Safety Code is amended and renumbered to read:

127620. (a) The Office of Statewide Health Planning and Development, in conjunction with the State Department of Health Services, shall act as the coordinating agency to develop a strategic plan that would assist rural California to prepare for health care reform. The plan shall assist in the coordination and integration of all rural health care services on the birth to death continuum and serve as an infrastructure for rural communities to establish priorities and develop appropriate programs.

(b) The office shall designate representatives from provider groups including rural hospitals, clinics, physicians, other rural providers including psychologists, counties, beneficiaries, and other entities directly affected by the plan. The office shall convene meetings with the objectives of doing all of the following:

(1) Assessing the current status of health care in rural communities.

(2) Assembling and reviewing data related to available programs and resources for rural California.

(3) Assembling and reviewing data related to other states' strategic plans for rural communities.

(4) Reviewing and integrating the office's rural work plan, as appropriate.

(5) Making assumptions about the future of health care and developing a strategic plan based on these assumptions.

(c) The rural health care strategic plan shall address all of the following:

(1) The special needs of the elderly and of ethnic populations.

(2) Elimination of barriers in planning and coordinating health services.

(3) The lack of primary and specialty providers.

(4) Access to emergency services.

(5) The role of new technologies, including, but not limited to, telemedicine.

SEC. 137. Section 429.14 of the Health and Safety Code, as amended by Chapter 630 of the Statutes of 1995, is amended and renumbered to read:

105190. (a) A fee shall be paid annually to the State Board of Equalization by employers in industries identified by the four-digit Standard Industrial Classification (S.I.C., 1987 Edition) established

by the United States Department of Commerce and for which the State Board of Equalization has received information from the State Department of Health Services of documented evidence of potential occupational lead poisoning.

(b) The State Department of Health Services shall provide to the State Board of Equalization on or before the first day of November of each year, all information for the prior three-year period obtained by the California Blood Lead Registry, regarding evidence of potential occupational lead poisoning by the Standard Industrial Classification. Based on this information, the State Board of Equalization shall determine whether an employer is within Category A of the Standard Industrial Classification or within Category B of the Standard Industrial Classification and shall implement the fee schedule set forth in subdivision (c). For the purpose of this subdivision and subdivision (c), a Category A Standard Industrial Classification code is a Standard Industrial Classification code listed in Section 105195 for which there have been less than 20 persons with elevated blood lead levels reported to the California Blood Lead Registry in the prior three-year period. A Category B Standard Industrial Classification code is a Standard Industrial Classification code listed in Section 105195 for which there have been 20 or more persons with elevated blood lead levels reported to the California Blood Lead Registry in the prior three-year period. An elevated blood lead level is a level greater than or equal to 25 micrograms of lead per deciliter of blood.

(c) For employers with 10 or more employees, but less than 100 employees, in a Category A Standard Industrial Classification code, the annual fee shall be one hundred ninety-five dollars ($195). For employers with 100 or more employees, but less than 500 employees, in a Category A Standard Industrial Classification code, the annual fee shall be three hundred ninety dollars ($390). For employers with 500 or more employees in a Category A Standard Industrial Classification code, the annual fee shall be nine hundred seventy-five dollars ($975). For employers with 10 or more employees, but less than 100 employees, in a Category B Standard Industrial Classification code, the annual fee shall be two hundred seventy-nine dollars ($279). For employers with 100 or more employees, but less than 500 employees, in a Category B Standard Industrial Classification code, the annual fee shall be seven hundred eighty-one dollars ($781). For employers with 500 or more employees in a Category B Standard Industrial Classification code, the annual fee shall be two thousand two hundred thirty-two dollars ($2,232). For the purpose of this subdivision, an employer is any person defined in Section 25118 of the Health and Safety Code. Employers with fewer than 10 employees are not subject to any fees pursuant to this section.

(d) The fees imposed in subdivision (b) are the rates for calendar year 1995 and shall be adjusted annually by the State Board of Equalization to reflect increases or decreases in the cost of living

during the prior fiscal year as measured by the Consumer Price Index issued by the Department of Industrial Relations, or a successor agency. This adjustment of fees shall not be subject to the requirements of Chapter 2.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) In no event shall the annual fee exceed the cost of the program described in Section 105185. The state department may exempt from payment of fees those employers who demonstrate that lead is not present in their places of employment. The cost of the program described in Section 105185 shall not exceed the amount of revenue collected from the annual fee.

(f) The fee imposed pursuant to subdivision (b) shall be paid by each employer that is identified in the schedule in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code and shall be deposited in the Occupational Lead Poisoning Prevention Account of the General Fund, which is hereby created, to be expended for the purposes of the Occupational Lead Poisoning Prevention Program, including the cost of administering the fees by the State Board of Equalization, upon appropriation by the Legislature.

SEC. 138. Section 429.82 of the Health and Safety Code, as added by Chapter 324 of the Statutes of 1995, is amended and renumbered to read:

128185. The Legislature finds and declares all of the following:

(a) The Health Manpower Pilot Project No. 152 was approved in 1988 to respond to a shortage of adequately trained personnel to meet the needs of residents in long-term health care facilities.

(b) Long-term health care facilities continue to report difficulties recruiting and retaining adequate nursing staff to meet current needs.

(c) The population most in need of long-term care is growing rapidly. It is estimated by the year 2000, one-third of the entire population in the United States will be composed of persons over 65 years of age. Three-fourths of all residents of long-term health care facilities will be generated by this age group.

(d) A 30-percent decrease in the labor pool of health workers has been projected for the same time period. This decline in resources will exacerbate the problem of acquiring adequate nursing resources.

(e) The establishment of the geriatric technician as a new category of health worker may have the potential to increase the retention of experienced workers in long-term health care by creating health career opportunities and upward mobility for certified nurse assistants.

(f) The use of geriatric technicians is not intended to displace licensed nurses, but rather to augment the level of available trained staff to optimize the quality of long-term health care.

SEC. 139. Section 429.83 of the Health and Safety Code, as added by Chapter 324 of the Statutes of 1995, is amended and renumbered to read:

128190. The office may extend the geriatric technician pilot project, known as the Health Manpower Pilot Project No. 152, for a minimum of four additional years, pursuant to reapplication by the sponsoring agency. The project shall continue to meet the applicable requirements established by the office. The number of sponsors authorized to participate in the pilot project may be expanded to a maximum of five.

SEC. 140. Section 429.84 of the Health and Safety Code, as added by Chapter 324 of the Statutes of 1995, is amended and renumbered to read:

128195. (a) The office shall issue a report on the existing Health Manpower Pilot Project No. 152 that evaluates Sonoma County's experience with the project, by December 1, 1996. The report shall contain all of the following information:

(1) A description of the persons trained, including, but not limited to, the following:

(A) The total number of persons who entered training.

(B) The total number of persons who completed training.

(C) The selection method, including descriptions of any nonquantitative criteria used by employers to refer persons to training.

(D) The education and experience of the trainees prior to training.

(E) Demographic characteristics of the trainees, as available.

(2) An analysis of the training completed, including, but not limited to, the following:

(A) Curriculum and core competencies.

(B) Qualifications of instructors.

(C) Changes in the curriculum during the pilot project or recommended for the future.

(D) Nature of clinical and didactic training, including ratio of students to instructors.

(3) A summary of the specific services and the standards of care for tasks performed by geriatric technicians.

(4) The new health skills taught or the extent to which existing skills have been reallocated.

(5) Implication of the project for existing licensure laws with suggestions for changes in the law where appropriate.

(6) Implications of the project for health services curricula and for health care delivery systems.

(7) Teaching methods used in the project.

(8) The quality of care, including pertinent medication errors, incident reports, and patient acceptance in the project.

(9) The extent to which persons with new skills could find employment in the health care system, assuming laws were changed to incorporate their skills.

(10) The cost of care provided in the project, the likely cost of this care if performed by the trainees subsequent to the project, and the cost for provision of this care by current providers.

(b) The office shall issue followup reports on additional geriatric technician pilot projects approved by the office following 24 months of implementation of the employment utilization phase of each project. The reports shall contain all of the following information:

(1) A description of the persons trained, including, but not limited to, the following:

(A) The total number of persons who entered training.

(B) The total number of persons who completed training.

(C) The selection method, including descriptions of any nonquantitative criteria used by employers to refer persons to training.

(D) The education and experience of the trainees prior to training.

(E) Demographic characteristics of the trainees, as available.

(2) An analysis of the training completed, including, but not limited to, the following:

(A) Curriculum and core competencies.

(B) Qualifications of the instructor.

(C) Changes in the curriculum during the pilot project or recommended for the future.

(D) The nature of clinical and didactic training, including the ratio of students to instructors.

(3) A summary of the specific services provided by geriatric technicians.

(4) The new health skills taught or the extent to which existing skills have been reallocated.

(5) Implications of the project for existing licensure laws with suggestions for changes in the law where appropriate.

(6) Implications of the project for health services curricula and for health care delivery systems.

(7) Teaching methods used in the project.

(8) The quality of care, including pertinent medication errors, incident reports, and patient acceptance in the project.

(9) The extent to which persons with new skills could find employment in the health care system, assuming laws were changed to incorporate their skills.

(10) The cost of care provided in the project, the likely cost of this care if performed by the trainees subsequent to the project, and the cost for provision of this care by current providers thereof.

(c) Notwithstanding any other provision of law, issuance of the reports described in subdivisions (a) and (b) shall not require that the office terminate the Health Manpower Pilot Project No. 152 or

subsequent geriatric technician pilot projects authorized by the office.

SEC. 141. Section 443.26 of the Health and Safety Code, as amended by Chapter 543 of the Statutes of 1995, is amended and renumbered to read:

128725. The functions and duties of the commission shall include the following:

(a) Advise the office on the implementation of the new, consolidated data system.

(b) Advise the office regarding the ongoing need to collect and report health facility data and other provider data.

(c) Annually develop a report to the director of the office regarding changes that should be made to existing data collection systems and forms. Copies of the report shall be provided to the Senate Health and Human Services Committee and to the Assembly Health Committee.

(d) Advise the office regarding changes to the uniform accounting and reporting systems for health facilities.

(e) Conduct public meetings for the purposes of obtaining input from health facilities, other providers, data users, and the general public regarding this chapter and Chapter 1 (commencing with Section 127125) of Part 2 of Division 107.

(f) Advise the Secretary of Health and Welfare on the formulation of general policies which shall advance the purposes of this part.

(g) Advise the office on the adoption, amendment, or repeal of regulations it proposes prior to their submittal to the Office of Administrative Law.

(h) Advise the office on the format of individual health facility or other provider data reports and on any technical and procedural issues necessary to implement this part.

(i) Advise the office on the formulation of general policies which shall advance the purposes of Chapter 1 (commencing with Section 127125) of Part 2 of Division 107.

(j) Recommend, in consultation with a 12-member technical advisory committee appointed by the chairperson of the commission, to the office the data elements necessary for the production of outcome reports required by Section 128745.

(k) (1) The technical advisory committee appointed pursuant to subdivision (j) shall be composed of two members who shall be hospital representatives appointed from a list of at least six persons nominated by the California Association of Hospitals and Health Systems, two members who shall be physicians and surgeons appointed from a list of at least six persons nominated by the California Medical Association, two members who shall be registered nurses appointed from a list of at least six persons nominated by the California Nurses Association, one medical record practitioner who shall be appointed from a list of at least six persons nominated by the California Health Information Association, one member who shall be

a representative of a hospital authorized to report as a group pursuant to subdivision (d) of Section 128760, two members who shall be representative of California research organizations experienced in effectiveness review of medical procedures or surgical procedures, or both procedures, one member representing the Health Access Foundation, and one member representing the Consumers Union. Members of the technical advisory committee shall serve without compensation, but shall be reimbursed for any actual and necessary expenses incurred in connection with their duties as members of the technical advisory committee.

(2) The commission shall submit its recommendation to the office regarding the first of the reports required pursuant to subdivision (a) of Section 128745 no later than January 1, 1993. The technical advisory committee shall submit its initial recommendations to the commission pursuant to subdivision (d) of Section 128750 no later than January 1, 1994. The commission, with the advice of the technical advisory committee, may periodically make additional recommendations under Sections 128745 and 128750 to the office, as appropriate.

(*l*) (1) Assess the value and usefulness of the reports required by Sections 127285, 128735, and 128740. On or before December 1, 1997, the commission shall submit recommendations to the office to accomplish all of the following:

(A) Eliminate redundant reporting.

(B) Eliminate collection of unnecessary data.

(C) Augment data bases as deemed valuable to enhance the quality and usefulness of data.

(D) Standardize data elements and definitions with other health data collection programs at both the state and national levels.

(E) Enable linkage with, and utilization of, existing data sets.

(F) Improve the methodology and data bases used for quality assessment analyses, including, but not limited to, risk-adjusted outcome reports.

(G) Improve the timeliness of reporting and public disclosure.

(2) The commission shall establish a committee to implement the evaluation process. The committee shall include representatives from the health care industry, providers, consumers, payers, purchasers, and government entities, including the Department of Corporations, the departments that comprise the Health and Welfare Agency, and others deemed by the commission to be appropriate to the evaluation of the data bases. The committee may establish subcommittees including technical experts.

(m) (1) As the office and the commission deem necessary, the commission may establish committees and appoint persons who are not members of the commission to these committees as are necessary to carry out the purposes of the commission. Representatives of area health planning agencies shall be invited, as appropriate, to serve on committees established by the office and the commission relative to

the duties and responsibilities of area health planning agencies. Members of the standing committees shall serve without compensation, but shall be reimbursed for any actual and necessary expenses incurred in connection with their duties as members of these committees.

(2) Whenever the office or the commission does not accept the advice of the other body on proposed regulations or on major policy issues, the office or the commission shall provide a written response on its action to the other body within 30 days, if so requested.

(3) The commission or the office director may appeal to the Secretary of Health and Welfare over disagreements on policy, procedural, or technical issues.

SEC. 141.2. Section 443.37 of the Health and Safety Code, as amended by Chapter 1021 of the Statutes of 1985, is amended and renumbered to read:

128775. Any health facility affected by any determination made under this part by the office may petition the office for review of the decision. This petition shall be filed with the office within 15 business days, or within a greater time as the office, with the advice of the commission, may allow, and shall specifically describe the matters which are disputed by the petitioner.

A hearing shall be commenced within 60 calendar days of the date on which the petition was filed. The hearing shall be held before an employee of the office, a hearing officer employed by the Office of Administrative Hearings, or a committee of the commission chosen by the chairperson for this purpose. If held before an employee of the office or a committee of the commission, the hearing shall be held in accordance with any procedures as the office, with the advice of the commission, shall prescribe. If held before a hearing officer employed by the Office of Administrative Hearings, the hearing shall be held in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of the Government Code. The employee, hearing officer, or committee shall prepare a recommended decision including findings of fact and conclusions of law and present it to the office for its adoption. The decision of the office shall be in writing and shall be final. The decision of the office shall be made within 60 calendar days after the conclusion of the hearing and shall be effective upon filing and service upon the petitioner.

Judicial review of any final action, determination, or decision may be had by any party to the proceedings as provided in Section 1094.5 of the Code of Civil Procedure. The decision of the office shall be upheld against a claim that its findings are not supported by the evidence unless the court determines that the findings are not supported by substantial evidence.

The employee of the office, the hearing officer employed by the Office of Administrative Hearings, the Office of Administrative Hearings, or the committee of the commission, may issue subpoenas

and subpoenas duces tecum in a manner and subject to the conditions established by Section 11510 of the Government Code.

This section shall become inoperative on July 1, 1997, and, as of January 1, 1998, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1998, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 141.4. Section 443.37 of the Health and Safety Code, as amended by Chapter 938 of the Statutes of 1995, is amended and renumbered to read:

128775. (a) Any health facility affected by any determination made under this part by the office may petition the office for review of the decision. This petition shall be filed with the office within 15 business days, or within a greater time as the office, with the advice of the commission, may allow, and shall specifically describe the matters which are disputed by the petitioner.

(b) A hearing shall be commenced within 60 calendar days of the date on which the petition was filed. The hearing shall be held before an employee of the office, an administrative law judge employed by the Office of Administrative Hearings, or a committee of the commission chosen by the chairperson for this purpose. If held before an employee of the office or a committee of the commission, the hearing shall be held in accordance with any procedures as the office, with the advice of the commission, shall prescribe. If held before an administrative law judge employed by the Office of Administrative Hearings, the hearing shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The employee, administrative law judge, or committee shall prepare a recommended decision including findings of fact and conclusions of law and present it to the office for its adoption. The decision of the office shall be in writing and shall be final. The decision of the office shall be made within 60 calendar days after the conclusion of the hearing and shall be effective upon filing and service upon the petitioner.

(c) Judicial review of any final action, determination, or decision may be had by any party to the proceedings as provided in Section 1094.5 of the Code of Civil Procedure. The decision of the office shall be upheld against a claim that its findings are not supported by the evidence unless the court determines that the findings are not supported by substantial evidence.

(d) The employee of the office, the administrative law judge employed by the Office of Administrative Hearings, the Office of Administrative Hearings, or the committee of the commission, may issue subpoenas and subpoenas duces tecum in a manner and subject to the conditions established by Article 11 (commencing with Section 11450.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(e) This section shall become operative on July 1, 1997.

SEC. 142. Section 443.46 of the Health and Safety Code, as amended by Chapter 543 of the Statutes of 1995, is amended and renumbered to read:

128815. This chapter shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, chaptered prior to that date, extends or deletes that date.

SEC. 143. Article 1.5 (commencing with Section 447) of Part 1.95 of Division 1 of the Health and Safety Code, as added by Chapter 758 of the Statutes of 1995, is repealed.

SEC. 144. Part 1.98 (commencing with Section 449.10) of Division 1 of the Health and Safety Code is repealed.

SEC. 145. Article 4.2 (commencing with Section 512) of Chapter 1 of Part 2 of Division 1 of the Health and Safety Code, as added by Chapter 671 of the Statutes of 1995, is repealed.

SEC. 146. Chapter 7 (commencing with Section 1000) of Part 2 of Division 1 of the Health and Safety Code is repealed.

SEC. 147. Part 6.5 (commencing with Section 1189) of Division 1 of the Health and Safety Code, as added by Chapter 758 of the Statutes of 1995, is repealed.

SEC. 148. Section 1201 of the Health and Safety Code is amended to read:

1201. "License" means a basic permit to operate a clinic. A license may only be granted to a clinic of a type enumerated in Section 1204 or 1204.1, and the license shall not be transferable. However, the issuance of a license upon a change of ownership shall not of itself constitute a project within the meaning of Section 127170.

SEC. 149. Section 1205.5 of the Health and Safety Code is amended to read:

1205.5. A clinic that has been verified by the Licensing and Certification Division of the State Department of Health Services and the Office of Statewide Health Planning and Development as having (1) provided chronic dialysis and (2) been licensed as an outpatient clinic, before September 26, 1978, shall not be required to have a certificate of need pursuant to Chapter 1 (commencing with Section 127125) of Part 2 of Division 107 in order to obtain licensure as a chronic dialysis clinic. A clinic that has been verified by the Licensing and Certification Division of the State Department of Health Services and the Office of Statewide Health Planning and Development as having (1) provided surgical services, (2) been licensed as an outpatient clinic and (3) been eligible to receive Medi-Cal reimbursement as an outpatient clinic in connection with the surgical services, before September 26, 1978, shall not be required to have a certificate of need pursuant to Chapter 1 (commencing with Section 127125) of Part 2 of Division 107 in order to obtain licensure as a surgical clinic.

Nothing in this section shall, however, be construed to exempt a clinic subject to this section from the requirement for a certificate of need with respect to projects specified in subdivision (c), (d), or (e)

of Section 127170, or with respect to changes of licensure category occurring subsequent to initial licensure as a specialty clinic pursuant to this section.

A clinic that has been verified by the Licensing and Certification Division of the State Department of Health Services and the Office of Statewide Health Planning and Development as having (1) provided surgical services, (2) been licensed as an outpatient clinic and (3) been eligible to receive Medi-Cal reimbursement as an outpatient clinic in connection with the surgical services, before September 26, 1978, and that meets the requirements for licensure as a surgical clinic, need not operate on an open-staff basis in order to be licensed as a surgical clinic.

A clinic that has been verified by the Licensing and Certification Division of the State Department of Health Services and the Office of Statewide Health Planning and Development as having (1) provided rehabilitation service and (2) been licensed as an outpatient clinic, a community clinic, or free clinic, before September 26, 1978, shall not be required to have a certificate of need pursuant to Chapter 1 (commencing with Section 127125) of Part 2 of Division 107 in order to obtain licensure as a rehabilitation clinic.

SEC. 150. Section 1212 of the Health and Safety Code, as amended by Chapter 512 of the Statutes of 1995, is amended to read:

1212. Any person, firm, association, partnership, or corporation desiring a license for a clinic or a special permit for special services under the provisions of this chapter, shall file with the state department a verified application on forms prescribed and furnished by the state department, containing the following:

(a) Evidence satisfactory to the state department that the applicant is of reputable and responsible character. If the applicant is a firm, association, partnership, trust, corporation, or other artificial or legal entity, like evidence shall be submitted as to the members, partners, trustees or shareholders, directors, and officers thereof and as to the person who is to be the administrator of, and exercise control, management, and direction of the clinic for which application is made.

(b) If the applicant is a partnership, the name and principal business address of each partner, and, if any partner is a corporation, the name and principal business address of each officer and director of the corporation and name and business address of each stockholder owning 10 percent or more of the stock thereof.

(c) If the applicant is a corporation, the name and principal business address of each officer and director of the corporation, and where the applicant is a stock corporation, the name and principal business address of each stockholder holding 10 percent or more of the applicant's stock and, where any stockholder is a corporation, the name and principal business address of each officer and director of the corporate stockholder.

(d) Evidence satisfactory to the state department of the ability of the applicant to comply with the provisions of this chapter and rules and regulations promulgated under this chapter by the state department.

(e) The name and address of the clinic, and if the applicant is a professional corporation, firm, partnership, or other form of organization, evidence that the applicant has complied with the requirements of the Business and Professions Code governing the use of fictitious names by practitioners of the healing arts.

(f) The name and address of the professional licentiate responsible for the professional activities of the clinic and the licentiate's license number and professional experience.

(g) The class of clinic to be operated, the character and scope of advice and treatment to be provided, and a complete description of the building, its location, facilities, equipment, apparatus, and appliances to be furnished and used in the operation of the clinic.

(h) Sufficient operational data to allow the state department to determine the class of clinic that the applicant proposes to operate and the initial license fee to be charged.

(i) Any other information as may be required by the state department for the proper administration and enforcement of this chapter, including, but not limited to, evidence that the clinic has a written policy relating to the dissemination of the following information to patients:

(1) A summary of current state laws requiring child passenger restraint systems to be used when transporting children in motor vehicles.

(2) A listing of child passenger restraint system programs located within the county, as required by Section 27360 or 27362 of the Vehicle Code.

(3) Information describing the risks of death or serious injury associated with the failure to utilize a child passenger restraint system.

(j) Applicants for a license or special permit covering a project within the meaning of Section 127170 shall submit a copy of a certificate of need as required by the state department.

SEC. 151. Section 1250.1 of the Health and Safety Code, as amended by Chapter 749 of the Statutes of 1995, is amended to read:

1250.1. (a) The state department shall adopt regulations that define all of the following bed classifications for health facilities:

(1) General acute care.

(2) Skilled nursing.

(3) Intermediate care-developmental disabilities.

(4) Intermediate care—other.

(5) Acute psychiatric.

(6) Specialized care, with respect to special hospitals only.

(7) Chemical dependency recovery.

(8) Intermediate care facility/developmentally disabled habilitative.

(9) Intermediate care facility/developmentally disabled nursing.

(10) Congregate living health facility.

(11) Pediatric day health and respite care facility, as defined in Section 1760.2.

(12) Correctional treatment center. For correctional treatment centers that provide psychiatric and psychological services provided by county mental health agencies in local detention facilities, the State Department of Mental Health shall adopt regulations specifying acute and nonacute levels of 24-hour care. Licensed inpatient beds in a correctional treatment center shall be used only for the purpose of providing health services.

(b) Except as provided in Section 1253.1, beds classified as intermediate care beds, on September 27, 1978, shall be reclassified by the state department as intermediate care—other. This reclassification shall not constitute a "project" within the meaning of Section 127170 and shall not be subject to any requirement for a certificate of need under Chapter 1 (commencing with Section 127125) of Part 2 of Division 107, and regulations of the state department governing intermediate care prior to the effective date shall continue to be applicable to the intermediate care—other classification unless and until amended or repealed by the state department.

SEC. 152. Section 1250.4 of the Health and Safety Code is amended to read:

1250.4. (a) As used in this section:

(1) "Department" means the Department of Corrections or the Department of the Youth Authority.

(2) "Communicable, contagious, or infectious disease" means any disease that is capable of being transmitted from person to person with or without contact and as established by the State Department of Health Services pursuant to Section 120130, and Section 2500 et seq. of Title 17 of the California Code of Regulations.

(3) "Inmate or ward" means any person incarcerated within the jurisdiction of the Department of Corrections or the Department of the Youth Authority, with the exception of a person on parole.

(4) "Institution" means any state prison, camp, center, office, or other facility under the jurisdiction of the Department of Corrections or the Department of the Youth Authority.

(5) "Medical director," "chief of medical services," or "chief medical officer" means the medical officer, acting medical officer, medical director, or the physician designated by the department to act in that capacity, who is responsible for directing the medical treatment programs and medical services for all health services and services supporting the health services provided in the institution.

(b) Each health care facility in the Department of Corrections and in the Department of the Youth Authority shall have a medical

director in charge of the health care services of that facility who shall be a physician and surgeon licensed to practice in California and who shall be appointed by the directors of the departments. The medical director shall direct the medical treatment programs for all health services and services supporting the health services provided in the facility.

(c) The medical director, chief of medical services, chief medical officer, or the physician designated by the department to act in that capacity, shall use every available means to ascertain the existence of, and to immediately investigate, all reported or suspected cases of any communicable, contagious, or infectious disease and to ascertain the source or sources of the infections and prevent the spread of the disease. In carrying out these investigations, the medical director, chief of medical services, chief medical officer, or the physician designated by the department to act in that capacity, is hereby invested with full powers of inspection, examination, and quarantine or isolation of all inmates or wards known to be, or reasonably suspected to be, infected with a communicable, contagious, or infectious disease.

(d) The medical director, chief of medical services, chief medical officer, or the physician designated by the department to act in that capacity, shall order an inmate or ward to receive an examination or test, or may order an inmate or ward to receive treatment if the medical director, chief of medical services, chief medical officer, or the physician designated by the department to act in that capacity, has reasonable suspicion that the inmate or ward has, has had, or has been exposed to a communicable, contagious, or infectious disease and the medical director, chief of medical services, chief medical officer, or the physician designated by the department to act in that capacity, has reasonable grounds to believe that it is necessary for the preservation and protection of staff and inmates or wards.

(e) Notwithstanding Section 2600 or 2601 of the Penal Code, or any other provision of law, any inmate or ward who refuses to submit to an examination, test, or treatment for any communicable, contagious, or infectious disease or who refuses treatment for any communicable, contagious, or infectious disease, or who, after notice, violates, or refuses or neglects to conform to any rule, order, guideline, or regulation prescribed by the department with regard to communicable disease control shall be tested involuntarily and may be treated involuntarily. This inmate or ward shall be subject to disciplinary action as described in Title 15 of the California Code of Regulations.

(f) This section shall not apply to HIV or AIDS. Testing, treatment, counseling, prevention, education, or other procedures dealing with HIV and AIDS shall be conducted as prescribed in Title 8 (commencing with Section 7500) of Part 3 of the Penal Code.

(g) This section shall not apply to tuberculosis. Tuberculosis shall be addressed as prescribed in Title 8.7 (commencing with Section 7570) of the Penal Code.

SEC. 153. Section 1250.8 of the Health and Safety Code is amended to read:

1250.8. (a) Notwithstanding subdivision (a) of Section 127170, the state department, upon application of a general acute care hospital that meets all the criteria of subdivision (b), and other applicable requirements of licensure, shall issue a single consolidated license to a general acute care hospital that includes more than one physical plant maintained and operated on separate premises or that has multiple licenses for a single health facility on the same premises. A single consolidated license shall not be issued where the separate freestanding physical plant is a skilled nursing facility or an intermediate care facility, whether or not the location of the skilled nursing facility or intermediate care facility is contiguous to the general acute care hospital unless the hospital is exempt from the requirements of subdivision (b) of Section 1254, or the facility is part of the physical structure licensed to provide acute care.

(b) The issuance of a single consolidated license shall be based on the following criteria:

(1) There is a single governing body for all of the facilities maintained and operated by the licensee.

(2) There is a single administration for all of the facilities maintained and operated by the licensee.

(3) There is a single medical staff for all of the facilities maintained and operated by the licensee, with a single set of bylaws, rules, and regulations that prescribe a single committee structure.

(4) Except as provided otherwise in this paragraph, the physical plants maintained and operated by the licensee that are to be covered by the single consolidated license are located not more than 15 miles apart. The director may issue a single consolidated license to a general acute care hospital that maintains and operates two or more physical plants which are located beyond 15 miles if all of the following exist:

(A) Either (i) one or more physical plants are located in a rural area, as defined by regulations of the director; or (ii) the physical plants are located beyond 15 miles from the general acute care hospital that obtains the single consolidated license and provide outpatient services as defined by the department, and do not provide inpatient services.

(B) The director finds, after consultation with the Director of the Office of Statewide Health Planning and Development, that the issuance of the single consolidated license for the general acute care hospital would not significantly impair the operation of Chapter 1 (commencing with Section 127125) of Part 2 of Division 107.

(C) The director finds that the licensee can comply with the requirements of licensure and maintain the provision of quality care, and adequate administrative and professional supervision.

(D) The physical plants satisfy the criteria of subdivision (a) and paragraphs (1), (2), and (3).

(E) The physical plants of the licensee operate in full compliance with subdivision (f) of Section 1275.

(c) In issuing the single consolidated license, the state department shall specify the location of each supplemental service and the location of the number and category of beds provided by the licensee. The single consolidated license shall be renewed annually.

(d) To the extent required by Chapter 1 (commencing with Section 127125) of Part 2 of Division 107, a general acute care hospital that has been issued a single consolidated license:

(1) Shall not transfer from one facility to another a special service described in Section 1255 without first obtaining a certificate of need.

(2) Shall not transfer, in whole or in part, from one facility to another, a supplemental service, as defined in regulations of the director pursuant to this chapter, without first obtaining a certificate of need, unless the licensee, 30 days prior to the relocation, notifies the Office of Statewide Health Planning and Development, the applicable health systems agency, and the state department of the licensee's intent to relocate the supplemental service, and includes with this notice a cost estimate, certified by a person qualified by experience or training to render the estimates, which estimates that the cost of the transfer will not exceed the capital expenditure threshold established by the Office of Statewide Health Planning and Development pursuant to Section 127170.

(3) Shall not transfer beds from one facility to another facility, without first obtaining a certificate of need unless, 30 days prior to the relocation, the licensee notifies the Office of Statewide Health Planning and Development, the applicable health systems agency, and the state department of the licensee's intent to relocate health facility beds, and includes with this notice both of the following:

(A) A cost estimate, certified by a person qualified by experience or training to render the estimates, which estimates that the cost of the relocation will not exceed the capital expenditure threshold established by the Office of Statewide Health Planning and Development pursuant to Section 127170.

(B) The identification of the number, classification, and location of the health facility beds in the transferor facility and the proposed number, classification, and location of the health facility beds in the transferee facility.

Except as otherwise permitted in Chapter 1 (commencing with Section 127125) of Part 2 of Division 107, or as authorized in an approved certificate of need pursuant to that part, health facility beds transferred pursuant to this section shall be used in the transferee

facility in the same bed classification as defined in Section 1250.1, as the beds were classified in the transferor facility.

Health facility beds transferred pursuant to this section shall not be transferred back to the transferor facility for two years from the date of the transfer, regardless of cost, without first obtaining a certificate of need pursuant to Chapter 1 (commencing with Section 127125) of Part 2 of Division 107.

(e) All transfers pursuant to subdivision (d) shall satisfy all applicable requirements of licensure and shall be subject to the written approval, if required, of the state department. The state department may adopt regulations that are necessary to implement the provisions of this section. These regulations may include a requirement that each facility of a health facility subject to a single consolidated license have an onsite full-time or part-time administrator.

(f) As used in this section, "facility" means any physical plant operated or maintained by a health facility subject to a single, consolidated license issued pursuant to this section.

(g) For purposes of selective provider contracts negotiated under the Medi-Cal program, the treatment of a health facility with a single consolidated license issued pursuant to this section shall be subject to negotiation between the health facility and the California Medical Assistance Commission. A general acute care hospital that is issued a single consolidated license pursuant to this section may, at its option, receive from the state department a single Medi-Cal program provider number or separate Medi-Cal program provider numbers for one or more of the facilities subject to the single consolidated license. Irrespective of whether the general acute care hospital is issued one or more Medi-Cal provider numbers, the state department may require the hospital to file separate cost reports for each facility pursuant to Section 14170 of the Welfare and Institutions Code.

(h) For purposes of the Annual Report of Hospitals required by regulations adopted by the state department pursuant to this part, the state department and the Office of Statewide Health Planning and Development may require reporting of bed and service utilization data separately by each facility of a general acute care hospital issued a single consolidated license pursuant to this section.

(i) The amendments made to this section during the 1985–86 Regular Session of the California Legislature pertaining to the issuance of a single consolidated license to a general acute care hospital in the case where the separate physical plant is a skilled nursing facility or intermediate care facility shall not apply to the following facilities:

(1) Any facility that obtained a certificate of need after August 1, 1984, and prior to February 14, 1985, as described in this subdivision. The certificate of need shall be for the construction of a skilled nursing facility or intermediate care facility that is the same facility

for which the hospital applies for a single consolidated license, pursuant to subdivision (a).

(2) Any facility for which a single consolidated license has been issued pursuant to subdivision (a), as described in this subdivision, prior to the effective date of the amendments made to this section during the 1985–86 Regular Session of the California Legislature.

Any facility that has been issued a single consolidated license pursuant to subdivision (a), as described in this subdivision, shall be granted renewal licenses based upon the same criteria used for the initial consolidated license.

(j) If the state department issues a single consolidated license pursuant to this section, the state department may take any action authorized by this chapter, including, but not limited to, any action specified in Article 5 (commencing with Section 1294), with respect to any facility, or any service provided in any facility, that is included in the consolidated license.

(k) The eligibility for participation in the Medi-Cal program (Chapter 7 (commencing with Section 14000), Part 3, Division 9, Welfare and Institutions Code) of any facility that is included in a consolidated license issued pursuant to this section, provides outpatient services, and is located more than 15 miles from the health facility issued the consolidated license shall be subject to a determination of eligibility by the state department. This subdivision shall not apply to any facility that is located in a rural area and is included in a consolidated license issued pursuant to subparagraphs (A), (B), and (C) of paragraph (4) of subdivision (b). Regardless of whether a facility has received or not received a determination of eligibility pursuant to this subdivision, this subdivision shall not affect the ability of a licensed professional, providing services covered by the Medi-Cal program to a person eligible for Medi-Cal in a facility subject to a determination of eligibility pursuant to this subdivision, to bill the Medi-Cal program for those services provided in accordance with applicable regulations.

SEC. 154. Section 1250.9 of the Health and Safety Code, as amended by Chapter 511 of the Statutes of 1995, is amended and renumbered to read:

128600. The Legislature finds and declares that the oversight and reporting requirements of the demonstration project established in this section are equal to, or exceed similar licensing standards for other health facilities.

(a) The Office of Statewide Health Planning and Development shall conduct a demonstration project to evaluate the accommodation of postsurgical care patients for periods not exceeding two days, except that the attending physician and surgeon may require that the stay be extended to no more than three days.

(b) (1) The demonstration project shall operate for a period not to exceed six years, for no more than 12 project sites, one of which shall be located in Fresno County. However, the demonstration

project shall be extended an additional six years, to September 30, 2000, only for those project sites that were approved by the Office of Statewide Health Planning and Development and operational prior to January 1, 1994.

(2) Any of the 12 project sites may be distinct parts of health facilities, or any of those sites may be physically freestanding from health facilities. None of the project sites that are designated as distinct parts of health facilities, shall be located in the service area of any one of the six freestanding project sites. None of the project sites that are designated as distinct parts of health facilities shall have a service area that overlaps with any one or more service areas of the freestanding pilot sites. For the purposes of this section, service area shall be defined by the office.

(c) (1) The office shall establish standards for participation, commensurate with the needs of postsurgical care patients requiring temporary nursing services following outpatient surgical procedures.

(2) In preparing the standards for participation, the office may, as appropriate, consult with the State Department of Health Services and a technical advisory committee that may be appointed by the Director of the Office of Statewide Health Planning and Development. The committee shall have no more than eight members, all of whom shall be experts in health care, as determined by the director of the office. One of the members of the committee shall, as determined by the director of the office, have specific expertise in the area of pediatric surgery and recovery care.

(3) If a technical advisory committee is established by the director of the office, members of the committee shall be reimbursed for any actual and necessary expenses incurred in connection with their duties as members of the committee.

(d) Not later than six months prior to the conclusion of the demonstration project, the office shall submit an evaluation of the demonstration project to the Legislature on the effectiveness and safety of the demonstration project in providing recovery services to patients receiving outpatient surgical services. The office, as part of the evaluation, shall include recommendations regarding the establishment of a new license category or amendment of existing licensing standards.

(e) The office shall establish and administer the demonstration project in facilities with no more than 20 beds that continuously meet the standards of skilled nursing facilities licensed under subdivision (c) of Section 1250, except that the office may, as appropriate and unless a danger to patients would be created, eliminate or modify the standards. This section shall not prohibit general acute care hospitals from participating in the demonstration project. The office may waive those building standards applicable to a project site that is a distinct part of a health facility that are inappropriate, as determined by the office, to the demonstration project. Notwithstanding health facility licensing regulations contained in Division 5 (commencing

with Section 70001) of Title 22 of the California Code of Regulations, a project site that is a distinct part of a health facility shall comply with all standards for participation established by the office and with all regulations adopted by the office to implement this section. A project site that is a distinct part of a health facility shall not, for the duration of the pilot project, be subject to Division 5 (commencing with Section 70001) of Title 22 of the California Code of Regulations which conflict, as determined by the office, with the demonstration project standards or regulations.

(f) The office shall issue a facility identification number to each facility selected for participation in the demonstration project.

(g) Persons who wish to establish recovery care programs shall make application to the office for inclusion in the pilot program. Applications shall be made on forms provided by the office and shall contain sufficient information determined as necessary by the office.

(h) As a condition of participation in the pilot program, each applicant shall agree to provide statistical data and patient information that the office deems necessary for effective evaluation. It is the intent of the Legislature that the office shall develop procedures to assure the confidentiality of patient information and shall only disclose patient information, including name identification, as is necessary pursuant to this section or any other law.

(i) Any authorized officer, employee, or agent of the office may, upon presentation of proper identification, enter and inspect any building or premises and any records, including patient records, of a pilot project participant at any reasonable time to review compliance with, or to prevent any violation of, this section or the regulations and standards adopted thereunder.

(j) The office may suspend or withdraw approval of any or all pilot projects with notice, but without hearing if it determines that patient safety is being jeopardized.

(k) The office may charge applicants and participants in the program a reasonable fee to cover its actual cost of administering the pilot program and the cost of any committee established by this section. The facilities participating in the pilot project shall pay fees that equal the amount of any increase in fiscal costs incurred by the state as a result of the extension of the pilot project until September 30, 2000, pursuant to subdivision (b).

(*l*) The office may contract with a medical consultant or other advisers as necessary, as determined by the office. Due to the necessity to expedite the demonstration project and its extremely specialized nature, the contracts shall be exempt from Section 10373 of the Public Contract Code, and shall be considered sole-source contracts.

(m) The office may adopt emergency regulations to implement this section in accordance with Section 11346.1 of the Government Code, except that the regulations shall be exempt from the requirements of subdivisions (e), (f), and (g) of that section. The

regulations shall be deemed an emergency for the purposes of Section 11346.1.

Applications to establish any of the four project sites authorized by the amendments made to this section during the 1987–88 Regular Session of the California Legislature shall be considered by the office from among the applications submitted to it in response to its initial request for proposal process.

(n) Any administrative opinion, decision, waiver, permit, or finding issued by the office prior to July 1, 1990, with respect to any of the demonstration projects approved by the office prior to July 1, 1990, shall automatically be extended by the office to remain fully effective as long as the demonstration projects are required to operate pursuant to this section.

(o) The office shall not grant approval to a postsurgical recovery care facility, as defined in Section 97500.111 of Title 22 of the California Code of Regulations, that is freestanding, as defined in Section 97500.49 of Title 22 of the California Code of Regulations, to begin operation as a participating demonstration project if it is located in the County of Solano.

(p) Participants in the demonstration program for postsurgical recovery facilities shall not be precluded from receiving reimbursement from, or conducting good faith negotiations with, a third-party payor solely on the basis that the participant is engaged in a demonstration program and accordingly is not licensed.

SEC. 155. Section 1251.3 of the Health and Safety Code is amended to read:

1251.3. A health facility licensed as a general acute care hospital, providing alcohol recovery services, may convert its licensure category to an acute psychiatric hospital and it may reclassify all of its general acute care beds to acute psychiatric without first obtaining a certificate of need pursuant to Section 127170 if all of the following conditions are met:

(a) The health facility notifies, in writing, the State Department and the Office of Statewide Health Planning and Development on or before September 3, 1982.

(b) The project would reclassify all of the facility's general acute care beds to acute psychiatric.

(c) The total licensed capacity of the facility to be converted does not exceed 31 beds.

SEC. 155.5. Section 1253.1 of the Health and Safety Code is amended to read:

1253.1. (a) Any skilled nursing facility or intermediate care facility that on the effective date of this section is providing care for the developmentally disabled may utilize beds designated for that purpose to provide intermediate care for the developmentally disabled without obtaining a certificate of need, a change in licensure category, or a change in bed classification pursuant to subdivision (c)

of Section 1250.1, provided the facility meets and continues to meet the following criteria:

(1) The facility was surveyed on or before July 18, 1977, by the State Department of Health for certification under the federal ICF/MR program pursuant to Section 449.13 of Title 42 of the Code of Federal Regulations, and the beds designated for intermediate care for the developmentally disabled were certified by the state department, either before or after that date, to meet the standards set forth in Section 449.13 of Title 42 of the Code of Federal Regulations.

(2) Not less than 95 percent of the beds so certified for intermediate care for the developmentally disabled are utilized exclusively for provision of care to residents with a developmental disability, as defined in subdivision (a) of Section 4512 of the Welfare and Institutions Code. Nothing in this paragraph shall require continuous bed occupancy, but a bed certified for intermediate care for the developmentally disabled shall be deemed to be converted to another use if occupied by a resident who is not developmentally disabled.

(3) On and after the effective date of regulations implementing this section, no change of ownership has occurred with respect to the facility requiring issuance of a new license, except a change occurring because of a decrease in the number of partners of a licensed partnership or a reorganization of the governing structure of a licensee in which there is no change in the relative ownership interests.

(b) Any facility receiving an exemption under subdivision (a) shall, with respect to beds designated for intermediate care for the developmentally disabled, be subject to regulations of the state department applicable to that level of care, rather than the level of care for which the beds are licensed. The state department shall indicate on the license of any facility receiving an exemption pursuant to subdivision (a) that the licensee has been determined by the state department to meet the criteria of subdivision (a).

(c) The licensee of any facility receiving an exemption under this section shall notify the state department not less than 30 days prior to taking action that will cause the facility to cease meeting the criteria specified in paragraph (2) or (3) of subdivision (a).

(d) Upon a change of ownership of the facility or change in ownership interests not meeting the criterion for continued exemption specified in paragraph (3) of subdivision (a), the applicant for relicensure shall elect as follows:

(1) To reclassify all skilled nursing beds that have been exempted under this section to the intermediate care-developmental disabilities classification, or to continue the skilled nursing classification with respect to skilled nursing beds that have received the exemption.

(2) To reclassify intermediate care beds that have been exempted under this section to the intermediate care-developmental disabilities classification, or to reclassify intermediate care beds that have received the exemption to the intermediate care-other classification.

Reclassification of beds pursuant to this subdivision shall not constitute a "project" within the meaning of Section 127170 and shall not be subject to any requirement for a certificate of need under Chapter 1 (commencing with Section 127125) of Part 2 of Division 107.

SEC. 156. Section 1255 of the Health and Safety Code is amended to read:

1255. In addition to the basic services offered under the license, a general acute care hospital may be approved in accordance with subdivision (c) of Section 1277 to offer special services including, but not limited to, the following:

(a) Radiation therapy department.
(b) Burn center.
(c) Emergency center.
(d) Hemodialysis center (or unit).
(e) Psychiatric.
(f) Intensive care newborn nursery.
(g) Cardiac surgery.
(h) Cardiac catheterization laboratory.
(i) Renal transplant.
(j) Other special services as the department may prescribe by regulation.

A general acute care hospital that exclusively provides acute medical rehabilitation center services may be approved in accordance with subdivision (b) of Section 1277 to offer special services not requiring surgical facilities.

The state department shall adopt standards for special services and other regulations as may be necessary to implement this section. For cardiac catheterization laboratory service, the state department shall, at a minimum, adopt standards and regulations that specify that only diagnostic services, and what diagnostic services, may be offered by an acute care hospital or a multispecialty clinic as defined in subdivision (*l*) of Section 1206 that is approved to provide cardiac catheterization laboratory service but is not also approved to provide cardiac surgery service, together with the conditions under which the cardiac catheterization laboratory service may be offered.

A cardiac catheterization laboratory service shall be located in a general acute care hospital that is either licensed to perform cardiovascular procedures requiring extracorporeal coronary artery bypass, that meets all of the applicable licensing requirements relating to staff, equipment, and space for service; or shall, at a minimum, have a licensed intensive care service, coronary care service and maintain a written agreement for the transfer of patients

to a general acute care hospital that is licensed for cardiac surgery or shall be located in a multispecialty clinic as defined in subdivision (*l*) of Section 1206. The transfer agreement shall include protocols that will minimize the need for duplicative cardiac catheterizations at the hospital in which the cardiac surgery is to be performed.

For purposes of this section, multispecialty clinic, as defined in subdivision (*l*) of Section 1206, includes an entity in which the multispecialty clinic holds at least a 50-percent general partner interest and maintains responsibility for the management of the service, if all of the following requirements are met:

(1) The multispecialty clinic existed as of March 1, 1983.

(2) Prior to March 1, 1985, the multispecialty clinic did not offer cardiac catherterization services, dynamic multiplane imaging, or other types of coronary or similar angiography.

(3) The multispecialty clinic creates only one entity that operates its service at one site.

(4) These entities shall have the equipment and procedures necessary for the stabilization of patients in emergency situations prior to transfer and patient transfer arrangements in emergency situations that shall be in accordance with the standards established by the Emergency Medical Services Authority, including the availability of comprehensive care and the qualifications of any general acute care hospital expected to provide emergency treatment.

Except as provided in Sections 128525 and 128530, under no circumstances shall cardiac catheterizations be performed outside of a general acute care hospital or a multispecialty clinic, as defined in subdivision (*l*) of Section 1206, that qualifies for this definition as of March 1, 1983.

SEC. 157. Section 1268 of the Health and Safety Code, as amended by Chapter 512 of the Statutes of 1995, is amended to read:

1268. (a) Upon the filing of the application for licensure or for a special permit for special services and full compliance with this chapter and the rules and regulations of the state department, the state department shall issue to the applicant the license or special permit applied for. A license shall not be issued or renewed for beds permanently converted to other than patient use and that do not meet construction and operational requirements. However, if the director finds that the applicant is not in compliance with the laws or regulations of this part, the director shall deny the applicant a license or a special permit for special services. Additionally, the director shall not issue a license covering a project within the meaning of Section 127170 for which there is no valid, subsisting, and unexpired certificate of need issued pursuant to Chapter 1 (commencing with Section 127125) of Part 2 of Division 107.

(b) As a condition of licensure, the director shall require evidence that the applicant have a written policy relating to the dissemination of the following information to patients:

(1) A summary of current state laws requiring child passenger restraint systems to be used when transporting children in motor vehicles.

(2) A listing of child passenger restraint system programs located within the county, as required by Section 27360 or 27362 of the Vehicle Code.

(3) Information describing the risks of death or serious injury associated with the failure to utilize a child passenger restraint system.

A hospital may satisfy the requirements of this paragraph by reproducing for distribution materials specified in Section 27366 of the Vehicle Code, describing the risks of injury or death as a result of the failure to utilize passenger restraints for infants and children, as provided, without charge, by the Department of the California Highway Patrol. A hospital that does not have these materials, but demonstrates that it has made a written request to the Department of the California Highway Patrol for the materials, is in compliance with this paragraph.

(c) The conversion of a general acute care hospital or special hospital to a general acute care hospital that exclusively provides acute medical rehabilitation center services shall not require a certificate of need, as required by Section 127170, if the health facility is rendering the services specified in subdivision (f) of Section 1250 on January 1, 1979.

SEC. 158. Section 1271.1 of the Health and Safety Code is amended to read:

1271.1. (a) A health facility may place up to 50 percent of its licensed bed capacity in voluntary suspension for a period not exceeding three years, upon submitting written notification to the state department and to the Office of Statewide Health Planning and Development. However, this section does not authorize a health facility to deactivate all beds utilized for the provision of a basic service or to deactivate all beds utilized for a special service or other supplemental service for which the health facility holds a special permit or licensure approval. Prior to the expiration of the voluntary suspension, the health facility may request an extension, that may be granted by the director if the director finds, after consultation with the Director of the Office of Statewide Health Planning and Development, that there is no identified need for additional beds (of the category suspended) in the service area of the health facility. If during a period of voluntary suspension under this section the statewide Health Facilities and Services Plan identifies a need for additional beds (of the category suspended) in the health facility's service area, the Director of the Office of Statewide Health Planning and Development may require the health facility to terminate the voluntary suspension and exercise one of the following options, at the discretion of the health facility: (1) place some or all of the suspended beds in operation, in accordance with the identified need, within one

year following his or her order, or (2) alternatively have the beds deemed permanently converted to other than patient use within the meaning of Section 1268.

(b) A health facility may remove all or any portion of its voluntarily suspended bed capacity from voluntary suspension by request to the state department, which request shall be granted unless the areas housing the suspended beds fail to meet currently applicable operational requirements or fail to meet construction requirements for the health facility in effect at the time the request for suspension of the beds was received by the state department.

(c) While health facility beds are in suspension pursuant to subdivision (a), the beds shall not be deemed to be permanently converted to other than patient use, for purposes of Section 1268. The requirements of this section shall not apply to any temporary deactivation of beds necessitated by the work of construction or other activities required with respect to a project for which a certificate of need or certificate of exemption has been granted pursuant to Chapter 1 (commencing with Section 127125) of Part 2 of Division 107. Nothing in this section shall in any way limit or affect the authority of a health facility to use a portion of its beds in one bed classification in another bed classification as permitted by subdivision (a) of Section 127170, including the use of general acute care beds as skilled nursing beds; provided, however, that when beds in a particular classification are suspended pursuant to this section, the remainder of the health facility's beds in the same classification may not be used so as to result in elimination of all beds utilized for provision of a basic service or utilized for provision of a special service or other supplemental service for which the health facility holds a special permit or licensure approval.

SEC. 159. Section 1339.5 of the Health and Safety Code is amended to read:

1339.5. As used in this article, unless otherwise indicated:

(a) "Health systems agency" means a health systems agency established pursuant to Public Law 93-641.

(b) "Primary care mid-level health practitioner" means a physician assistant certified pursuant to Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code and also means a registered nurse who meets the standards for a nurse practitioner adopted pursuant to Article 8 (commencing with Section 2834) of Chapter 6 of Division 2 of the Business and Professions Code, and also means a nurse midwife certified pursuant to Article 2.5 (commencing with Section 2746) of Chapter 6 of Division 2 of the Business and Professions Code.

(c) "Swing bed" means beds licensed for general acute care pursuant to Section 1250.1 that may, subject to this article, be used as skilled nursing beds, as classified in Section 1250.1. Swing beds shall retain the general acute care bed classification, for the purposes of

Chapter 1 (commencing with Section 127125) of Part 2 of Division 107.

SEC. 160. Section 1339.8 of the Health and Safety Code is amended to read:

1339.8. The Office of Statewide Health Planning and Development shall review and approve the number of swing beds that may be designated pursuant to paragraph (4) of subdivision (b) of Section 1339.15, based upon community need and projected utilization and issue a certificate of need pursuant to the review and approval. Except as provided herein, a primary health service hospital shall be subject to the requirements pertaining to approval of projects, as defined in Section 127170, that are set forth in Chapter 1 (commencing with Section 127125) of Part 2 of Division 107.

SEC. 161. Section 1339.30 of the Health and Safety Code is amended to read:

1339.30. A Special Hospital: Hospice Pilot Project is hereby created. This pilot project shall be established and administered by the department, and shall consist of up to three pilot projects, one of which shall be located in San Diego. The department shall license facilities that are part of the pilot project for the duration of the pilot project as a special hospital: hospice. No person or entity shall be licensed as a special hospital: hospice unless that person or entity is participating in this pilot project.

The purpose of the pilot project is to determine the need of hospice patients for acute inpatient hospital care.

This article shall not preclude the provision of appropriate hospice services in other settings.

The pilot project does not constitute an approved project as defined in subdivision (b) of Section 128130.

SEC. 162. Section 1395 of the Health and Safety Code is amended to read:

1395. (a) Notwithstanding Article 6 (commencing with Section 650) of Chapter 1 of Division 2 of the Business and Professions Code, any health care service plan or specialized health care service plan may, except as limited by this subdivision, solicit or advertise with regard to the cost of subscription or enrollment, facilities and services rendered, provided, however, Article 5 (commencing with Section 600) of Chapter 1 of Division 2 of the Business and Professions Code remains in effect. Any price advertisement shall be exact, without the use of such phrases as "as low as," "and up," "lowest prices" or words or phrases of similar import. Any advertisement that refers to services, or costs for the services, and that uses words of comparison must be based on verifiable data substantiating the comparison. Any health care service plan or specialized health care service plan so advertising shall be prepared to provide information sufficient to establish the accuracy of the comparison. Price advertising shall not be fraudulent, deceitful, or misleading, nor contain any offers of discounts, premiums, gifts, or bait of similar nature. In connection

with price advertising, the price for each product or service shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

(b) Plans licensed under this chapter shall not be deemed to be engaged in the practice of a profession, and may employ, or contract with, any professional licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code to deliver professional services. Employment by or a contract with a plan as a provider of professional services shall not constitute a ground for disciplinary action against a health professional licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code by a licensing agency regulating a particular health care profession.

(c) A health care service plan licensed under this chapter may directly own, and may directly operate through its professional employees or contracted licensed professionals, offices and subsidiary corporations, including pharmacies that satisfy the requirements of subdivision (d) of Section 4080.5 of the Business and Professions Code, as are necessary to provide health care services to the plan's subscribers and enrollees.

(d) A professional licensed pursuant to the provisions of Division 2 (commencing with Section 500) of the Business and Professions Code who is employed by, or under contract to, a plan may not own or control offices or branch offices beyond those expressly permitted by the provisions of the Business and Professions Code.

(e) Nothing in this chapter shall be construed to repeal, abolish, or diminish the effect of Section 129450 of the Health and Safety Code.

(f) Except as specifically provided in this chapter, nothing in this chapter shall be construed to limit the effect of the laws governing professional corporations, as they appear in applicable provisions of the Business and Professions Code, upon specialized health care service plans.

SEC. 163. Section 1403.1 of the Health and Safety Code is amended to read:

1403.1. The fee specified in Section 1403 shall be adjusted annually in the manner specified in Section 100445. The adjustments shall be rounded off to the nearest whole dollar amount.

SEC. 164. Section 1569.691 of the Health and Safety Code is amended to read:

1569.691. (a) The department shall select and monitor facilities to participate in a program, as model projects, to determine the appropriateness of allowing secured perimeters in residential care facilities for the elderly for persons with dementia, including, but not limited to, Alzheimer's disease.

(b) Model projects shall commence operation during the 1990 calendar year and shall remain in operation until January 1, 1996. The program shall consist of six facilities or sites.

(1) Three sites shall be residential care facilities for the elderly that specialize in caring for persons with the medical diagnosis of dementia and have secured perimeters.

(2) Three sites shall be residential care facilities for the elderly that specialize in caring for persons with the medical diagnosis of dementia and use door alarms or wrist bands, or other types of devices, to provide a safe and secure environment.

(c) The department shall develop criteria and standards for participation in the pilot project that shall include, but not be limited to, the following:

(1) The facility shall be a residential care facility for the elderly, with licenses in good standing. The facilities shall maintain substantial compliance with all applicable regulations and statutes during the pilot project.

(2) The facility shall have or develop a special program for persons with dementia that shall be reviewed by the department and by the Alzheimer's diagnostic and treatment centers established pursuant to Section 125280.

(3) The facility shall submit to the department a plan of operation that includes a description of the type of security, the method used to provide access to the department, visitors, community and advocacy groups, an emergency evacuation plan that has been approved by the local fire authority, staffing standards, qualifications and training of staff, and any other items deemed to be necessary by the department.

(4) The facility shall obtain the appropriate fire clearance from the local fire authority.

(5) Each facility shall have admission, retention, and transfer criteria to select residents who may be placed in the facility during the pilot project. A resident shall not have other mental or physical health care needs beyond those caused by the dementing illness which would otherwise disqualify that person for acceptance or retention in a residential care facility for the elderly.

(6) The facility shall have a consulting physician to review the medical condition of residents.

(7) The facility shall conduct an admission assessment of the resident prior to admission, that shall include:

(A) A minimental test to assess the resident's level of cognitive impairment.

(B) An activities of daily living assessment.

(C) A behavioral assessment for the purpose of designing and implementing an individualized care plan of therapeutic activities.

The department shall develop criteria for granting exemptions from the requirements of this paragraph for circumstances when emergency placement is necessary.

(8) The facility shall provide a program of planned therapeutic activities that take place throughout the waking hours and include a minimum of 40 percent large motor activities and the balance to be perceptual and sensory stimulation.

(9) The facility shall ensure that all staff who work with the residents go through training consisting of at least 25 hours covering the following issues:

(A) Facility orientation.

(B) Normal aging process.

(C) Characteristics of Alzheimer's disease and related dementias.

(D) Activities for persons with dementia.

(E) Communication with residents with dementia.

(F) Understanding the family of residents with dementia.

(G) Medications and misuse.

(H) Aid to daily living.

(I) Staff burnout.

(J) Developing problem-solving skills.

(10) The facility shall ensure that the staff receives ongoing continuing education in the care of residents with dementia.

(11) The facility shall provide an ongoing assessment of the resident to monitor problem behaviors and medical condition.

(12) The facility shall provide monthly family council meetings.

(d) The department shall consult with the Alzheimer's disease diagnostic and treatment centers funded by the State Department of Health Services pursuant to Section 125280 or other agencies deemed appropriate to establish evaluative criteria for appropriate diagnosis, assessment, treatment, and discharge plans for residents of facilities participating in the model projects.

(e) The Health and Welfare Agency's Alzheimer's Disease and Related Disorders Advisory Group, or any other entity, may provide assistance to the department, as requested by the department.

SEC. 165. Section 1569.692 of the Health and Safety Code is amended to read:

1569.692. (a) Notwithstanding paragraph (6) of subdivision (a) of Section 87572 of Title 22 of the California Code of Regulations, participating residential care facilities for the elderly may operate with a secured or locked perimeter if all of the following conditions are met:

(1) The resident is never locked in his or her room.

(2) With respect to residential care facility for the elderly sites, the resident is never physically or chemically restrained. For purposes of this section "chemically restrained" does not include medication prescribed by a physician and surgeon that is an essential component of the resident's treatment plan and that is generally recognized by the Alzheimer's disease diagnostic and treatment centers established pursuant to Section 125280 as appropriate treatment for a person with a medical diagnosis of dementia.

(3) With respect to residential care facility for the elderly sites, the resident has freedom of movement within the secured perimeter.

(4) Evidence shall be provided in the resident's file that a formal mental status questionnaire has been administered to rule out mental illness and to determine cognitive level.

(5) Evidence shall be provided in the resident's file that the following diagnostic tests have been given, as appropriate, to rule out reversible disease:

(A) At least one type of brain imaging test.
(B) A complete blood count.
(C) Serum glucose.
(D) Serum urea nitrogen.
(E) Creatinine level.
(F) Thyroid function.
(G) Seriology test for syphilis.
(H) Determination of B-12 and Folate levels.
(I) Urinalysis.
(J) Other tests indicated by medical history or physician and surgeon.

The department, in consultation with the Alzheimer's disease diagnostic and treatment centers, established pursuant to Section 125280, may require other tests or change the tests required in this paragraph to reflect advances in diagnostic technology.

(b) For purposes of this section, "secured perimeter" means that the external boundary of the facility, including yard areas, are functionally locked to the resident. If a facility provides multiple levels of care or has separate and distinct sections to the physical layout, each level or section licensed by the department may be secured. The purpose of the secured perimeter is to provide free movement in a safe area to residents within the boundaries of the facility, including yard areas, to prevent wandering.

SEC. 166. Section 1596.813 of the Health and Safety Code is amended to read:

1596.813. The department shall adopt regulations regarding immunization requirements for children enrolled in family day care homes in accordance with Chapter 1 (commencing with Section 120325) of Part 2 of Division 105.

SEC. 167. Section 1603.3 of the Health and Safety Code is amended to read:

1603.3. (a) Prior to a donation of blood or blood components each donor shall be notified in writing of, and shall have signed a written statement confirming the notification of, all of the following:

(1) That the blood or blood components shall be tested for evidence of antibodies to the probable causative agent of acquired immune deficiency syndrome.

(2) That donors found to have serologic evidence of the antibodies shall be placed on a confidential statewide Blood Donor Deferral

Register without a listing of the reason for being included on the register.

(3) That the donor shall be notified of the test results in accordance with the requirements described in subdivision (c).

(4) That the donor blood or blood component that is found to have the antibodies shall not be used for transfusion.

(5) That blood or blood components shall not be donated for transfusion purposes by a person if the person has reason to believe that he or she has been exposed to acquired immune deficiency syndrome.

(6) That the donor is required to complete a health screening questionnaire to assist in the determination as to whether he or she has been exposed to acquired immune deficiency syndrome.

(b) A blood bank or plasma center shall incorporate voluntary means of self-deferral for donors. The means of self-deferral may include, but are not limited to, a form with checkoff boxes specifying that the blood donated is for research or test purposes only and a telephone callback system for donors to use in order to inform the blood bank that blood donated should not be used for transfusion. The blood bank or plasma center shall inform the donor, in a manner that is understandable to the donor, that the self-deferral process is available and should be used if the donor has reason to believe that he or she is infected with the human immunodeficiency virus. The blood bank or plasma center shall also inform the donor that it is a felony pursuant to Section 1621.5 to donate blood if the donor knows that he or she has a diagnosis of AIDS or knows that he or she has tested reactive to the etiologic agent of AIDS or to antibodies to that agent.

(c) Blood or blood products from any donor initially found to have serologic evidence of antibodies to the probable causative agent of AIDS shall be retested for confirmation. Only if a further test confirms the conclusion of the earlier test shall the donor be notified of a reactive result by the blood bank or plasma center.

The state department shall develop permissive guidelines for blood banks and plasma centers on the method or methods to be used to notify a donor of a test result. Each blood bank or plasma center shall, upon positive confirmation using the best available and reasonable techniques, provide the information to the state department for inclusion in the Donor Deferral Register. Blood banks and plasma centers shall provide the information on donations testing reactive for the antibodies to the probable causative agent of AIDS and carrier donors of viral hepatitis to the department on a single list in the same manner without specification of the reason the donor appears on the list.

(d) The Blood Donor Deferral Register, as described in subdivision (e) of Section 1603.1, shall include names of individuals who are deferred from blood donations without identifying the reasons for deferral.

(e) Each blood bank or plasma center operating in California shall prominently display at each of its collection sites a notice that provides the addresses and telephone numbers of sites, within the proximate area of the blood bank or plasma center, where tests provided pursuant to Chapter 3 (commencing with Section 120885) of Part 4 of Division 105 may be administered without charge.

(f) The state department may promulgate any additional regulations it deems necessary to enhance the safety of donated blood and plasma. The state department may also promulgate regulations it deems necessary to safeguard the consistency and accuracy of HIV test results by requiring any confirmatory testing the state department deems appropriate for the particular types of HIV tests that have yielded "reactive," "positive," "indeterminate," or other similarly labeled results.

(g) Notwithstanding any other provision of law, no civil liability or criminal sanction shall be imposed for disclosure of test results to a public health officer when the disclosure is necessary to locate and notify a blood donor of a reactive result if reasonable efforts by the blood bank or plasma center to locate the donor have failed. Upon completion of the public health officer's efforts to locate and notify a blood donor of a reactive result, all records obtained from the blood bank pursuant to this subdivision, or maintained pursuant to this subdivision, including, but not limited to, any individual identifying information or test results, shall be expunged by the public health officer.

SEC. 168. Section 1603.4 of the Health and Safety Code is amended to read:

1603.4. (a) Notwithstanding Chapter 7 (commencing with Section 120975) of Part 4 of Division 105, as added by Chapter 22 of the Statutes of 1985, or any other provision of law, no public entity or any private blood bank or plasma center shall be liable for an inadvertent, accidental, or otherwise unintentional disclosure of the results of an HIV test or information in the Donor Referral Register.

As used in this section, "public entity" includes, but is not limited to, any publicly owned or operated blood bank or plasma center and the state department.

(b) Neither the state department nor any blood bank or plasma center, including a blood bank or plasma center owned or operated by a public entity, shall be held liable for any damage resulting from the notification of test results, as set forth in paragraph (3) of subdivision (a) of, or in subdivision (c) of, Section 1603.3.

SEC. 169. Section 1616.5 of the Health and Safety Code is amended to read:

1616.5. (a) The fee required pursuant to Section 1616 for the calendar year commencing January 1, 1992, and for each fiscal year thereafter unless adjusted pursuant to subdivision (b), shall not exceed the following:

One thousand five hundred dollars ($1,500) for a blood bank and no more than one blood collection center operated at the same location as the blood bank. In addition and irrespective of the location of the blood collection center, a fee of five hundred dollars ($500) for each additional blood collection center operated by the blood bank up to a maximum of one thousand five hundred dollars ($1,500) for three or more blood collection centers.

(b) The maximum application and renewal fees for blood bank licenses pursuant to subdivision (a) shall be adjusted annually in the manner specified in Section 100450. The adjustments shall be rounded off to the nearest whole dollar.

(c) This chapter shall not be interpreted to exempt the state, a district, city, county, or city and county, from payment of fees or from meeting the requirements established pursuant to this chapter or regulations adopted thereunder.

SEC. 170. Section 1619 of the Health and Safety Code is amended to read:

1619. Nothing in this chapter shall be considered to be in conflict with Part 5 (commencing with Section 109875) of Division 104 of this code and all provisions of that division shall apply to biologics within the meaning of this chapter, except that this chapter shall not apply to products of:

(a) A laboratory licensed by the Public Health Service, United States Department of Health, Education and Welfare.

(b) A laboratory licensed by the Animal Inspection and Quarantine Branch, Agricultural Research Service, United States Department of Agriculture.

SEC. 171. Section 1729.1 of the Health and Safety Code is amended to read:

1729.1. The fee specified in Section 1729 shall be adjusted annually in the manner specified in Section 100445. The adjustments shall be rounded off to the nearest whole dollar amount.

SEC. 172. Section 1797.98e of the Health and Safety Code is amended to read:

1797.98e. (a) It is the intent of the Legislature that a simplified, cost-efficient system of administration of this chapter be developed so that the maximum amount of funds may be utilized to reimburse physicians and surgeons and for other emergency medical services purposes. The administering agency shall select an administering officer and shall establish procedures and time schedules for the submission and processing of proposed reimbursement requests submitted by physicians and surgeons. The schedule shall provide for disbursements of moneys in the Emergency Medical Services Fund on at least an annual basis to applicants who have submitted accurate and complete data for payment by a date to be established by the administering agency. When the administering agency determines that claims for payment for physician and surgeon services are of sufficient numbers and amounts, that if paid, the claims would exceed

the total amount of funds available for payment, the administering agency shall fairly prorate, without preference, payments to each claimant at a level less than the maximum payment level. Each administering agency may encumber sufficient funds during one fiscal year to reimburse claimants for losses incurred during that fiscal year for which claims will not be received until after the fiscal year. The administering agency may, as necessary, request records and documentation to support the amounts of reimbursement requested by physicians and surgeons and the administering agency may review and audit the records for accuracy. Reimbursements requested and reimbursements made that are not supported by records may be denied to and recouped from physicians and surgeons. Physicians and surgeons found to submit requests for reimbursement that are inaccurate or unsupported by records may be excluded from submitting future requests for reimbursement. The administering officer shall not give preferential treatment to any facility, physician and surgeon, or category of physician and surgeon and shall not engage in practices that constitute a conflict of interest by favoring a facility or physician and surgeon with which the administering officer has an operational or financial relationship. A hospital administrator of a hospital owned or operated by a county of a population of 250,000 or more as of January 1, 1991, or a person under the direct supervision of that person, shall not be the administering officer. The board of supervisors of a county or any other county agency may serve as the administering officer.

(b) Each provider of health services that receives payment under this chapter shall keep and maintain records of the services rendered, the person to whom rendered, the date, and any additional information the administering agency may, by regulation, require, for a period of three years from the date the service was provided. The administering agency shall not require any additional information from a physician and surgeon providing emergency medical services that is not available in the patient record maintained by the entity listed in subdivision (f) where the medical services are provided, nor shall the administering agency require a physician and surgeon to make eligibility determinations.

(c) During normal working hours, the administering agency may make any inspection and examination of a hospital's or physician and surgeon's books and records needed to carry out the provisions of this chapter. A provider who has knowingly submitted a false request for reimbursement shall be guilty of civil fraud.

(d) Nothing in this chapter shall prevent a physician and surgeon from utilizing an agent who furnishes billing and collection services to the physician and surgeon to submit claims or receive payment for claims.

(e) All payments from the fund pursuant to Section 1797.98c to physicians and surgeons shall be limited to physicians and surgeons

who, in person, provide onsite services in a clinical setting, including, but not limited to, radiology and pathology settings.

(f) All payments from the fund shall be limited to claims for care rendered by physicians and surgeons to patients who are initially medically screened, evaluated, treated, or stabilized in any of the following:

(1) A basic or comprehensive emergency department of a licensed general acute care hospital.

(2) A site that was approved by a county prior to January 1, 1990, as a paramedic receiving station for the treatment of emergency patients.

(3) A standby emergency department that was in existence on January 1, 1989, in a hospital specified in Section 124840.

(4) For the 1991–92 fiscal year and each fiscal year thereafter, a facility which contracted prior to January 1, 1990, with the National Park Service to provide emergency medical services.

(g) Payments shall be made only for emergency services provided on the calendar day on which emergency medical services are first provided and on the immediately following two calendar days, however, payments may not be made for services provided beyond a 48-hour period of continuous service to the patient.

(h) Notwithstanding subdivision (g), if it is necessary to transfer the patient to a second facility providing a higher level of care for the treatment of the emergency condition, reimbursement shall be available for services provided at the facility to which the patient was transferred on the calendar day of transfer and on the immediately following two calendar days, however, payments may not be made for services provided beyond a 48-hour period of continuous service to the patient.

(i) Payment shall be made for medical screening examinations required by law to determine whether an emergency condition exists, notwithstanding the determination after the examination that a medical emergency does not exist. Payment shall not be denied solely because a patient was not admitted to an acute care facility. Payment shall be made for services to an inpatient only when the inpatient has been admitted to a hospital from an entity specified in subdivision (f).

(j) The administering agency shall compile a quarterly and year-end summary of reimbursements paid to facilities and physicians and surgeons. The summary shall include, but shall not be limited to, the total number of claims submitted by physicians and surgeons in aggregate from each facility and the amount paid to each physician and surgeon. The administering agency shall provide copies of the summary and forms and instructions relating to making claims for reimbursement to the public, and may charge a fee not to exceed the reasonable costs of duplication.

(k) Each county shall establish an equitable and efficient mechanism for resolving disputes relating to claims for

reimbursements from the fund. The mechanism shall include a requirement that disputes be submitted either to binding arbitration conducted pursuant to arbitration procedures set forth in Chapter 3 (commencing with Section 1282) and Chapter 4 (commencing with Section 1285) of Part 3 of Title 9 of the Code of Civil Procedure, or to a local medical society for resolution by neutral parties.

SEC. 173. Section 1797.189 of the Health and Safety Code is amended to read:

1797.189. (a) As used in this section:

(1) "Chief medical examiner-coroner" means the chief medical examiner or the coroner as referred to in subdivision (m) of Section 24000, Section 24010, subdivisions (k), (m), and (n) of Section 24300, subdivisions (k), (m), and (n) of Section 24304, and Sections 27460 to 27530, inclusive, of the Government Code, and Section 102850.

(2) "Prehospital emergency medical care person or personnel" means any of the following: authorized registered nurse or mobile intensive care nurse, emergency medical technician-I, emergency medical technician-II, emergency medical technician-paramedic, lifeguard, firefighter, or peace officer, as defined or described by Sections 1797.56, 1797.80, 1797.82, 1797.84, 1797.182, and 1797.183, respectively, or a physician and surgeon who provides prehospital emergency medical care or rescue services.

(3) "Reportable disease or condition" or "a disease or condition listed as reportable" means those diseases specified in Subchapter 1 (commencing with Section 2500) of Chapter 4 of Title 17 of the California Administrative Code, as may be amended from time to time.

(4) "Exposed" means at risk for contracting a disease, as defined by regulations of the state department.

(5) "Health facility" means a health facility, as defined in Section 1250, including a publicly operated facility.

(b) Any prehospital emergency medical care personnel, whether volunteers, partly paid, or fully paid who have provided emergency medical or rescue services and have been exposed to a person afflicted with a disease or condition listed as reportable, that can, as determined by the county health officer, be transmitted through oral contact or secretions of the body, including blood, shall be notified that they have been exposed to the disease and should contact the county health officer if all of the following conditions are met:

(1) The prehospital emergency medical care person, who has rendered emergency medical or rescue services and has been exposed to a person afflicted with a reportable disease or condition, provides the chief medical examiner-coroner with his or her name and telephone number at the time the patient is transferred from that prehospital medical care person to the chief medical examiner-coroner; or the party transporting the person afflicted with the reportable disease or condition provides that chief medical examiner-coroner with the name and telephone number of the

prehospital emergency medical care person who provided the emergency medical or rescue services.

(2) The chief medical examiner-coroner reports the name and telephone number of the prehospital emergency medical care person to the county health officer upon determining that the person to whom the prehospital emergency medical care person provided the emergency medical or rescue services is diagnosed as being afflicted with a reportable disease or condition.

(c) The county health officer shall immediately notify the prehospital emergency medical care person who has provided emergency medical or rescue services and has been exposed to a person afflicted with a disease or condition listed as reportable, that can, as determined by the county health officer, be transmitted through oral contact or secretions of the body, including blood, upon receiving the report from a health facility pursuant to paragraph (1) of subdivision (b). The county health officer shall not disclose the name of the patient or other identifying characteristics to the prehospital emergency medical care person.

Nothing in this section shall be construed to authorize the further disclosure of confidential medical information by the chief medical examiner-coroner or any of the prehospital emergency medical care personnel described in this section except as otherwise authorized by law.

The chief medical examiner-coroner, or the county health officer shall notify the funeral director, charged with removing or receiving the decedent afflicted with a reportable disease or condition from the chief medical examiner-coroner, of the reportable disease prior to the release of the decedent from the chief medical examiner-coroner to the funeral director.

Notwithstanding Section 1798.206, violation of this section is not a misdemeanor.

SEC. 174. Section 1797.221 of the Health and Safety Code is amended to read:

1797.221. The medical director of the local EMS agency may approve or conduct any scientific or trial study of the efficacy of the prehospital emergency use of any drug, device, or treatment procedure within the local EMS system, utilizing any level of prehospital emergency medical care personnel. The study shall be consistent with any requirements established by the authority for scientific or trial studies conducted within the prehospital emergency medical care system, and, where applicable, with Article 5 (commencing with Section 111550) of Chapter 6 of Part 5 of Division 104. No drug, device, or treatment procedure which has been specifically excluded by the authority from usage in the EMS system shall be included in such a study.

SEC. 175. Section 1799.54 of the Health and Safety Code is amended to read:

1799.54. The commission shall review and comment upon the emergency medical services portion of the State Health Facilities and Service Plan developed pursuant to Section 127155.

SEC. 176. Section 2202 of the Health and Safety Code is amended to read:

2202. (a) Except as otherwise provided in subdivision (b), every mosquito abatement district or vector control district employee who handles, applies, or supervises the use of any pesticide for public health purposes, shall be certified by the state department as a vector control technician, in at least one of the following categories commensurate with the assigned duties:

(1) Mosquito control.

(2) Terrestrial invertebrate vector control.

(3) Vertebrate vector control.

(b) The state department may establish, by regulation, exemptions from the requirements of this section that are deemed reasonably necessary to further the purposes of this section.

(c) The state department shall establish by regulation minimum standards for continuing education for any government agency employee certified under Section 116110 and regulations adopted pursuant thereto, who handles, applies, or supervises the use of any pesticide for public health purposes.

(d) An official record of the completed continuing education units shall be maintained by the state department. If a certified technician fails to meet the requirements set forth under subdivision (c), the state department shall suspend the technician's certificate or certificates and immediately notify the technician and the employing district. The state department shall establish by regulation procedures for reinstating a suspended certificate.

(e) The state department shall charge and collect a nonreturnable renewal fee of twenty-five dollars ($25) to be paid by each continuing education certificant on or before the first day of July, or on any other date that is determined by the state department. Each person employed in a position on the effective date of this section that requires certification shall first pay the annual fee the first day of the first July following that date. All new certificants shall first pay the annual fee the first day of the first July following their certification.

(f) The state department shall collect and account for all money received pursuant to this section and shall deposit it in the Mosquitoborne Disease Surveillance Account provided for in Section 25852 of the Government Code. Notwithstanding Section 25852 of the Government Code, fees deposited in the Mosquitoborne Disease Surveillance Account pursuant to this section shall be available for expenditure upon the appropriation by the Legislature to implement this section.

(g) Fees collected pursuant to this section shall be subject to the annual fee increase provisions of Section 100425.

SEC. 177. Section 2317 of the Health and Safety Code is amended to read:

2317. (a) All revenues generated from the emergency mosquito abatement standby charge ordinance shall be deposited in a separate emergency mosquito abatement trust fund in the county treasury of the county in which the district is organized, except that the county may retain an amount not to exceed the actual costs of performing the duties required by Section 2318.

(b) The trust fund shall not exceed fifty thousand dollars ($50,000) or 25 percent of the district's expenditures for operations and maintenance in the immediately preceding fiscal year, whatever is greater, except that the trust fund may exceed these limits by the amount of interest earned.

(c) (1) The emergency mosquito abatement trust fund shall be used solely for the abatement and extermination of mosquitoes, as provided by Section 2270, except that the district may use 50 percent of any interest earned on the trust fund for the general purposes of the district. Not more than 50 percent of any interest earned on the trust fund may be appropriated for deposit on or before June 30 of each fiscal year in the Mosquitoborne Disease Surveillance Account in the General Fund, created by Section 25852 of the Government Code. Districts that agree to contribute to the Mosquitoborne Disease Surveillance Account shall enter into a cooperative agreement pursuant to subdivision (c) of Section 116180. The funds deposited in the state account, when appropriated by the Legislature, shall be used by the State Department of Health Services to support those mosquitoborne disease field and laboratory surveillance activities which are needed to carry out the provisions of this article. The department shall not commit expenditures for the mosquitoborne disease field and laboratory surveillance activities unless the funds deposited in the Mosquitoborne Disease Surveillance Account are sufficient for the ensuing fiscal year. If the amount of the Mosquitoborne Disease Surveillance Account exceeds the amount required for the ensuing fiscal year, plus a reserve of fifty thousand dollars ($50,000), the excess shall be credited to the participating districts as a reduction in the amount deposited in the Mosquitoborne Disease Surveillance Account for the ensuing fiscal year.

(2) The Legislature finds and declares that the use of district funds for mosquitoborne disease surveillance serves a public purpose of a district, as well as a public purpose of the state, within the meaning of Section 6 of Article XVI of the California Constitution.

(d) The district shall not spend any part of the principal of the emergency mosquito abatement trust fund unless the State Director of Health Services has declared that the public health and safety are, or may be, threatened by an unabated outbreak of mosquitoes in a portion or all of the territory within the district, or that conditions

require emergency preventive mosquito abatement work, and that the expenditure is necessary to protect the public health and safety.

(e) The department shall adopt emergency regulations to implement, interpret, or make specific the provisions of this article, including, but not limited to, conditions under which the principal of the emergency mosquito abatement trust fund may be expended, and criteria for determining if a district has established adequate emergency mosquito abatement procedures.

(f) Nothing in this section shall be construed as an alternative for the abatement procedures authorized by Article 4 (commencing with Section 2270).

SEC. 178. Section 2805 of the Health and Safety Code is amended to read:

2805. (a) Except as otherwise provided in subdivision (b), every pest abatement district employee who handles, applies, or supervises the use of any pesticide for public health purposes, shall be certified by the state department as a vector control technician in at least one of the following categories commensurate with assigned duties:

(1) Mosquito control.

(2) Terrestrial invertebrate vector control.

(3) Vertebrate vector control.

(b) The state department may establish, by regulation, exemptions from the requirements of this section that are deemed reasonably necessary to further the purposes of this section.

(c) The state department shall establish by regulation minimum standards for continuing education for any government agency employee certified under Section 116110 and regulations adopted pursuant thereto, who handles, applies, or supervises the use of any pesticide for public health purposes.

(d) An official record of the completed continuing education units shall be maintained by the state department. If a certified technician fails to meet the requirements set forth under subdivision (c), the state department shall suspend the technician's certificate or certificates and immediately notify the technician and the employing district. The state department shall establish by regulation procedures for reinstating a suspended certificate.

(e) The state department shall charge and collect a nonreturnable renewal fee of twenty-five dollars ($25) to be paid by each continuing education certificant on or before the first day of July, or on any other date that is determined by the state department. Each person employed in a position on the effective date of this section that requires certification shall first pay the annual fee the first day of the first July following that date. All new certificants shall first pay the annual fee the first day of the first July following their certification.

(f) The state department shall collect and account for all money received pursuant to this section and shall deposit it in the Mosquitoborne Disease Surveillance Account provided for in Section 25852 of the Government Code. Notwithstanding Section 25852 of the

Government Code, fees deposited in the Mosquitoborne Disease Surveillance Account pursuant to this section shall be available for expenditure upon appropriation by the Legislature to implement this section.

(g) Fees collected pursuant to this section shall be subject to the annual fee increase provisions of Section 100425.

SEC. 179. Section 3381 of the Health and Safety Code, as amended by Chapter 291 of the Statutes of 1995, is amended and renumbered to read:

120335. (a) As used in Chapter 1 (commencing with Section 120325, but excluding Section 120380), and as used in Sections 120400, 120405, 120410, and 120415, the term "governing authority" means the governing board of each school district or the authority of each other private or public institution responsible for the operation and control of the institution or the principal or administrator of each school or institution.

(b) The governing authority shall not unconditionally admit any person as a pupil of any private or public elementary or secondary school, child care center, day nursery, nursery school, family day care home, or development center, unless prior to his or her first admission to that institution he or she has been fully immunized. The following are the diseases for which immunizations shall be documented:

(1) Diphtheria.

(2) Haemophilus influenzae type b, except for children who have reached the age of four years, six months.

(3) Measles.

(4) Mumps, except for children who have reached the age of seven years.

(5) Pertussis (whooping cough), except for children who have reached the age of seven years.

(6) Poliomyelitis.

(7) Rubella.

(8) Tetanus.

(9) Hepatitis B for all children entering the institutions listed in subdivision (b) at the kindergarten level or below on or after August 1, 1997.

(10) Any other disease deemed appropriate by the state department, taking into consideration the recommendations of the United States Public Health Services' Centers for Disease Control Immunization Practices Advisory Committee and the American Academy of Pediatrics Committee of Infectious Diseases.

(c) The state department may specify the immunizing agents which may be utilized and the manner in which immunizations are administered.

SEC. 180. The heading of Article 3 (commencing with Section 3396) of Chapter 7 of Division 4 of the Health and Safety Code is amended to read:

CHAPTER 2.5. DISCLOSURE OF IMMUNIZATION STATUS

SEC. 181. Section 3396 of the Health and Safety Code, as added by Chapter 314 of the Statutes of 1995, is amended and renumbered to read:

120440. (a) For the purposes of this chapter, "health care provider" means any person licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code.

(b) Local health officers may operate immunization information systems pursuant to their authority under Section 120175, in conjunction with the Immunization Branch of the State Department of Health Services.

(c) Notwithstanding any other provision of law, unless a refusal to permit recordsharing is made pursuant to subdivision (e), health care providers may disclose the information set forth in paragraphs (1) to (9), inclusive, from the patient's medical record to local health departments operating countywide immunization information and reminder systems and the State Department of Health Services. Local health departments and the State Department of Health Services may disclose the information set forth in paragraphs (1) to (9), inclusive, to other local health departments and health care providers taking care of the patient, upon request for information pertaining to a specific person. All of the following information shall be subject to this subdivision:

(1) The name of the patient and names of the patient's parents or guardians.

(2) Date of birth of the patient.

(3) Types and dates of immunizations received by the patient.

(4) Manufacturer and lot number for each immunization received.

(5) Adverse reaction to immunizations received.

(6) Other nonmedical information necessary to establish the patient's unique identity and record.

(7) Current address and telephone number of the patient and the patient's parents or guardians.

(8) Patient's gender.

(9) Patient's place of birth.

(d) Health care providers, local health departments, and the State Department of Health Services shall maintain the confidentiality of information listed in subdivision (c) in the same manner as other medical record information with patient identification that they possess, and shall use the information only for the following purposes:

(1) To provide immunization services to the patient, including issuing reminder notifications to patients or their parents or guardians when immunizations are due.

(2) To provide or facilitate provision of third-party payer payments for immunizations.

(3) To compile and disseminate statistical information of immunization status on groups of patients or populations in California, without patient identifying information for these patients included in these groups or populations.

(e) A patient or a patient's parent or guardian may refuse to permit recordsharing. The health care provider administering immunization shall inform the patient or the patient's parent or guardian of the following:

(1) The information listed in subdivision (c) may be shared with local health departments, and the State Department of Health Services. The health care provider shall provide the name and address of the department or departments with which the provider will share the information.

(2) Any of the information shared will be treated as confidential medical information and used only to help provide immunization services to the patient, or to issue reminder notifications to the patient or patient's parent or guardian if immunizations are due or overdue.

(3) The patient or patient's parent or guardian has the right to examine any immunization-related information shared in this manner and to correct any errors in it.

(4) The patient or the patient's parent or guardian may refuse to allow this information to be shared in the manner described, or to receive immunization reminder notifications at any time, or both.

(f) If the patient or patient's parent or guardian refuses to allow the information to be shared, pursuant to paragraph (4) of subdivision (e), the health care provider shall not share this information in the manner described in subdivision (c).

(g) Upon request of the patient or the patient's parent or guardian, in writing or by other means acceptable to the recipient, a local health department or the State Department of Health Services that has received information about a person pursuant to subdivision (c) shall do all of the following:

(1) Provide the name and address of other persons or agencies with whom the recipient has shared the information.

(2) Stop sharing the information in its possession after the date of the receipt of the request.

(h) Upon notification, in writing or by other means acceptable to the recipient, of an error in the information, a local health department or the State Department of Health Services that has information about a person pursuant to subdivision (c) shall correct the error. If the recipient is aware of a disagreement about whether an error exists, information to that effect may be included.

(i) Section 120330 shall not apply to this section.

SEC. 182. Section 4010.1 of the Health and Safety Code, as amended by Chapter 673 of the Statutes of 1995, is amended and renumbered to read:

116275. As used in this chapter:

(a) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

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

(c) "Primary drinking water standards" means:

(1) Maximum levels of contaminants that, in the judgment of the department, may have an adverse effect on the health of persons.

(2) Specific treatment techniques adopted by the department in lieu of maximum contaminant levels pursuant to subdivision (c) of Section 116365.

(3) The monitoring and reporting requirements as specified in regulations adopted by the department that pertain to maximum contaminant levels.

(d) "Secondary drinking water standards" means standards that specify maximum contaminant levels that, in the judgment of the department, are necessary to protect the public welfare. Secondary drinking water standards may apply to any contaminant in drinking water that may adversely affect the odor or appearance of the water and may cause a substantial number of persons served by the public water system to discontinue its use, or that may otherwise adversely affect the public welfare. Regulations establishing secondary drinking water standards may vary according to geographic and other circumstances and may apply to any contaminant in drinking water that adversely affects the taste, odor, or appearance of the water when the standards are necessary to assure a supply of pure, wholesome, and potable water.

(e) "Human consumption" means the use of water for drinking, bathing or showering, hand washing, food preparation, cooking, or oral hygiene.

(f) "Maximum contaminant level" means the maximum permissible level of a contaminant in water.

(g) "Person" means an individual, corporation, company, association, partnership, limited liability company, municipality, public utility, or other public body or institution.

(h) "Public water system" means a system for the provision of piped water to the public for human consumption that has 15 or more service connections or regularly serves at least 25 individuals daily at least 60 days out of the year. A public water system includes the following:

(1) Any collection, treatment, storage, and distribution facilities under control of the operator of the system that are used primarily in connection with the system.

(2) Any collection or pretreatment storage facilities not under the control of the operator that are used primarily in connection with the system.

(3) Any water system that treats water on behalf of one or more public water systems for the purpose of rendering it safe for human consumption.

(i) "Community water system" means a public water system that serves at least 15 service connections used by yearlong residents or regularly serves at least 25 yearlong residents.

(j) "Noncommunity water system" means a public water system that meets one of the following criteria:

(1) Serves drinking water to at least 25 nonresident individuals daily at least 60 days of the year, but not more than 24 yearlong residents.

(2) Serves 15 or more service connections and any number of nonresident individuals at least 60 days of the year, but no yearlong residents.

(k) "Local health officer" means a local health officer appointed pursuant to Section 101000 or a local comprehensive health agency designated by the board of supervisors pursuant to Section 101275 to carry out the drinking water program.

(*l*) "Significant rise in the bacterial count of water" means a rise in the bacterial count of water that the department determines, by regulation, represents an immediate danger to the health of water users.

(m) "State small water system" means a system for the provision of piped water to the public for human consumption that serves at least five, but not more than 14, service connections and does not regularly serve drinking water to more than an average of 25 individuals daily for more than 60 days out of the year.

(n) "User" means any person using water for domestic purposes. User does not include any person processing, selling, or serving water or operating a public water system.

(o) "Waterworks standards" means regulations adopted by the department that take cognizance of the latest available "Standards of Minimum Requirements for Safe Practice in the Production and Delivery of Water for Domestic Use" adopted by the California section of the American Water Works Association.

(p) "Local primacy agency" means any local health officer that has applied for and received primacy delegation from the department pursuant to Section 116330.

(q) "Service connection" means the point of connection between the customer's piping or ditch, and the public community water system's meter, service pipe, or ditch.

(r) "Resident" means a person who physically occupies, whether by ownership, rental, lease or other means, the same dwelling for at least 60 days of the year.

SEC. 183. Section 4010.35 of the Health and Safety Code, as added by Chapter 673 0f the Statutes of 1995, is amended and renumbered to read:

116282. Except as provided in this section, and except for the fee requirements of Section 116565, the department shall exempt from the water quality requirements of this chapter, any noncommunity water system serving a transient population that provides restrooms

for employees or the public provided that the water system demonstrates to the department that it meets all of the following criteria:

(a) The water system is in compliance with either of the following:

(1) No water is served by the water system for any public human consumption other than for handwashing.

(2) If water is served for public human consumption other than for handwashing, bottled water from a source approved by the department is provided for the consumption other than handwashing.

(b) The water for handwashing is bacteriologically safe. This shall be ensured by sampling the water for coliform bacteria at least once each calendar year. The samples shall be analyzed and the results reported to the department in accordance with Section 64423.1 of Title 22 of the California Code of Regulations.

(c) The noncommunity water system is not a business regulated as a food facility under Section 113785.

SEC. 184. Section 4017 of the Health and Safety Code, as amended by Chapter 673 of the Statutes of 1995, is amended and renumbered to read:

116555. Any person who operates a public water system shall do all of the following:

(a) Comply with primary and secondary drinking water standards.

(b) Ensure that the system will not be subject to backflow under normal operating conditions.

(c) Provide a reliable and adequate supply of pure, wholesome, healthful, and potable water.

(d) Employ or utilize only water treatment plant operators or operators-in-training that have been certified by the department at the appropriate grade.

SEC. 186. Section 4026.7 of the Health and Safety Code, as added by Chapter 660 of the Statutes of 1995, is amended and renumbered to read:

116410. (a) In order to promote the public health through the protection and maintenance of dental health, the department shall adopt regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code, requiring the fluoridation of public water systems. By July 1, 1996, each public water system with at least 10,000 services connections shall provide to the department an estimate of the total capital costs to install fluoridation treatment. The regulations adopted by the department shall take effect on January 1, 1997.

(b) The regulations shall include, but not be limited to, the following:

(1) Minimum and maximum permissible concentrations of fluoride to be maintained by fluoridation of public water systems.

(2) The requirements and procedures for maintaining proper concentrations of fluoride, including equipment, testing, recordkeeping, and reporting.

(3) Requirements for the addition of fluorides to public water systems in which the natural level of fluorides is less than the minimum level established in the regulations.

(4) A schedule for the fluoridation of public water systems with at least 10,000 service connections, based on the lowest capital cost per connection for each system.

SEC. 187. Section 4026.8 of the Health and Safety Code, as added by Chapter 660 of the Statutes of 1995, is amended and renumbered to read:

116415. (a) (1) A public water system is not required to comply with Section 116410, or the regulations adopted thereunder by the department, in either of the following situations:

(A) If the public water system is scheduled to implement a fluoridation program pursuant to paragraph (4) of subdivision (b) of Section 116410 and funds are not available to the public water system sufficient to pay the capital and associated costs from any source other than the system's ratepayers, shareholders, local taxpayers, bondholders, or any fees or charges levied by the water system.

(B) If the public water system has obtained the capital and associated funds necessary for fluoridation as set forth in subparagraph (A), however, in any given fiscal year (July 1–June 30) funding is not available to the public water system sufficient to pay the noncapital operation and maintenance costs described in subdivision (g) from any source other than the system's ratepayers, shareholders, local taxpayers, bondholders, or any fees or charges levied by the water system.

(2) Each year the department shall prepare and distribute a list of those water systems that do not qualify for exemption under this section from the fluoridation requirements of Section 116410. This list shall include water systems that have received, or are expected to receive, sufficient funding for capital and associated costs so as to not qualify for exemption under subparagraph (A) of paragraph (1), and have received, or anticipate receiving, sufficient noncapital maintenance and operation funding pursuant to subdivision (g), so that they do not qualify for exemption under subparagraph (B) of paragraph (1).

(3) Any water system that has acquired the funds necessary for fluoridation as set forth in subparagraph (A) of paragraph (1), and is not included in the list pursuant to paragraph (2), may elect to exercise the option not to fluoridate during the following fiscal year pursuant to subparagraph (B) of paragraph (1) by so notifying the department by certified mail on or before June 1.

(4) The permit issued by the department for a public water system that is scheduled to implement fluoridation pursuant to paragraph (4) of subdivision (b) of Section 116410 shall specify

whether it is required to fluoridate pursuant to Section 116410, or whether it has been granted an exemption pursuant to either subparagraph (A) or subparagraph (B) of paragraph (1).

(b) The department shall enforce Section 116410 and this section, and all regulations adopted pursuant to these sections, unless delegated pursuant to a local primary agreement.

(c) If the owner or operator of any public water system subject to Section 116410 fails, or refuses, to comply with any regulations adopted pursuant to Section 116410, or any order of the department implementing these regulations, the Attorney General shall, upon the request of the department, institute mandamus proceedings, or other appropriate proceedings, in order to compel compliance with the order, rule, or regulation. This remedy shall be in addition to all other authorized remedies or sanctions.

(d) Neither this section nor Section 116410 shall supersede subdivision (b) of Section 116410.

(e) The department shall seek all sources of funding for enforcement of the standards and capital cost requirements established pursuant to this section and Section 116410, including, but not limited to, all of the following:

(1) Federal block grants.

(2) Donations from private foundations.

Expenditures from governmental sources shall be subject to specific appropriation by the Legislature for these purposes.

(f) A public water system with less than 10,000 service connections may elect to comply with the standards, compliance requirements, and regulations for fluoridation established pursuant to this section and Section 116410.

(g) Costs, other than capital costs, incurred in complying with this section and Section 116410, including regulations adopted pursuant to those sections, may be paid from federal grants, or donations from private foundations, for these purposes. Each public water system that will incur costs, other than capitalization costs, as a result of compliance with this section and Section 116410, shall provide an estimate to the department of the anticipated total annual operations and maintenance costs related to fluoridation treatment by January 1 of each year.

(h) A public water system subject to the jurisdiction of the Public Utilities Commission shall be entitled to recover from its customers all of its capital and associated costs, and all of its operation and maintenance expenses associated with compliance with this section and Section 116410. The Public Utilities Commission shall approve rate increases for an owner or operator of a public water system that is subject to its jurisdiction within 45 days of the filing of an application or an advice letter, in accordance with the commission's requirements, showing in reasonable detail the amount of additional revenue required to recover the foregoing capital and associated costs, and operation and maintenance expenses.

SEC. 188. Section 4049.54 of the Health and Safety Code, as amended by Chapter 28 of the Statutes of 1995, is amended and renumbered to read:

116815. (a) All pipes installed above or below the ground, on and after June 1, 1993, that are designed to carry recycled water, shall be colored purple or distinctively wrapped with purple tape.

(b) Subdivision (a) shall apply only in areas served by a water supplier delivering water for municipal and industrial purposes, and in no event shall apply to any of the following:

(1) Municipal or industrial facilities that have established a labeling or marking system for recycled water on their premises, as otherwise required by a local agency, that clearly distinguishes recycled water from potable water.

(2) Water delivered for agricultural use.

(c) For purposes of this section, "recycled water" has the same meaning as defined in subdivision (n) of Section 13050 of the Water Code.

SEC. 189. Section 6542 of the Health and Safety Code is amended to read:

6542. In the application of those acts to proceedings under this article the terms used in those acts shall have the following meanings:

(a) "City council" and "council" mean board.

(b) "City" and "municipality" mean district.

(c) "Clerk" and "city clerk" mean secretary.

(d) "Superintendent of streets," "street superintendent," and "city engineer" mean the engineer of the district, or any other person appointed to perform the duties.

(e) "Tax collector" means county tax collector.

(f) "Treasurer" and "city treasurer" mean any person or official who has charge of and makes payment of the funds of the district.

(g) "Right-of-way" means any parcel of land in, on, under or through which a right-of-way or easement has been granted to the district for the purpose of constructing and maintaining any of the works or improvements mentioned in Section 6540.

(h) "Health officer" means the health officer appointed by the legislative body having jurisdiction over all or any portion of the territory to be served by any of the works mentioned in Section 6540, except that as to cities that have consented to or contracted for health administration by the county health officer pursuant to Article 2 (commencing with Section 101375) of, or Article 3 (commencing with Section 101400) of, Chapter 4 of Part 3 of Division 101, it shall mean the county health officer.

SEC. 190. Section 7025 of the Health and Safety Code is amended to read:

7025. "Disposition" means the interment of human remains within California, or the shipment outside of California, for lawful interment or scattering elsewhere, including release of remains pursuant to Section 103060.

SEC. 191. Section 7054 of the Health and Safety Code is amended to read:

7054. (a) Except as authorized pursuant to the sections referred to in subdivision (b), every person who deposits or disposes of any human remains in any place, except in a cemetery, is guilty of a misdemeanor.

(b) Cremated remains may be disposed of pursuant to Sections 7117 and 103060 or Sections 7054.6 and 103060.

(c) Subdivision (a) of this section shall not apply to the reburial of Native American remains under an agreement developed pursuant to subdivision (*l*) of Section 5097.94 of the Public Resources Code, or implementation of a recommendation or agreement made pursuant to Section 5097.98 of the Public Resources Code.

SEC. 192. Section 7054.6 of the Health and Safety Code is amended to read:

7054.6. Cremated remains may be removed in a durable container from the place of cremation or interment and kept in the dwelling owned or occupied by the person having the right to control disposition of the remains under Section 7100, or the durable container holding the cremated remains may be kept in a church or religious shrine, if written permission of the church or religious shrine is obtained and there is no conflict with local use permit requirements or zoning laws, if the removal is under the authority of a permit for disposition granted under Section 103060. The placement, in any place, of six or more cremated remains under this section does not constitute the place a cemetery, as defined in Section 8100.

SEC. 193. Section 7117 of the Health and Safety Code is amended to read:

7117. Cremated remains may be taken by boat from any harbor in this state, or by air, for burial at sea. Cremated remains shall be removed from their container before the remains are buried at sea.

Any person who buries at sea, either from a boat or from the air, any human cremated remains shall file with the local registrar of births and deaths in the county nearest the point where the remains were buried, a verified statement containing the name of the deceased person, the time and place of death, the place at which the cremated remains were buried, and any other information that the local registrar of births and deaths may require. The first copy of the endorsed permit shall be filed with the local registrar of births and deaths within 10 days of disposition. The third copy shall be returned to the office of issuance.

Notwithstanding any other provision of this code, the cremated remains of a deceased person may be buried at sea as provided in this section and Section 103060.

SEC. 194. Section 8961.5 of the Health and Safety Code is amended to read:

8961.5. (a) Notwithstanding Sections 8961 and 8961.1, the trustees may permit any cemetery maintained by the district to be used for the burial within the ground of any deceased nonresident of the district if the decedent died while serving on active duty in the armed forces or active militia or while in the line of duty as a peace officer or firefighter, and if all of the following conditions are met:

(1) The trustees determine that the cemetery has adequate space for the foreseeable future.

(2) The district has established an endowment care fund that requires at least the minimum deposit set forth in Section 8738.

(3) The district requires the payment of a nonresident fee established pursuant to Section 8894.

(b) As used in this section, the following definitions shall control:

(1) "Armed forces" has the meaning set forth in Section 18540 of the Government Code.

(2) "Active militia" has the meaning set forth in Section 120 of the Military and Veterans Code.

(3) "Peace officer" has the meaning set forth in Section 830 of the Penal Code.

(4) "Firefighter" has the meaning set forth in Section 1797.182.

SEC. 195. Section 10605 of the Health and Safety Code, as amended by Chapter 880 of the Statutes of 1995, is amended and renumbered to read:

103625. (a) A fee of three dollars ($3) shall be paid by the applicant for a certified copy of a fetal death or death record.

(b) (1) A fee of three dollars ($3) shall be paid by a public agency or licensed private adoption agency applicant for a certified copy of a birth certificate that the agency is required to obtain in the ordinary course of business. A fee of seven dollars ($7) shall be paid by any other applicant for a certified copy of a birth certificate. Four dollars ($4) of any seven dollar ($7) fee is exempt from subdivision (e) and shall be paid either to a county children's trust fund or to the State Children's Trust Fund, in conformity with Article 5 (commencing with Section 18965) of Chapter 11 of Part 6 of Division 9 of the Welfare and Institutions Code.

(2) The board of supervisors of any county that has established a county children's trust fund may increase the fee for a certified copy of a birth certificate by up to three dollars ($3) for deposit in the county children's trust fund in conformity with Article 5 (commencing with Section 18965) of Chapter 11 of Part 6 of Division 9 of the Welfare and Institutions Code.

(3) (A) As a pilot project, Contra Costa, Los Angeles, Orange, Sacramento, San Diego, Santa Clara, and Tulare Counties may increase the fee for a certified copy of a birth certificate by up to three dollars ($3), through December 31, 1996, for the purpose of providing dependency mediation services in the juvenile court. Public agencies shall be exempt from paying this portion of the fee. However, if a county increases this fee, neither the revenue generated from the fee

increase nor the increased expenditures made for these services shall be considered in determining the court's progress towards achieving its cost reduction goals pursuant to Section 68113 of the Government Code if the net effect of the revenue and expenditures is a cost increase. In each county participating in the pilot project up to 5 percent of the revenue generated from the fee increase may be apportioned to the county recorder for the additional accounting costs of the program.

(B) On or before December 31, 1995, each participating county shall submit an independent study of the project to the Legislature. The study shall consider the effectiveness of mediation, the cost-avoidance realized, what model of juvenile court mediation should be promoted statewide, and at what point mediation is most effective.

(C) The presiding judge of the superior court of each participating county shall designate a person who will facilitate access to case files and any other data necessary for the independent study.

(D) Variables to be evaluated and measured to indicate the success of the pilot projects shall include, but not be limited to:

(i) At least 75 percent of all participants should be satisfied or very satisfied with the dependency mediation process.

(ii) The range of creative solutions for resolution of the families' problems within the development of the court ordered plan shall increase by 10 percent.

(iii) At least 70 percent of matters coming before the court should be settled in less time using dependency mediation than if adjudicated.

(iv) Dependency mediation shall result in a 25 percent reduction in foster care placements.

(c) A fee of three dollars ($3) shall be paid by a public agency applicant for a certified copy of a marriage record, that has been filed with the county recorder or county clerk, that the agency is required to obtain in the ordinary course of business. A fee of six dollars ($6) shall be paid by any other applicant for a certified copy of a marriage record that has been filed with the county recorder or county clerk. Three dollars ($3) of any six-dollar ($6) fee is exempt from subdivision (e) and shall be transmitted monthly by each local registrar, county recorder, and county clerk to the state for deposit into the General Fund as provided by Section 1852 of the Family Code.

(d) A fee of three dollars ($3) shall be paid by a public agency applicant for a certified copy of a marriage dissolution record obtained from the State Registrar that the agency is required to obtain in the ordinary course of business. A fee of six dollars ($6) shall be paid by any other applicant for a certified copy of a marriage dissolution record obtained from the State Registrar.

(e) Each local registrar, county recorder, or county clerk collecting a fee pursuant to this section shall transmit 15 percent of the fee for each certified copy to the State Registrar by the 10th day of the month following the month in which the fee was received.

(f) The additional three dollars ($3) authorized to be charged to applicants other than public agency applicants for certified copies of marriage records by subdivision (c) may be increased pursuant to Section 100430.

SEC. 196. Section 11026 of the Health and Safety Code is amended to read:

11026. "Practitioner" means any of the following:

(a) A physician, dentist, veterinarian, podiatrist, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107.

(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(c) A scientific investigator, or other person licensed, registered, or otherwise permitted, to distribute, dispense, conduct research with respect to, or administer, a controlled substance in the course of professional practice or research in this state.

SEC. 197. Section 11122 of the Health and Safety Code is amended to read:

11122. (a) A controlled substance shall be stored only in a warehouse that is licensed by the Board of Pharmacy.

(b) This section shall not apply to any of the following:

(1) Any pharmacy or other person who is licensed or authorized by this state to sell or furnish the controlled substance upon the written prescription of a practitioner, as defined in subdivision (a) of Section 11026.

(2) Any practitioner, as defined in subdivision (a) of Section 11026, who possesses a controlled substance for administration to his or her patients.

(3) Any licensed laboratory in this state that is authorized to receive and use the controlled substance.

(4) Any licensed hospital in this state.

(5) Any person who obtains the controlled substance upon the prescription of a practitioner, as defined in subdivision (a) of Section 11026, for his or her personal use.

(6) Any agent or employee of any licensed manufacturer or wholesaler who possesses the controlled substance for display purposes or furnishes controlled substances as a sample at no cost to

a licensed pharmacist or practitioner, as defined in subdivision (a) of Section 11026.

(7) A manufacturer licensed pursuant to Section 111615 of this code or Section 4084 or 4084.6 of the Business and Professions Code.

(8) A wholesaler licensed pursuant to Section 4084 or 4084.6 of the Business and Professions Code.

(9) Any emergency medical technician-II, emergency medical technician-paramedic, or mobile intensive care nurse, certified or authorized pursuant to Division 2.5 (commencing with Section 1797) to provide prehospital limited advanced life support or advanced life support as part of a local emergency medical services system, who, in a secure manner and according to policies and procedures established by the local emergency medical services agency as part of the local emergency medical services plan, transports, stores, or administers controlled substances acting within his or her scope of practice.

(10) Any emergency medical response or transport unit that has been approved by the local emergency medical services agency and is operating as part of the local emergency medical services system according to policies and procedures established by the local medical services agency for the emergency medical treatment and transport of patients, upon which, controlled substances authorized by the scope of practice of the prehospital personnel approved to staff the unit are stored or transported in a secure manner according to policies and procedures established by the local emergency medical services agency.

SEC. 198. Section 11150 of the Health and Safety Code is amended to read:

11150. No person other than a physician, dentist, podiatrist, or veterinarian, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or out-of-state prescriber pursuant to Section 4008 of the Business and Professions Code shall write or issue a prescription.

SEC. 199. Section 11210 of the Health and Safety Code is amended to read:

11210. A physician, surgeon, dentist, veterinarian, or podiatrist, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division

107 may prescribe for, furnish to, or administer controlled substances to his or her patient when the patient is suffering from a disease, ailment, injury, or infirmities attendant upon old age, other than addiction to a controlled substance.

The physician, surgeon, dentist, veterinarian, or podiatrist, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 shall prescribe, furnish, or administer controlled substances only when in good faith he or she believes the disease, ailment, injury, or infirmity requires the treatment.

The physician, surgeon, dentist, veterinarian, or podiatrist, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 shall prescribe, furnish, or administer controlled substances only in the quantity and for the length of time as are reasonably necessary.

SEC. 200. Section 11250 of the Health and Safety Code is amended to read:

11250. No prescription is required in case of the sale of controlled substances at retail in pharmacies by pharmacists to any of the following:

(a) Physicians.

(b) Dentists.

(c) Podiatrists.

(d) Veterinarians.

(e) Pharmacists acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or registered nurses acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or physician assistants acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107.

In any sale mentioned in this article, there shall be executed any written order that may otherwise be required by federal law relating to the production, importation, exportation, manufacture, compounding, distributing, dispensing, or control of controlled substances.

SEC. 201. Section 11251 of the Health and Safety Code is amended to read:

11251. No prescription is required in case of sales at wholesale by pharmacies, jobbers, wholesalers and manufacturers to any of the following:

(a) Pharmacies as defined in the Business and Professions Code.

(b) Physicians.

(c) Dentists.

(d) Podiatrists.

(e) Veterinarians.

(f) Other jobbers, wholesalers or manufacturers.

(g) Pharmacists acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or registered nurses acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or physician assistants acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107.

SEC. 202. Section 11758.54 of the Health and Safety Code is amended to read:

11758.54. (a) The department, in cooperation with San Luis Obispo County, shall evaluate the pilot project created pursuant to this chapter. The evaluation shall include numbers of intravenous (IV) drug users in target counties, status of HIV test results among alcoholics and IV drug users not in recovery, drug and alcohol-related jail intakes, and repeat offenses. Changes in the above data following completion of the in-home detoxification project shall be carefully scrutinized. Particular attention shall be paid to changes in incidence of HIV test results among individuals requesting testing from the San Luis Obispo County health department and repeat alcohol- and drug-related offenses as tracked by the county jail, municipal court, and Department of Motor Vehicles.

(b) Additional monitoring and outcome data shall be collected regarding clients of the in-home detoxification pilot project, that shall include each of the following:

(1) Clients' health status at time of intake screening.

(2) Clients' health status during detoxification.

(3) Clients' health status after detoxification.

(4) Status and results of HIV testing for those choosing the test.

(5) Numbers of detoxification referrals completed.

(6) Numbers of successful referrals to followup.

(7) Rate of subsequent rearrest.

(c) The degree of successful completion of program objectives shall also be analyzed and discussed. Analysis shall be based on results of monitoring instruments designed for the in-home detoxification project that shall include all of the following:

(1) Numbers of referrals to the in-home detoxification project initiated.

(2) Numbers of clients (both detoxification clients and family members) who successfully meet educational criteria related to AIDS education.

(3) Numbers of detoxification referrals completed.

(4) Numbers of successful referrals to followup treatment.

(5) Rate of subsequent rearrest.

(d) The department shall submit an evaluation of the pilot project to the Governor and the Legislature not later than July 1, 1992.

(e) Blood testing and test result disclosure shall be in accordance with Chapter 7 (commencing with Section 120975) and Chapter 10 (commencing with Section 121075) of Part 4 of Division 105.

SEC. 203. Section 15097.105 of the Health and Safety Code, as amended by Chapter 543 of the Statutes of 1995, is amended and renumbered to read:

130025. (a) In the event of a seismic event, or other natural or manmade calamity that the office believes is of a magnitude so that it may have compromised the structural integrity of a hospital building, or any major system of a hospital building, the office shall send one or more authorized representatives to examine the structure or system. "System" for these purposes shall include, but not be limited to, the electrical, mechanical, plumbing, and fire and life safety system of the hospital building. If, in the opinion of the office, the structural integrity of the hospital building or any system has been compromised and damaged to a degree that the hospital building has been made unsafe to occupy, the office may cause to be placed on the hospital building either a red tag, a yellow tag, or a green tag.

(b) A "red" tag shall mean the hospital building is unsafe and shall be evacuated immediately. Access to red-tagged buildings shall be restricted to persons authorized by the office to enter.

(c) A "yellow" tag shall mean that the hospital building has been authorized for limited occupancy, and the authorized representative of the office shall write directly on the yellow tag that portion of the hospital building that may be entered with or without restriction and those portions that may not.

(d) A "green" tag shall mean the hospital building and all of its systems have been inspected by an authorized agent of the office, and have been found to be safe for use and occupancy.

(e) Any law enforcement or other public safety agency of this state shall grant access to hospital buildings by authorized representatives of the office upon the showing of appropriate credentials.

(f) For purposes of this section, "hospital building" includes the buildings referred to in paragraphs (2) and (3) of subdivision (b) of Section 129725.

SEC. 204. Section 17961 of the Health and Safety Code is amended to read:

17961. The housing department or, if there is no housing department, the health department, of every city, county or city and county, or any environmental agency authorized pursuant to Section 101275, shall enforce within its jurisdiction all of this part, the building standards published in the State Building Standards Code, and the other rules and regulations adopted pursuant to this part pertaining to the maintenance, sanitation, ventilation, use, or occupancy of apartment houses, hotels, or dwellings. The health department or the environmental agency may, in conjunction with a local housing department, enforce within its jurisdictions all of this part, the building standards published in the State Building Standards Code, and the other rules and regulations adopted pursuant to this part pertaining to the maintenance, sanitation, ventilation, use, or occupancy of apartment houses, hotels or dwellings, provided the agencies shall not duplicate enforcement activities.

SEC. 205. Section 24174 of the Health and Safety Code is amended to read:

24174. As used in this chapter, "medical experiment" means:

(a) The severance or penetration or damaging of tissues of a human subject or the use of a drug or device, as defined in Section 109920 or 109925, electromagnetic radiation, heat or cold, or a biological substance or organism, in or upon a human subject in the practice or research of medicine in a manner not reasonably related to maintaining or improving the health of the subject or otherwise directly benefiting the subject.

(b) The investigational use of a drug or device as provided in Sections 111590 and 111595.

(c) Withholding medical treatment from a human subject for any purpose other than maintenance or improvement of the health of the subject.

SEC. 206. Section 24177 of the Health and Safety Code is amended to read:

24177. This chapter shall not supersede, but shall be in addition to, Article 4 (commencing with Section 111515) of Chapter 6 of Part 5 of Division 104 of this code and Title 2.1 (commencing with Section 3500) of Part 3 of the Penal Code.

SEC. 207. Section 24425 of the Health and Safety Code, as amended by Chapter 176 of the Statutes of 1995, is amended and renumbered to read:

108625. A manufacturer, distributor, or seller of plastic or metal four-gallon to six-gallon, inclusive, straight sided, slightly tapered, open head, industrial containers, as defined by the American Society for Testing and Materials (ASTM), intended for use, sale, distribution, or any other purpose within the state, irrespective of point of origin, shall ensure that each industrial container bears a warning label or labels, that shall be applied prior to release for

shipment into the stream of commerce, and shall meet all of the following requirements:

(a) The label or labels shall be a permanent paper, plastic, silk screened, or an offset printed label and shall be easily removable only by the use of tools or a solvent.

(b) The label or labels shall be either of the following:

(1) One label of at least six inches in height, by at least two inches in width, and containing a minimum total area of at least 17 square inches. The label shall be placed on the side of the container near where the handle is inserted. The top half of the label shall be in English and the bottom half of the label shall be in Spanish; or

(2) Two labels of at least five inches in height, by two and three-quarters inches in width or any larger size as the labeler may voluntarily choose, and one label shall be placed on each side of the container near where the handle is inserted. The label on one side shall be in Spanish, and the label on the other side shall be in English.

(c) The label shall contain on a contrasting background both the word "WARNING" in block print and the words "Children Can Fall Into Bucket and Drown—Keep Children Away From Buckets With Even a Small Amount of Water."

(d) The label shall contain a picture of a child reaching into an industrial container and shall include an encircled slash and a triangle with an exclamation point upon a contrasting field before the word "WARNING".

SEC. 208. Section 25020.5 of the Health and Safety Code, as amended by Chapter 877 of the Statutes of 1995, is amended and renumbered to read:

117635. "Biohazardous waste" means any of the following:

(a) Laboratory waste, including, but not limited to, all of the following:

(1) Human or animal specimen cultures from medical and pathology laboratories.

(2) Cultures and stocks of infectious agents from research and industrial laboratories.

(3) Wastes from the production of bacteria, viruses, spores, discarded live and attenuated vaccines used in human health care or research, discarded animal vaccines, including Brucellosis and Contagious Ecthyma, as identified by the department, and culture dishes and devices used to transfer, inoculate, and mix cultures.

(b) Human surgery specimens or tissues removed at surgery or autopsy, that are suspected by the attending physician and surgeon or dentist of being contaminated with infectious agents known to be contagious to humans.

(c) Animal parts, tissues, fluids, or carcasses suspected by the attending veterinarian of being contaminated with infectious agents known to be contagious to humans.

(d) Waste, that at the point of transport from the generator's site, at the point of disposal, or thereafter, contains recognizable fluid

blood, fluid blood products, containers or equipment containing blood that is fluid, or blood from animals known to be infected with diseases that are highly communicable to humans.

(e) Waste containing discarded materials contaminated with excretion, exudate, or secretions from humans or animals that are required to be isolated by the infection control staff, the attending physician and surgeon, the attending veterinarian, or the local health officer, to protect others from highly communicable diseases or diseases of animals that are highly communicable to humans.

(f) (1) Waste that is hazardous only because it is comprised of human surgery specimens or tissues that have been fixed in formaldehyde or other fixatives, or only because the waste is contaminated through contact with, or having previously contained, chemotherapeutic agents, including, but not limited to, gloves, disposable gowns, towels, and intravenous solution bags and attached tubing that are empty. A biohazardous waste which meets the conditions of this paragraph is not subject to Chapter 6.5 (commencing with Section 25100).

(2) For purposes of this subdivision, "chemotherapeutic agent" means an agent that kills or prevents the reproduction of malignant cells.

(3) For purposes of this subdivision, a container, or inner liner removed from a container, that previously contained a chemotherapeutic agent, is empty if the container or inner liner removed from the container has been emptied by the generator as much as possible, using methods commonly employed to remove waste or material from containers or liners, so that the following conditions are met:

(A) If the material that the container or inner liner held is pourable, no material can be poured or drained from the container or inner liner when held in any orientation, including, but not limited to, when tilted or inverted.

(B) If the material that the container or inner liner held is not pourable, no material or waste remains in the container or inner liner that can feasibly be removed by scraping.

SEC. 209. Section 25021.9 of the Health and Safety Code, as amended by Chapter 877 of the Statutes of 1995, is amended and renumbered to read:

117662. "Health care professional" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code; any person licensed pursuant to the Osteopathic Initiative Act, as set forth in Chapter 8 (commencing with Section 3600) of Division 2 of the Business and Professions Code, or pursuant to the Chiropractic Initiative Act, as set forth in Chapter 2 (commencing with Section 1000) of Division 2 of the Business and Professions Code; and any person certified pursuant to Division 2.5 (commencing with Section 1797).

SEC. 210. Section 25022.8 of the Health and Safety Code, as amended by Chapter 877 of the Statutes of 1995, is amended and renumbered to read:

117680. "Large quantity generator" means a medical waste generator that generates 200 or more pounds of medical waste in any month of a 12-month period.

SEC. 211. Section 25023.2 of the Health and Safety Code, as amended by Chapter 877 of the Statutes of 1995, is amended and renumbered to read:

117690. (a) "Medical waste" means waste that meets both of the following requirements:

(1) The waste is composed of waste that is generated or produced as a result of any of the following actions:

(A) Diagnosis, treatment, or immunization of human beings or animals.

(B) Research pertaining to the activities specified in subparagraph (A).

(C) The production or testing of biologicals.

(D) The accumulation of properly contained home-generated sharps waste that is brought by a patient, a member of his or her family, or by a person authorized by the enforcement agency, to a point of consolidation approved by the enforcement agency pursuant to Section 117904 or authorized pursuant to Section 118147.

(2) The waste is any of the following:

(A) Biohazardous waste.

(B) Sharps waste.

(b) For purposes of this section, "biologicals" means medicinal preparations made from living organisms and their products, including, but not limited to, serums, vaccines, antigens, and antitoxins.

SEC. 212. Section 25023.8 of the Health and Safety Code, as amended by Chapter 877 of the Statutes of 1995, is amended and renumbered to read:

117700. Medical waste does not include any of the following:

(a) Waste generated in food processing or biotechnology that does not contain an infectious agent as defined in Section 117675.

(b) Waste generated in biotechnology that does not contain human blood or blood products or animal blood or blood products suspected of being contaminated with infectious agents known to be communicable to humans.

(c) Urine, feces, saliva, sputum, nasal secretions, sweat, tears, and vomitus, unless they contain fluid blood, except as defined in subdivision (e) of Section 117635.

(d) Waste that is not biohazardous, including, but not limited to, paper towels, paper products, articles containing nonfluid blood, and other medical solid waste products commonly found in the facilities of medical waste generators.

(e) Hazardous waste, radioactive waste, or household waste.

(f) Waste generated from normal and legal veterinarian, agricultural, and animal livestock management practices on a farm or ranch.

SEC. 213. Section 25024 of the Health and Safety Code, as amended by Chapter 877 of the Statutes of 1995, is amended and renumbered to read:

117705. "Medical waste generator" means any person, whose act or process produces medical waste and includes, but is not limited to, a provider of health care as defined in subdivision (d) of Section 56.05 of the Civil Code. All of the following are examples of businesses that generate medical waste:

(a) Medical and dental offices, clinics, hospitals, surgery centers, laboratories, research laboratories, unlicensed health facilities, those facilities required to be licensed pursuant to Division 2 (commencing with Section 1200), chronic dialysis clinics, as regulated pursuant to Division 2 (commencing with Section 1200), and education and research facilities.

(b) Veterinary offices, veterinary clinics, and veterinary hospitals.

(c) Pet shops.

SEC. 214. Section 25025.9 of the Health and Safety Code, as amended by Chapter 877 of the Statutes of 1995, is amended and renumbered to read:

117742. "Parent organization" means an organization that employs or contracts with health care professionals who provide health care services at a location other than at a health care facility specified in subdivision (a) of Section 117705.

SEC. 215. Section 25027 of the Health and Safety Code, as amended by Chapter 877 of the Statutes of 1995, is amended and renumbered to read:

117765. "Storage" means the holding of medical wastes, in accordance with Chapter 9 (commencing with Section 118275), at a designated accumulation area, offsite point of consolidation, transfer station, other registered facility, or in a vehicle detached from its means of locomotion.

SEC. 216. Section 25027.5 of the Health and Safety Code, as amended by Chapter 877 of the Statutes of 1995, is amended and renumbered to read:

117775. "Transfer station" means any offsite location where medical waste is loaded, unloaded, stored, or consolidated by a registered hazardous waste hauler, or a holder of a limited quantity hauling exemption granted pursuant to Section 118030, during the normal course of transportation of the medical waste. "Transfer station" does not include any onsite facility, including, but not limited to, common storage facilities, facilities of medical waste generators employed for the purpose of consolidation, or onsite treatment facilities.

SEC. 217. Section 25030.5 of the Health and Safety Code, as amended by Chapter 877 of the Statutes of 1995, is amended and renumbered to read:

117904. (a) In addition to the consolidation points authorized pursuant to Section 118147, the enforcement agency may approve a location as a point of consolidation for the collection of home-generated sharps waste, which, after collection, shall be transported and treated as medical waste.

(b) A consolidation location approved pursuant to this section shall be known as a "home-generated sharps consolidation point."

(c) A home-generated sharps consolidation point is not subject to the requirements of Chapter 9 (commencing with Section 118275), to the permit or registration requirements of this division, or to any permit or registration fees, with regard to the activity of consolidating home-generated sharps waste pursuant to this section.

(d) A home-generated sharps consolidation point shall comply with all of the following requirements:

(1) All sharps waste shall be placed in sharps containers.

(2) Sharps containers ready for disposal shall not be held for more than seven days without the written approval of the enforcement agency.

(e) An operator of a home-generated sharps consolidation point approved pursuant to this section shall not be considered the generator of that waste.

(f) The medical waste treatment facility that treats the sharps waste subject to this section shall maintain the tracking documents required by Sections 118040 and 118165 with regard to that sharps waste.

SEC. 218. Section 25041 of the Health and Safety Code, as amended by Chapter 877 of the Statutes of 1995, is amended and renumbered to read:

117930. Small quantity generators that treat waste onsite, pursuant to subdivision (a) of Section 117925, shall register with the enforcement agency prior to the commencement of treatment.

SEC. 219. Section 25055 of the Health and Safety Code, as amended by Chapter 877 of the Statutes of 1995, is amended and renumbered to read:

117975. A medical waste generator required to register pursuant to this chapter shall maintain individual treatment, and tracking records, if medical waste is removed from the generator's site for treatment, for three years or for the period specified in the regulations.

SEC. 220. Section 25061 of the Health and Safety Code, as amended by Chapter 877 of the Statutes of 1995, is amended and renumbered to read:

118030. (a) A medical waste generator or parent organization that employs health care professionals who generate medical waste may apply to the enforcement agency for a limited-quantity hauling

exemption, if the generator or health care professional meets all of the following requirements:

(1) The generator or health care professional generates less than 20 pounds of medical waste per week, transports less than 20 pounds of medical waste at any one time, and the generator or parent organization has on file one of the following:

(A) If the generator or parent organization is a small quantity generator required to register pursuant to Chapter 4 (commencing with Section 117915), a medical waste management plan prepared pursuant to Section 117935.

(B) If the generator or parent organization is a small quantity generator not required to register pursuant to Chapter 4 (commencing with Section 117915), the information document maintained pursuant to subdivision (a) of Section 117945.

(C) If the parent organization is a large quantity generator, a medical waste management plan prepared pursuant to Section 117960.

(2) The generator or health care professional who generated medical waste transports the medical waste himself or herself, or directs a member of his or her staff to transport the waste, to a permitted medical waste treatment facility, a transfer station, a parent organization, or another health care facility for the purpose of consolidation before treatment and disposal.

(3) Except as provided in paragraph (4), the generator maintains a tracking document, as specified in Section 118040.

(4) (A) Notwithstanding paragraph (3), if a health care professional who generates medical waste returns the medical waste to the parent organization, a single-page form or multiple entry log may be substituted for the tracking document, if the form or log contains all of the following information:

(i) The name of the person transporting the medical waste.

(ii) The number of containers and type of medical waste. This subparagraph does not require any generator to maintain a separate medical waste container for every patient or to maintain records as to the specified source of the medical waste in any container.

(iii) The date that the medical waste was returned.

(B) This paragraph does not prohibit the use of a single document to verify the return of more than one container over a period of time, if the form or log is maintained in the files of the parent organization once the page is completed.

(b) The limited-quantity hauling exemption authorized by this section is valid for a period of one year.

(c) An application for an initial or a renewal of a limited-quantity hauling exemption shall be accompanied by a fee of twenty-five dollars ($25). The application shall identify each person who will transport medical waste for the transporter. If the generator or parent organization identifies more than four persons who will be transporting medical waste, the generator or parent organization

shall pay an additional fee of five dollars ($5) for each person, up to a maximum additional fee of twenty-five dollars ($25).

SEC. 221. Section 25062.5 of the Health and Safety Code, as amended by Chapter 877 of the Statutes of 1995, is amended and renumbered to read:

118035. For the purpose of transferring medical waste prior to reaching a permitted medical waste treatment facility, medical waste shall not be unloaded, reloaded, or transferred to another vehicle at any location, except at a permitted medical waste transfer station or in the case of a vehicle breakdown or other emergency.

SEC. 222. Section 25063 of the Health and Safety Code, as amended by Chapter 877 of the Statutes of 1995, is amended and renumbered to read:

118040. (a) Except with regard to sharps waste consolidated by a home-generated sharps consolidation point approved pursuant to Section 117904, a hazardous waste transporter or generator transporting medical waste shall maintain a completed tracking document of all medical waste removed for treatment or disposal. A hazardous waste transporter or generator who transports medical waste to a facility, other than the final medical waste treatment facility, shall also maintain tracking documents that show the name, address, and telephone number of the medical waste generator, for purposes of tracking the generator of medical waste when the waste is transported to the final medical waste treatment facility. At the time the medical waste is received by a hazardous waste transporter, the transporter shall provide the medical waste generator with a copy of the tracking document for the generator's medical waste records. The transporter or generator transporting medical waste shall maintain its copy of the tracking document for three years.

(b) The tracking document shall include, but not be limited to, all of the following information:

(1) The name, address, telephone number, and registration number of the transporter, unless transported pursuant to Section 118030.

(2) The type and quantity of medical waste transported.

(3) The name, address, and telephone number of the generator.

(4) The name, address, telephone number, permit number, and the signature of an authorized representative of the permitted facility receiving the waste.

(5) The date that the medical waste is collected or removed from the generator's facility, the date that the medical waste is received by the transfer station, the registered large quantity generator, or point of consolidation, if applicable, and the date that the medical waste is received by the treatment facility.

(c) Any hazardous waste transporter or generator transporting medical waste in a vehicle shall have a tracking document in his or her possession while transporting the waste. The tracking document shall be shown upon demand to any enforcement agency personnel

or an officer of the Department of the California Highway Patrol. If the waste is transported by rail, vessel, or air, the railroad corporation, vessel operator, or airline shall enter on the shipping papers any information concerning the waste that the enforcement agency may require.

(d) A hazardous waste transporter or a generator transporting medical waste shall provide the facility receiving the medical waste with the original tracking document.

(e) Each hazardous waste transporter and each medical waste treatment facility shall provide tracking data periodically and in a format as determined by the department.

(f) Medical waste transported out of state shall be consigned to a permitted medical waste treatment facility in the receiving state. If there is no permitted treatment facility in the receiving state or if the medical waste is crossing an international border, the waste shall be treated in accordance with Chapter 8 (commencing with Section 118215) prior to being transported out of the state.

SEC. 223. Section 25070.4 of the Health and Safety Code, as amended by Chapter 877 of the Statutes of 1995, is amended and renumbered to read:

118147. Notwithstanding any other provision of this part, a registered medical waste generator, that is a facility specified in subdivisions (a) and (b) of Section 117705, may accept home-generated sharps waste, to be consolidated with the facility's medical waste stream, subject to all of the following conditions:

(a) The generator of the sharps waste, a member of the generator's family, or a person authorized by the enforcement agency transports the sharps waste to the medical waste generator's facility.

(b) The sharps waste is accepted at a central location at the medical waste generator's facility.

(c) A reference to, and a description of, the actions taken pursuant to this section are included in the facility's medical waste management plan adopted pursuant to Section 117960.

SEC. 224. Section 25080 of the Health and Safety Code, as amended by Chapter 877 of the Statutes of 1995, is amended and renumbered to read:

118275. To containerize or store medical waste, a person shall do all of the following:

(a) Medical waste shall be contained separately from other waste at the point of origin in the producing facility. Sharps containers may be placed in biohazard bags or in containers with biohazard bags.

(b) Biohazardous waste shall be placed in a red biohazard bag conspicuously labeled with the words "Biohazardous Waste" or with the international biohazard symbol and the word "BIOHAZARD."

(c) Sharps waste shall be contained in a sharps container pursuant to Section 118285.

(d) (1) Biohazardous waste, that meets the conditions of subdivision (f) of Section 117635 because it is contaminated through contact with, or having previously contained, chemotherapeutic agents, shall be segregated for storage, and, when placed in a secondary container, that container shall be labeled with the words "Chemotherapy Waste", "CHEMO", or other label approved by the department on the lid and on the sides, so as to be visible from any lateral direction, to ensure treatment of the waste pursuant to Section 118222.

(2) Biohazardous waste, that meets the conditions of subdivision (f) of Section 117635 because it is comprised of human surgery specimens or tissues that have been fixed in formaldehyde or other fixatives, shall be segregated for storage and, when placed in a secondary container, that container shall be labeled with the words "Pathology Waste", "PATH", or other label approved by the department on the lid and on the sides, so as to be visible from any lateral direction, to ensure treatment of the waste pursuant to Section 118222.

(e) Sharps waste, that meets the conditions of subdivision (f) of Section 117635, shall be placed in sharps containers labeled in accordance with the industry standard with the words "Chemotherapy Waste", "Chemo", or other label approved by the department, and segregated to ensure treatment of the waste pursuant to Section 118222.

(f) Biohazardous waste, which are recognizable human anatomical parts, as specified in Section 118220, shall be segregated for storage and, when placed in a secondary container for treatment as pathology waste, that container shall be labeled with the words "Pathology Waste", "PATH", or other label approved by the department on the lid and on the sides, so as to be visible from any lateral direction, to ensure treatment of the waste pursuant to Section 118222.

SEC. 225. Section 25081 of the Health and Safety Code, as amended by Chapter 877 of the Statutes of 1995, is amended and renumbered to read:

118280. To containerize biohazard bags, a person shall do all of the following:

(a) The bags shall be tied to prevent leakage or expulsion of contents during all future storage, handling, or transport.

(b) Biohazardous waste shall be bagged in accordance with subdivision (b) of Section 118275 and placed for storage, handling, or transport in a rigid container that may be disposable, reusable, or recyclable. Containers shall be leak resistant, have tight-fitting covers, and be kept clean and in good repair. Containers may be recycled with the approval of the enforcement agency. Containers may be of any color and shall be labeled with the words "Biohazardous Waste" or with the international biohazard symbol and the word "BIOHAZARD" on the lid and on the sides so as to be

visible from any lateral direction. Containers meeting the requirements specified in Section 66840 of Title 22 of the California Code of Regulations, as it read on December 31, 1990, may also be used until the replacement of the containers is necessary or existing stock has been depleted.

(c) Biohazardous waste shall not be removed from the biohazard bag until treatment as prescribed in Chapter 8 (commencing with Section 118215) is completed, except to eliminate a safety hazard, or by the enforcement officer in performance of an investigation pursuant to Section 117820. Biohazardous waste shall not be disposed of before being treated as prescribed in Chapter 8 (commencing with Section 118215).

(d) (1) Except as provided in paragraph (5), a person generating biohazardous waste shall comply with the following requirements:

(A) If the person generates 20 or more pounds of biohazardous waste per month, the person shall not contain or store biohazardous or sharps waste above 0° Centigrade (32° Fahrenheit) at any onsite location for more than seven days without obtaining prior written approval of the enforcement agency.

(B) If a person generates less than 20 pounds of biohazardous waste per month, the person shall not contain or store biohazardous waste above 0° Centigrade (32 ° Fahrenheit) at any onsite location for more than 30 days.

(2) A person may store biohazardous or sharps waste at or below 0° Centigrade (32° Fahrenheit) at an onsite location for not more than 90 days without obtaining prior written approval of the enforcement agency.

(3) A person may store biohazardous or sharps waste at a permitted transfer station at or below 0° Centigrade (32° Fahrenheit) for not more than 30 days without obtaining prior written approval of the enforcement agency.

(4) A person shall not store biohazardous or sharps waste above 0° Centigrade (32° Fahrenheit) at any location or facility that is offsite from the generator for more than seven days before treatment.

(5) Notwithstanding paragraphs (1) to (4), inclusive, if the odor from biohazardous or sharps waste stored at a facility poses a nuisance, the enforcement agency may require more frequent removal.

SEC. 226. Section 25088 of the Health and Safety Code, as amended by Chapter 877 of the Statutes of 1995, is amended and renumbered to read:

118320. (a) Except as provided in subdivision (b), compactors or grinders shall not be used to process medical waste until after the waste has been treated pursuant to Chapter 8 (commencing with Section 118215) and rendered solid waste.

(b) (1) Grinding or compacting may be used when it is an integral part of an alternative treatment method, approved by the department.

(2) A compactor may be used to compact medical waste if the type of medical waste compactor proposed to be used is evaluated by the department, and approved by the department prior to its use pursuant to the following criteria:

(A) The compactor operates without the release of liquids or pathogenic microorganisms from the medical waste during placement of medical waste into, or removal from, the compactor units, and during the compaction process.

(B) The compacted medical waste will not release liquids or pathogens during any subsequent handling and no residual waste will be left in the compactor unit after the process is completed.

(C) Compactor operations and maintenance personnel will not be at any substantial increased risk of exposure to pathogens.

(D) The compactor has been demonstrated not to have any adverse effects on any treatment method. If only specific treatment methods are compatible with the compaction process, the department shall condition its approval of the compactor for use only in conjunction with treatment methods for which no adverse effects have been demonstrated.

(c) Medical waste in bags or other containers shall not be subject to compaction by any compacting device and shall not be placed for storage or transport in a portable or mobile trash compactor, except as allowed pursuant to subdivision (b).

SEC. 227. Section 25090 of the Health and Safety Code, as amended by Chapter 877 of the Statutes of 1995, is amended and renumbered to read:

118215. A person generating or treating medical waste shall ensure that the medical waste is treated by one of the following methods, thereby rendering it solid waste, as defined in Section 40191 of the Public Resources Code, prior to disposal:

(a) (1) Incineration at a permitted medical waste treatment facility in a controlled-air, multichamber incinerator, or other method of incineration approved by the department that provides complete combustion of the waste into carbonized or mineralized ash.

(2) Treatment with an alternative technology approved pursuant to subdivision (d), that, due to the extremely high temperatures of treatment in excess of 1300 degrees Fahrenheit, has received express approval by the department.

(b) (1) Discharge to a public sewage system if the medical waste is liquid or semiliquid, and not either of the following:

(A) Liquid or semiliquid laboratory waste, as defined in subdivision (a) of Section 117635.

(B) Microbiological specimens, including those specified in subdivision (b) of Section 117635.

(2) Medical waste discharge shall be consistent with the waste discharge requirements placed on the public sewer system by the California regional water quality control board with jurisdiction.

(c) Steam sterilization at a permitted medical waste treatment facility or by other sterilization, in accordance with all of the following operating procedures for steam sterilizers or other sterilization:

(1) Standard written operating procedures shall be established for biological indicators, or for other indicators of adequate sterilization approved by the department, for each steam sterilizer, including time, temperature, pressure, type of waste, type of container, closure on container, pattern of loading, water content, and maximum load quantity.

(2) Recording or indicating thermometers shall be checked during each complete cycle to ensure the attainment of 121° Centigrade (250° Fahrenheit) for at least one-half hour, depending on the quantity and density of the load, in order to achieve sterilization of the entire load. Thermometers shall be checked for calibration annually. Records of the calibration checks shall be maintained as part of the facility's files and records for a period of three years or for the period specified in the regulations.

(3) Heat-sensitive tape, or another method acceptable to the enforcement agency, shall be used on each biohazard bag or sharps container that is processed onsite to indicate the attainment of adequate sterilization conditions.

(4) The biological indicator Bacillus stearothermophilus, or other indicator of adequate sterilization as approved by the department, shall be placed at the center of a load processed under standard operating conditions at least monthly to confirm the attainment of adequate sterilization conditions.

(5) Records of the procedures specified in paragraphs (1), (2), and (4) shall be maintained for a period of not less than three years.

(d) (1) Other alternative medical waste treatment methods that are both of the following:

(A) Approved by the department.

(B) Result in the destruction of pathogenic micro-organisms.

(2) Any alternative medical waste treatment method proposed to the department shall be evaluated by the department and either approved or rejected pursuant to the criteria specified in this subdivision.

SEC. 228. Section 25090.5 of the Health and Safety Code, as amended by Chapter 877 of the Statutes of 1995, is amended and renumbered to read:

118220. Recognizable human anatomical parts, with the exception of teeth not deemed infectious by the attending physician and surgeon or dentist shall be disposed of by interment or in accordance with subdivision (a) of Section 118215, unless otherwise hazardous.

SEC. 229. Section 25090.6 of the Health and Safety Code, as amended by Chapter 877 of the Statutes of 1995, is amended and renumbered to read:

118222. Biohazardous waste that meets the conditions of subdivision (f) of Section 117635 shall be treated pursuant to subdivision (a) of Section 118215 prior to disposal.

SEC. 230. Section 25143.10 of the Health and Safety Code, as amended by Chapter 639 of the Statutes of 1995, is amended to read:

25143.10. (a) Except as provided in subdivisions (e) and (f), any person who recycles more than 100 kilograms per month of recyclable material under a claim that the material qualifies for exclusion or exemption pursuant to Section 25143.2 shall, on or before July 1, 1992, and every two years thereafter, provide to the local officer or agency authorized to enforce this section pursuant to subdivision (a) of Section 25180, all of the following information, using the format established pursuant to subdivision (d), in writing:

(1) The name, site address, mailing address, and telephone number of the owner or operator of any facility that recycles the material.

(2) The name and address of the generator of the recyclable material.

(3) Documentation that the requirements of any exemptions or exclusions pursuant to Section 25143.2 are met, including, but not limited to, all of the following:

(A) Where a person who recycles the material is not the same person who generated the recyclable material, documentation that there is a known market for disposition of the recyclable material and any products manufactured from the recyclable material.

(B) Where the basis for the exclusion is that the recyclable material is used or reused to make a product or as a safe and effective substitute for a commercial product, a general description of the material and products, identification of the constituents or group of constituents, and their approximate concentrations, that would render the material or product hazardous under the regulations adopted pursuant to Sections 25140 and 25141, if it were a waste, and the means by which the material is beneficially used.

(b) Except as provided in Section 25404.5, the governing body of a city or county may adopt an ordinance or resolution pursuant to Section 101325 to pay for the actual expenses of the activities carried out by local officers or agencies pursuant to subdivision (a).

(c) If a person who recycles material under a claim that the material qualifies for exclusion or exemption pursuant to Section 25143.2 is not the same person who generated the recyclable material, the person who recycles the material shall, on or before July 1, 1992, and every two years thereafter, provide a copy of the information required to be submitted pursuant to subdivision (a) to the generator of the recyclable material.

(d) The person providing the information required by subdivision (a) shall use a format developed by the California Conference of Directors of Environmental Health in consultation with the department. The department shall distribute the format to local

officers and agencies authorized to enforce this section pursuant to subdivision (a) of Section 25180.

(e) A recyclable material generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated nonwaste treatment manufacturing unit is not subject to the requirements of this section, until the recyclable material exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the material remains in the unit for more than 90 days after the unit ceases to be operated for manufacturing, storage, or transportation of the product or raw material.

(f) A local officer or agency authorized to enforce this section pursuant to subdivision (a) of Section 25180 may exempt from subdivision (a) any person who operates antifreeze recycling units or solvent distillation units, where the recycled material is returned to productive use at the site of generation, or may require less information than that required under subdivision (a) from the person.

SEC. 231. Section 25163 of the Health and Safety Code, as amended by Section 1 of Chapter 672 of the Statutes of 1995, is amended to read:

25163. (a) (1) Except as otherwise provided in subdivisions (b), (c), (f), and (g), it is unlawful for any person to carry on, or engage in, the transportation of hazardous wastes, unless the person holds a valid registration issued by the department, and it shall be unlawful for any person to transfer custody of a hazardous waste to a transporter who does not hold a valid registration issued by the department. A person who holds a valid registration issued by the department pursuant to this section is a registered hazardous waste transporter, for purposes of this chapter. Any registration issued by the department to a transporter of hazardous waste is not transferable from the person to whom it was issued to any other person.

(2) Any person who transports hazardous waste in a vehicle shall have a valid registration issued by the department in his or her possession while transporting the hazardous waste. The registration certificate shall be shown upon demand to any representative of the department, officer of the Department of the California Highway Patrol, any local health officer, or any public officer designated by the department. Any person registered pursuant to this section may obtain additional copies of the registration from the department upon the payment of a fee of two dollars ($2) for each copy requested, in accordance with Section 12196 of the Government Code.

(3) The hazardous waste information required and collected for registration pursuant to this subdivision shall be recorded and

maintained in the management information system operated by the Department of the California Highway Patrol.

(b) Persons transporting only septic tank, cesspool, seepage pit, or chemical toilet waste that does not contain a hazardous waste originating from other than the body of a human or animal and who hold an unrevoked registration issued by the health officer or the health officer's authorized representative pursuant to Article 1 (commencing with Section 117400) of Chapter 4 of Part 13 of Division 104 are exempt from the requirements of subdivision (a).

(c) Except as provided in subdivision (g), persons transporting hazardous wastes to a permitted hazardous waste facility for transfer, treatment, recycling, or disposal, that do not exceed a total volume of five gallons or do not exceed a total weight of 50 pounds, are exempt from the requirements of subdivisions (a) and (e) and from the requirements of Section 25160 concerning possession of the manifest while transporting hazardous waste, upon meeting all of the following conditions:

(1) The hazardous wastes are transported in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during the transporting.

(2) Different hazardous waste materials are not mixed within a container during the transporting.

(3) If the hazardous waste is extremely hazardous waste or acutely hazardous waste, the extremely hazardous waste or acutely hazardous waste was not generated in the course of any business, and is not more than 2.2 pounds.

(4) The person transporting the hazardous waste is the producer of that hazardous waste, and the person produces not more than 100 kilograms of hazardous waste in any month.

(5) The person transporting the hazardous waste does not accumulate more than a total of 1,000 kilograms of hazardous waste onsite at any one time.

(d) Any person registered as a hazardous waste transporter pursuant to subdivision (a) is not subject to the registration requirements of Article 1 (commencing with Section 117400) of Chapter 4 of Part 13 of Division 104, but shall comply with those terms, conditions, orders, and directions that the health officer or the health officer's authorized representative may determine to be necessary for the protection of human health and comfort, and shall otherwise comply with the requirements for statements as provided in Section 117435. Violations of those requirements of Section 117435 shall be punished as provided in Section 117450. Proof of registration pursuant to subdivision (a) shall be submitted by mail or in person to the local health officer in the city or county in which the registered hazardous waste transporter will be conducting the activities described in Section 117405.

(e) It is unlawful for any person to transport hazardous waste in any truck, trailer, semitrailer, vacuum tank, or cargo tank not

inspected by the Department of the California Highway Patrol or to transport hazardous waste in any container, other than a container packaged pursuant to United States Department of Transportation regulations, that has not been inspected by the Department of the California Highway Patrol, or in a rolloff bin that has not been inspected, certified, and maintained in compliance with subdivisions (b) and (c) of Section 25169.1.

(f) Any person authorized to collect solid waste, as defined in Section 40191 of the Public Resources Code, who unknowingly transports hazardous waste to a solid waste facility, as defined in Section 40194 of the Public Resources Code, incidental to the collection of solid waste is not subject to subdivisions (a) and (e).

(g) Any person transporting household hazardous waste or a conditionally exempt small quantity generator transporting hazardous waste to an authorized household hazardous waste collection facility pursuant to Section 25218.5 is exempt from subdivisions (a) and (e) and from paragraph (1) of subdivision (d) of Section 25160 requiring possession of the manifest while transporting hazardous waste.

(h) This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 232. Section 25163 of the Health and Safety Code, as amended by Section 2 of Chapter 672 of the Statutes of 1995, is amended to read:

25163. (a) (1) Except as otherwise provided in subdivisions (b), (c), (f), and (g), it is unlawful for any person to carry on, or engage in, the transportation of hazardous wastes, unless the person holds a valid registration issued by the department, and it shall be unlawful for any person to transfer custody of a hazardous waste to a transporter who does not hold a valid registration issued by the department. A person who holds a valid registration issued by the department pursuant to this section is a registered hazardous waste transporter, for purposes of this chapter. Any registration issued by the department to a transporter of hazardous waste is not transferable from the person to whom it was issued to any other person.

(2) Any person who transports hazardous waste in a vehicle shall have a valid registration issued by the department in his or her possession while transporting the hazardous waste. The registration certificate shall be shown upon demand to any representative of the department, officer of the Department of the California Highway Patrol, any local health officer, or any public officer designated by the department. Any person registered pursuant to this section may obtain additional copies of the registration from the department upon the payment of a fee of two dollars ($2) for each copy requested, in accordance with Section 12196 of the Government Code.

(3) The hazardous waste information required and collected for registration pursuant to this subdivision shall be recorded and maintained in the management information system operated by the Department of the California Highway Patrol.

(b) Persons transporting only septic tank, cesspool, seepage pit, or chemical toilet waste that does not contain a hazardous waste originating from other than the body of a human or animal and who hold an unrevoked registration issued by the health officer or the health officer's authorized representative pursuant to Article 1 (commencing with Section 117400) of Chapter 4 of Part 13 of Division 104 are exempt from the requirements of subdivision (a).

(c) Except as provided in subdivision (g), persons transporting hazardous wastes to a permitted hazardous waste facility for transfer, treatment, recycling, or disposal, that do not exceed a total volume of five gallons or do not exceed a total weight of 50 pounds, are exempt from the requirements of subdivisions (a) and (e) and from the requirements of Section 25160 concerning possession of the manifest while transporting hazardous waste, upon meeting all of the following conditions:

(1) The hazardous wastes are transported in closed containers and packed in a manner that prevents the containers from tipping, spilling, or breaking during the transporting.

(2) Different hazardous waste materials are not mixed within a container during the transporting.

(3) If the hazardous waste is extremely hazardous waste or acutely hazardous waste, the extremely hazardous waste or acutely hazardous waste was not generated in the course of any business, and is not more than 2.2 pounds.

(4) The person transporting the hazardous waste is the producer of that hazardous waste, and the person produces not more than 100 kilograms of hazardous waste in any month.

(5) The person transporting the hazardous waste does not accumulate more than a total of 1,000 kilograms of hazardous waste onsite at any one time.

(d) Any person registered as a hazardous waste transporter pursuant to subdivision (a) is not subject to the registration requirements of Article 1 (commencing with Section 117400) of Chapter 4 of Part 13 of Division 104, but shall comply with those terms, conditions, orders, and directions that the health officer or the health officer's authorized representative may determine to be necessary for the protection of human health and comfort, and shall otherwise comply with the requirements for statements as provided in Section 117435. Violations of those requirements of Section 117435 shall be punished as provided in Section 117450. Proof of registration pursuant to subdivision (a) shall be submitted by mail or in person to the local health officer in the city or county in which the registered hazardous waste transporter will be conducting the activities described in Section 117405.

(e) It is unlawful for any person to transport hazardous waste in any truck, trailer, semitrailer, vacuum tank, or cargo tank not inspected by the Department of the California Highway Patrol or to transport hazardous waste in any container, other than a container packaged pursuant to United States Department of Transportation regulations, which has not been inspected by the Department of the California Highway Patrol.

(f) Any person authorized to collect solid waste, as defined in Section 40191 of the Public Resources Code, who unknowingly transports hazardous waste to a solid waste facility, as defined in Section 40194 of the Public Resources Code, incidental to the collection of solid waste is not subject to subdivisions (a) and (e).

(g) Any person transporting household hazardous waste or a conditionally exempt small quantity generator transporting hazardous waste to an authorized household hazardous waste collection facility pursuant to Section 25218.5 is exempt from subdivisions (a) and (e) and from paragraph (1) of subdivision (d) of Section 25160 requiring possession of the manifest while transporting hazardous waste.

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

SEC. 233. Section 25174.7 of the Health and Safety Code is amended to read:

25174.7. (a) The fees provided for in Sections 25174.1 and 25205.5 do not apply to any of the following:

(1) Hazardous wastes which result when a government agency, or its contractor, removes or remedies a release of hazardous waste in the state caused by another person.

(2) Hazardous wastes generated or disposed of by a public agency operating a household hazardous waste collection facility in the state pursuant to Article 10.8 (commencing with Section 25218), including, but not limited to, hazardous waste received from conditionally exempt small quantity commercial generators, authorized pursuant to Section 25218.3.

(3) Hazardous wastes generated or disposed of by local vector control agencies which have entered into a cooperative agreement pursuant to Section 116180 or by county agricultural commissioners, if the hazardous wastes result from their control or regulatory activities and if they comply with the requirements of this chapter and regulations adopted pursuant thereto.

(4) Hazardous waste disposed of, or submitted for disposal or treatment, by any person, which is discovered and separated from solid waste as part of a load checking program.

(b) Notwithstanding paragraph (1) of subdivision (a), any person responsible for a release of hazardous waste, which has been removed or remedied by a government agency, or its contractor, shall pay the fee pursuant to Section 25174.1.

(c) Any person who acquires land for the sole purpose of owner-occupied single-family residential use, and who acquires that

land without actual or constructive notice or knowledge that there is a tank containing hazardous waste on or under that property, is exempt from the fees imposed pursuant to Sections 25174.1, 25205.5, and 25345, in connection with the removal of the tank.

SEC. 234. Section 25187 of the Health and Safety Code, as amended by Section 26.5 of Chapter 639 of the Statutes of 1995, is amended to read:

25187. (a) (1) Whenever the department, a unified program agency authorized pursuant to paragraph (2), local health officer authorized pursuant to Section 25187.7, or a local public officer designated by the director pursuant to subdivision (a) of Section 25180 and authorized pursuant to Section 25187.7 determines that any person has violated, is in violation of, or threatens, as defined in subdivision (e) of Section 13304 of the Water Code, to violate, this chapter, Chapter 6.8 (commencing with Section 25300) of this division, or Article 3 (commencing with Section 114990) of Chapter 8 of Part 9 of Division 104, or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, Chapter 6.8 (commencing with Section 25300) of this division, or Article 3 (commencing with Section 114990) of Chapter 8 of Part 9 of Division 104, or the department, an authorized unified program agency, an authorized local health officer, or an authorized local public officer determines that there is or has been a release, as defined in Chapter 6.8 (commencing with Section 25300), of hazardous waste or constituents into the environment from a hazardous waste facility, the department, an authorized unified program agency, authorized local health officer, or authorized local public officer may issue an order specifying a schedule for compliance or correction and imposing an administrative penalty for any violation of this chapter or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter. In the case of a release of hazardous waste or constituents into the environment from a hazardous waste facility that is required to obtain a permit pursuant to Article 9 (commencing with Section 25200), the department shall pursue the remedies available under this chapter, including the issuance of an order for corrective action pursuant to this section, before using the legal remedies available pursuant to Chapter 6.8 (commencing with Section 25300), except in any of the following circumstances:

(A) Where the person who is responsible for the release voluntarily requests in writing that the department issue an order to that person to take corrective action pursuant to Chapter 6.8 (commencing with Section 25300).

(B) Where the person who is responsible for the release is unable to pay for the cost of corrective action to address the release. For purposes of this subparagraph, the inability of a person to pay for the cost of corrective action shall be determined in accordance with the policies of the Environmental Protection Agency for the implementation of Section 9605 of Title 42 of the United States Code.

(C) Where the person responsible for the release is unwilling to perform corrective action to address the release. For purposes of this subparagraph, the unwillingness of a person to take corrective action shall be determined in accordance with the policies of the Environmental Protection Agency for the implementation of Section 9605 of Title 42 of the United States Code.

(D) Where the release is part of a regional or multisite groundwater contamination problem that cannot, in its entirety, be addressed using the legal remedies available pursuant to this chapter and for which other releases that are part of the regional or multisite groundwater contamination problem are being addressed using the legal remedies available pursuant to Chapter 6.8 (commencing with Section 25300).

(E) Where an order for corrective action has already been issued against the person responsible for the release, or the department and the person responsible for the release have, prior to January 1, 1996, entered into an agreement to address the required cleanup of the release pursuant to Chapter 6.8 (commencing with Section 25300).

(F) Where the hazardous waste facility is owned or operated by the federal government.

(2) The authority granted under this section to a unified program agency is limited to the issuance of orders to correct releases from, and violations of the requirements of this chapter listed in paragraph (1) of subdivision (c) of Section 25404 occurring at, a unified program facility within the jurisdiction of the CUPA, and is subject to the provisions of Section 25404.1.

(A) Notwithstanding paragraph (1) and Section 25187.7, within the jurisdiction of a CUPA, the unified program agencies shall be the only local agencies authorized to issue orders under this section to correct releases from, and violations of the requirements of this chapter listed to paragraph (1) of subdivision (c) of Section 25404 occurring at, a unified program facility.

(B) The CUPA shall annually submit a summary report to the department on the status of orders issued by the unified program agencies under this section and Section 25187.1.

(C) The department shall adopt regulations to implement this paragraph and paragraph (2) of subdivision (a) of Section 25187.1. The regulations shall include, but not be limited to, all of the following requirements:

(i) A requirement that the unified program agency shall consult with the district attorney for the county on the development of policies to be followed by the unified program agency in exercising the authority delegated pursuant to this section and Section 25187.1.

(ii) Provisions to ensure coordinated and consistent application of this section and Section 25187.1 when both the department and the unified program agency have or will be issuing orders under one or both of these sections at the same facility.

(iii) Provisions to ensure that the enforcement authority granted to the unified program agencies will be exercised consistently throughout the state.

(iv) A requirement that the unified program agency have the ability to represent itself in administrative appeal hearings.

(v) Minimum training requirements for staff of the unified program agency relative to this section and Section 25187.1.

(vi) Procedures to be followed by the department to rescind the authority granted to a unified program agency under this section and Section 25187.1, if the department finds that the unified program agency is not exercising that authority in a manner consistent with the provisions of this chapter and Chapter 6.11 (commencing with Section 25404) and the regulations adopted pursuant thereto.

(3) An order issued pursuant to this section shall include a requirement that the person take corrective action with respect to hazardous waste, including the cleanup of the hazardous waste, abatement of the effects thereof, and any other necessary remedial action. An order issued pursuant to this section that requires corrective action at a hazardous waste facility shall require that corrective action be taken beyond the facility boundary, where necessary to protect human health or the environment. The order shall incorporate, as a condition of the order, any applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board, and shall be consistent with all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code and state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code existing at the time of the issuance of the order, to the extent that the department, authorized unified program agency, authorized local health officer, or authorized local public officer determines that those plans and policies are not less stringent than this chapter and regulations adopted pursuant to this chapter. The department, authorized unified program agency, authorized local health officer, or authorized local public officer also may include any more stringent requirement that the department, authorized unified program agency, authorized local health officer, or authorized local public officer determines is necessary or appropriate to protect water quality. Persons who are subject to an order pursuant to this section include present and prior owners, lessees, or operators of the property where the hazardous waste is located, present or past generators, storers, treaters, transporters, disposers, and handlers of hazardous waste, and persons who arrange, or have arranged, by contract or other agreement, to store, treat, transport, dispose of, or otherwise handle hazardous waste.

(4) In an order proposing a penalty pursuant to this section, the department, authorized unified program agency, authorized local

health officer, or authorized local public officer shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the proposed civil penalty, and the prophylactic effect that imposition of the proposed penalty would have on both the violator and the regulated community as a whole.

(b) For purposes of subdivision (a), "hazardous waste facility" includes the entire site that is under the control of an owner or operator engaged in the management of hazardous waste.

(c) Any order issued pursuant to subdivision (a) shall be served by personal service or certified mail and shall inform the person so served of the right to a hearing.

(d) (1) Any person served with an order pursuant to subdivision (c) who has been unable to resolve any violation or deficiency on an informal basis with the department, authorized unified program agency, authorized local health officer, or authorized local public officer may, within 15 days after service of the order, request a hearing by filing with the department, authorized unified program agency, authorized local health officer, or authorized local public officer a notice of defense. The notice shall be filed with the office that issued the order. A notice of defense shall be deemed filed within the 15-day period provided by this subdivision if it is postmarked within that 15-day period. If no notice of defense is filed within the time limits provided by this subdivision, the order shall become final.

(2) If a person served with an order pursuant to subdivision (c) chooses to resolve the content, terms, or conditions of the order directly with the department, authorized unified program agency, authorized local health officer, or authorized local public officer and does not file an administrative or judicial appeal, the person may request, and the department, authorized unified program agency, authorized local health officer, or authorized local public officer shall prepare, a written statement, that the department, authorized unified program agency, authorized local health officer, or authorized local public officer shall amend into the order, that explains the violation and the penalties applied, including the nature, extent, and gravity of the violations, and that includes a brief description of any mitigating circumstances and any explanations by the respondent. Any amendment to include the written statement prepared pursuant to this subdivision does not constitute a new order and does not create new appeal rights.

(e) Except as provided in subdivision (f), any hearing requested under subdivision (d) shall be conducted within 90 days after receipt of the notice of defense by an administrative law judge of the Office of Administrative Hearings of the Department of General Services in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the

department, authorized unified program agency, authorized local health officer, or authorized local public officer shall have all the authority granted to an agency by those provisions.

(f) Any provision of an order issued under subdivision (a), except the imposition of an administrative penalty, shall take effect upon issuance by the department or unified program agency if the department or unified program agency finds that the violation or violations of law associated with that provision may pose an imminent and substantial endangerment to the public health or safety or the environment, and a request for a hearing shall not stay the effect of that provision of the order pending a decision by the department under subdivision (e). However, in the event that the department or unified program agency determines that any or all provisions of the order are so related that the public health or safety or the environment can be protected only by immediate compliance with the order as a whole, then the order as a whole, except the imposition of an administrative penalty, shall take effect upon issuance by the department or unified program agency. A request for a hearing shall not stay the effect of the order as a whole pending a decision by the hearing officer under subdivision (e). Any order issued after a hearing requested under subdivision (d) shall take effect upon issuance by the department or unified program agency.

(g) A decision issued pursuant to this section may be reviewed by the court pursuant to Section 11523 of the Government Code. In all proceedings pursuant to this subdivision, the court shall uphold the decision of the department, authorized unified program agency, authorized local health officer, or authorized local public officer if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any corrective action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(h) Except as otherwise provided in subdivisions (i) and (j), all administrative penalties collected under this section shall be placed in a separate subaccount in the Hazardous Waste Control Account and shall be available for expenditure by the department only upon appropriation by the Legislature.

(i) Fifty percent of the penalties collected from actions brought by unified program agencies, local health officers or designated local public officers pursuant to this section shall be paid to the city or county whose unified program agency, local health officer, or designated local public officer imposed the penalty, and shall be deposited into a special account that may be expended to fund the activities of the unified program agency, local health officer, or designated local public officer in enforcing this chapter pursuant to Section 25180, after the director determines that the local agency enforcement of this section is fair and reasonable.

(j) Fifty percent of the penalties collected from actions brought by unified program agencies, local health officers, or designated local public officers pursuant to this section shall be paid to the department and deposited in the Hazardous Waste Control Account for expenditure by the department, upon appropriation by the Legislature, in connection with activities of unified program agencies, local health officers, or designated local public officers.

SEC. 235. Section 25198 of the Health and Safety Code, as amended by Section 1 of Chapter 301 of the Statutes of 1995, is amended to read:

25198. (a) For purposes of this section, "state department" means the State Department of Health Services.

(b) Except as provided in subdivision (c), the analysis of any material required by this chapter shall be performed by a laboratory certified by the state department pursuant to Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101, except that laboratories previously issued a certificate under this section shall be deemed certified until the time that certification under Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101 has been either granted or denied, but not beyond the expiration date shown on the certificate previously issued under this section.

(c) The requirements of subdivision (b) shall not apply to analyses performed by a laboratory pursuant to the facility's waste analysis plan, that is prepared in accordance with the regulations adopted by the Department of Toxic Substances Control pursuant to this chapter, if both of the following conditions are met:

(1) The laboratory is owned or operated by the same person who owns or operates the facility at which the waste will be managed, and the facility is a hazardous waste treatment, storage, or disposal facility that is required to obtain a hazardous waste facilities permit pursuant to Article 9 (commencing with Section 25200).

(2) The analysis is conducted for any of the following purposes:

(A) To determine whether a facility will accept the hazardous waste for transfer, storage, or treatment, as described in paragraph (3) of subdivision (a) of Section 66264.13 of, and paragraph (3) of subdivision (a) of Section 66265.13 of, Title 22 of the California Code of Regulations, as those sections read on January 1, 1996.

(B) To ensure that the analysis used to determine whether a facility will accept the hazardous waste for transfer, storage, or treatment is accurate and up to date, as described in paragraph (4) of subdivision (a) of Section 66264.13 of, and paragraph (4) of subdivision (a) of Section 66265.13 of, Title 22 of the California Code of Regulations, as those sections read on January 1, 1996.

(C) To determine whether the hazardous waste received at the facility for transfer, storage, or treatment matches the identity of the hazardous waste designated on an accompanying manifest or shipping paper, as described in paragraph (5) of subdivision (a) of

Section 66264.13 of, and paragraph (5) of subdivision (a) of Section 66265.13 of, the California Code of Regulations, as those sections read on January 1, 1996.

(d) An analysis performed in accordance with subdivision (c) is not an analysis performed for regulatory purposes within the meaning of paragraph (4) of subdivision (c) of Section 100825.

(e) The exemption provided by subdivision (c) does not exempt the analyses of waste for purposes of disposal from the requirements of subdivision (b) requiring certified laboratory analyses. The analyses described in subdivision (c) are not exempt from any other requirement of law, regulation, or guideline governing quality assurance and quality control.

(f) No person or public entity of the state shall contract with a laboratory for environmental analyses for which certification is required pursuant to this chapter, unless the laboratory holds a valid certificate from the state department.

(g) This section shall remain in effect until January 1, 2001, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2001, deletes or extends that date.

SEC. 236. Section 25198 of the Health and Safety Code, as added by Section 2 of Chapter 301 of the Statutes of 1995, is amended to read:

25198. (a) For purposes of this section, "state department" means the State Department of Health Services.

(b) The analysis of any material required by this chapter shall be performed by a laboratory certified by the state department pursuant to Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101, except that laboratories previously issued a certificate under this section shall be deemed certified until the time that certification under Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101 has been either granted or denied, but not beyond the expiration date shown on the certificate previously issued under this section.

(c) No person or public entity of the state shall contract with a laboratory for environmental analyses for which certification is required pursuant to this chapter, unless the laboratory holds a valid certificate.

(d) This section shall become operative January 1, 2001.

SEC. 237. Section 25208.17 of the Health and Safety Code is amended to read:

25208.17. (a) Except as provided in subdivision (g), a person specified in subdivision (h) is exempt from filing the report required by Section 25208.7 if the surface impoundment has been closed, or will be closed before January 1, 1988, in accordance with Subchapter 15 (commencing with Section 2510) of Chapter 3 of Title 23 of the California Administrative Code, and it has only been used for the discharge of economic poisons, as defined in Section 12753 of the Food and Agricultural Code, and if the person submits an application for exemption to the regional board on or before February 1, 1987,

pursuant to subdivision (b) and an initial hydrogeological site assessment report to the regional board on or before July 1, 1987. A qualified person shall be responsible for the preparation of the hydrogeological site assessment report and shall certify its completeness and accuracy.

(b) A person seeking exemption from Section 25208.7 shall file an application for exemption with the regional board on or before February 1, 1987, together with an initial filing fee of three thousand dollars ($3,000). The application shall include the names of persons who own or operate each surface impoundment for which the exemption is sought and the location of each surface impoundment for which an exemption is sought.

(c) Notwithstanding Section 25208.3, each person filing an application for exemption pursuant to subdivision (b) shall pay only the application fee provided in subdivision (b) and any additional fees assessed by the state board to recover the actual costs incurred by the state board and regional boards to administer this section. The person is not liable for fees assessed pursuant to Section 25208.3, except that, if the person is required to comply with Section 25208.7 or 25208.6, the fees assessed under this section shall include the costs of the regional board and state board to administer those sections.

(d) If a person fails to pay the initial filing fee by February 1, 1987, or fails to pay any subsequent additional assessment pursuant to subdivision (c), the person shall be liable for a penalty of not more than 100 percent of the fees due and unpaid, but in an amount sufficient to defer future noncompliance, as based upon that person's past history of noncompliance and ability to pay, and upon additional expenses incurred by the regional board and state board as a result of this noncompliance.

(e) Notwithstanding Section 25208.3, after the regional board has made a determination pursuant to subdivision (g), a final payment or refund of fees specified in subdivision (c) shall be made so that the total fees paid by the person shall be sufficient to cover the actual costs of the state board and the regional board in administering this section.

(f) The hydrogeological site assessment report shall contain for each surface impoundment, all of the following information:

(1) A description of the surface impoundment, including its physical characteristics, its age, the presence or absence of a liner, a description of the liner, the liner's compatibility with the hazardous wastes discharged to the impoundment, and the design specifications of the impoundment.

(2) A description of the volume and concentration of hazardous waste constituents placed in the surface impoundment, based on a representative chemical analysis of the specific hazardous waste type and accounting for variance in hazardous waste constituents over time.

(3) An analysis of surface and groundwater on, under, and within one mile of the surface impoundment to provide a reliable indication of whether or not hazardous constituents or leachate is leaking or has been released from the surface impoundment.

(4) A chemical characterization of soil-pore liquid in areas which are likely to be affected by hazardous constituents or leachate released from the surface impoundment, as compared to geologically similar areas near the surface impoundment that have not been affected by releases from the surface impoundment. This characterization shall include:

(A) A description of the composition of the vadose zone beneath the surface impoundment. This description shall include a chemical and hydrogeological characterization of both the consolidated and unconsolidated geologic materials underlying the surface impoundment, and an analysis for pollutants, including those constituents discharged into the surface impoundment. This description shall also include soil moisture readings from a representative number of points around the surface impoundment's perimeter and at the maximum depth of the surface impoundment. If the regional board determines that the use of suction type soil sampling devices are infeasible due to climate, soil hydraulics, or soil texture, the regional board may authorize the use of alternative devices. The initial report shall contain all data in tabular form so that data, constituents, and concentrations are readily discernible.

(B) A determination of the chemical characteristics of the soil made by collecting a soil sample upgradient from the impoundment or from an area that has not been affected by seepage from the surface impoundment and that is in a hydrogeologic environment similar to the surface impoundment. The determinations shall be analyzed for the same pollutants analyzed pursuant to subparagraph (A).

(5) A description of current groundwater and vadose zone monitoring being conducted at the surface impoundment for leak detection, including detailed plans and equipment specifications and a technical report that provides the rationale for the spatial distribution of groundwater and vadose zone monitoring points for the design of monitoring facilities, and for the selection of monitoring equipment. This description shall include:

(A) A map showing the location of monitoring facilities with respect to each surface impoundment.

(B) Drawings and design data showing construction details of groundwater monitoring facilities, including all of the following:

(i) Casing and hole diameter.

(ii) Casing materials.

(iii) Depth of each monitoring well.

(iv) Size and position of perforations.

(v) Method for joining sections of casing.

(vi) Nature and gradation of filter material.

(vii) Depth and composition of annular seals.

(viii) Method and length of time of development.

(ix) Method of drilling.

(C) Specifications, drawings, and data for the location and installation of vadose zone monitoring equipment.

(D) Discussion of sampling frequency and methods and analytical protocols used.

(E) Justification of indicator parameters used.

(6) Documentation demonstrating that the monitoring system and methods used at the facility can detect any seepage before the hazardous waste constituents enter the waters of the state. This documentation shall include, but is not limited to, substantiation of each of the following:

(A) The monitoring facilities are located close enough to the surface impoundment to identify lateral and vertical migration of any constituents discharged to the impoundment.

(B) The groundwater monitoring wells are not located within the influence of any adjacent pumping water wells that might impair their effectiveness.

(C) The groundwater monitoring wells are screened only in the zone of groundwater to be monitored.

(D) The casing material in the groundwater monitoring wells does not interfere with, or react to, the potential contaminants of major concern at the impoundment.

(E) The casing diameter allows an adequate amount of water to be removed during sampling and allows full development of each well.

(F) The annular seal of each groundwater monitoring well prevents pollutants from migrating down the well.

(G) The water samples are collected after at least five well volumes have been removed from the well and that the samples are collected, preserved, transported, handled, analyzed, and reported in accordance with guidelines for collection and analysis of groundwater samples that provide for preservation of unstable indicator parameters and prevent physical or chemical changes that could interfere with detection of indicator parameters. If the wells are low-yield wells, in that the wells are incapable of yielding three well volumes during a 24-hour period, the methods of water sample collection shall insure that a representative sample is obtained from the well.

(H) The hazardous waste constituents selected for analysis are specific to the facility, taking into account the chemical composition of hazardous wastes previously placed in the surface impoundment.

(I) The frequency of monitoring is sufficient to give timely warning of any leakage or release of hazardous constituents or leachate so that remedial action can be taken prior to any adverse changes in the quality of the groundwater.

(7) A written statement from the qualified person preparing the report indicating whether any hazardous constituents or leachate has migrated into the vadose zone, water-bearing strata, or waters of the state in concentrations that pollute or threaten to pollute the waters of the state.

(8) A written statement from the qualified person preparing the report indicating whether any migration of hazardous constituents or leachate into the vadose zone, water-bearing strata, or waters of the state is likely or not likely to occur within five years, and any evidence supporting that statement.

(g) The regional board shall complete a thorough analysis of each hydrogeological site assessment report submitted pursuant to subdivision (b) within one year after submittal. If the regional board, determines that a hazardous waste constituent from the surface impoundment is polluting or threatening to pollute, as defined in subdivision (*l*) of Section 13050 of the Water Code, both of the following shall occur:

(1) The regional board shall issue a cease and desist order or a cleanup and abatement order that prohibits any discharge into the surface impoundment and that requires compliance with Section 25208.6.

(2) The person shall file a report pursuant to Section 25208.7 within nine months after the regional board makes the determination pursuant to subdivision (g). In making any determination under this subdivision, the regional board shall state the factual basis for the determinations.

(h) For purposes of this section, person means only the following:

(1) Pest control operators and businesses licensed pursuant to Section 11701 of the Food and Agricultural Code.

(2) Local governmental vector control agencies who have entered into a cooperative agreement with the department pursuant to Section 116180.

SEC. 238. Section 25249.11 of the Health and Safety Code is amended to read:

25249.11. Definitions.

For purposes of this chapter:

(a) "Person" means an individual, trust, firm, joint stock company, corporation, company, partnership, limited liability company, and association.

(b) "Person in the course of doing business" does not include any person employing fewer than 10 employees in his or her business; any city, county, or district or any department or agency thereof or the state or any department or agency thereof or the federal government or any department or agency thereof; or any entity in its operation of a public water system as defined in Section 116275.

(c) "Significant amount" means any detectable amount except an amount which would meet the exemption test in subdivision (c) of

Section 25249.10 if an individual were exposed to such an amount in drinking water.

(d) "Source of drinking water" means either a present source of drinking water or water which is identified or designated in a water quality control plan adopted by a regional board as being suitable for domestic or municipal uses.

(e) "Threaten to violate" means to create a condition in which there is a substantial probability that a violation will occur.

(f) "Warning" within the meaning of Section 25249.6 need not be provided separately to each exposed individual and may be provided by general methods such as labels on consumer products, inclusion of notices in mailings to water customers, posting of notices, placing notices in public news media, and the like, provided that the warning accomplished is clear and reasonable. In order to minimize the burden on retail sellers of consumer products including foods, regulations implementing Section 25249.6 shall to the extent practicable place the obligation to provide any warning materials such as labels on the producer or packager rather than on the retail seller, except where the retail seller itself is responsible for introducing a chemical known to the state to cause cancer or reproductive toxicity into the consumer product in question.

SEC. 239. Section 25298.5 of the Health and Safety Code is amended to read:

25298.5. The analysis of any material that is required to demonstrate compliance with this chapter shall be performed by a laboratory accredited by the department pursuant to Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101.

SEC. 240. Section 25358.4 of the Health and Safety Code is amended to read:

25358.4. The analysis of any material that is required to demonstrate compliance with this chapter shall be performed by a laboratory accredited by the department pursuant to Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101.

SEC. 241. Section 25673.1 of the Health and Safety Code, as amended by Chapter 554 of the Statutes of 1995, is amended and renumbered to read:

106985. (a) Notwithstanding Section 2052 of the Business and Professions Code or any other provision of law, a radiologic technologist certified pursuant to the Radiologic Technology Act (Section 27) may, under the general supervision of a licensed physician and surgeon, assist a licensed physician and surgeon in completing an injection to administer contrast materials, manually or by utilizing a mechanical injector, after the performance of venipuncture or arterial puncture by a person authorized to perform those tasks.

(b) Nothing in this section shall be construed to grant radiologic technologists the authority to perform venipuncture or arterial puncture, or to administer contrast materials.

(c) " General supervision," for purposes of this section, means the direction of procedures authorized by this section by a licensed physician and surgeon who shall be physically present within the facility and immediately available within the facility where the procedures are performed.

SEC. 241.5. Section 26569.22 of the Health and Safety Code, as amended by Chapter 207 of the Statutes of 1995, is amended and renumbered to read:

110820. Except as otherwise provided in this article, no food shall be sold as organic unless it consists entirely of any of the following:

(a) Raw agricultural commodities that meet the following requirements:

(1) The commodity has been produced and handled without any prohibited material or color additive having been applied, and without irradiation.

(2) In the case of any raw agricultural commodity produced from seed, the seed has not been treated with any prohibited material. If untreated seed is not available, seed treated with a fungicide may be used, except for seed used for sprouts and other raw agricultural commodities, as described in paragraph (6).

(3) In the case of perennial crops:

(A) For fields or management units registered with the county agricultural commissioner pursuant to Section 46002 of the Food and Agricultural Code prior to January 1, 1995, no prohibited material shall have been applied to the crop, field, management unit, or area where the commodity is grown for 12 months prior to the appearance of flower buds.

(B) For fields or management units registered with the county agricultural commissioner pursuant to Section 46002 of the Food and Agricultural Code during the 1995 calendar year, no prohibited material shall have been applied to the crop, field, management unit, or area where the commodity is grown for 24 months prior to harvest.

(C) For fields or management units registered with the county agricultural commissioner pursuant to Section 46002 of the Food and Agricultural Code commencing January 1, 1996, no prohibited material shall have been applied to the crop, field, management unit, or area where the commodity is grown for 36 months prior to harvest.

(4) In the case of annual or two-year crops:

(A) For fields or management units registered with the county agricultural commissioner pursuant to Section 46002 of the Food and Agricultural Code prior to January 1, 1995, no prohibited material shall have been applied to the field, management unit, or area where the commodity is grown for 12 months prior to seed planting or transplanting.

(B) For fields or management units registered with the county agricultural commissioner pursuant to Section 46002 of the Food and Agricultural Code during the 1995 calendar year, no prohibited material shall have been applied to the crop, field, management unit, or area where the commodity is grown for 24 months prior to harvest.

(C) For fields or management units registered with the county agricultural commissioner pursuant to Section 46002 of the Food and Agricultural Code commencing January 1, 1996, no prohibited material shall have been applied to the crop, field, management unit, or area where the commodity is grown for 36 months prior to harvest.

(5) In the case of any raw agricultural commodity that is grown in any growing medium, such as fungi grown in compost or transplants grown in potting mix:

(A) The growing medium must have been manufactured or produced:

(i) Without any prohibited material having been included in the medium.

(ii) Without any prohibited material having been applied to the area where the medium is manufactured or produced during seeding or inoculation of the medium.

(iii) Using methods that will minimize the migration or accumulation of any pesticide chemical residue in food grown in the medium.

(B) No prohibited material shall have been applied to the area where the commodity is grown during seeding or inoculation. If a prohibited material is applied in the area prior to seeding or inoculation, a residue test shall be performed on the commodity grown from that seeding or inoculation.

(6) In the case of sprouts and other raw agricultural commodities as described in subparagraph (B):

(A) The seed shall have been organically produced, handled, and processed in accordance with this article. No prohibited material shall have been applied to the seed or to the area in which the commodity is grown after introduction of the seed.

(B) This paragraph and the requirements of paragraphs (4) and (5), where applicable, shall apply to raw agricultural commodities that are grown directly from seed through either of the following methods:

(i) Without soil or growing medium other than water.

(ii) On a soil or growing medium and seeded at a rate greater than one ounce per square foot (2,722 pounds per acre).

(b) Processed food manufactured only from raw agricultural commodities as described in subdivision (a), except as follows:

(1) Water, air, and salt may be added to the processed food.

(2) Ingredients other than raw agricultural commodities as described in subdivision (a) may be added to the processed food if these ingredients are included in the national list adopted by the United States Secretary of Agriculture pursuant to Section 6517 of the

federal Organic Foods Production Act (7 U.S.C. Sec. 6501 et seq.) and do not represent more than 5 percent of the weight of the total finished product, excluding salt and water.

(c) Processed food manufactured only from a combination of raw agricultural commodities as described in subdivision (a) and processed food as described in subdivision (b).

(d) Meat, fowl, fish, dairy products, or eggs that are produced, distributed, and processed without any prohibited material having been applied or administered.

SEC. 242. Section 26569.30 of the Health and Safety Code, as amended by Chapter 207 of the Statutes of 1995, is amended and renumbered to read:

110850. (a) Following initial United States Department of Agriculture accreditation of certifying agents as provided in Section 6514 of Title 7 of the United States Code and upon implementation of the federal organic certification requirement pursuant to the federal Organic Foods Production Act of 1990 (7 U.S.C.A. Sec. 6501 et seq., Sec. 2101, P.L. 101-624), all products sold as organic in California shall be certified by a federally accredited certifying agent, if they are required to be certified under the federal act. In addition food shall be sold as organic only in accordance with this section, subdivisions (c) and (d) of Section 110830, Sections 110855 to 110870, inclusive, and Section 46009 of the Food and Agricultural Code. The Secretary of Food and Agriculture, director, and the county agricultural commissioners shall carry out this subdivision to the extent that adequate funds are made available for that purpose.

(b) Food sold as organic may be certified only by a certification organization registered pursuant to subdivisions (c) and (d), by the director pursuant to subdivision (f), by a certification organization registered pursuant to Section 46009 of the Food and Agricultural Code, or by the Secretary of Food and Agriculture or a county agricultural commissioner pursuant to Section 46009 of the Food and Agricultural Code or a federally accredited certification organization.

(c) In order to be registered, a certification organization shall meet all of the following minimum qualifications:

(1) Be the certification organization for at least five legally separate and distinct, financially unrelated, and independently controlled persons involved in the production or processing of food sold as organic.

(2) Be a legally separate and distinct entity from any person whose food is certified by the organization. A certification organization shall be considered legally separate and distinct notwithstanding the fact that persons or representatives of persons whose food is certified serve as directors, officers, or in other capacities for the certification organization, so long as those persons or representatives of those persons do not exercise decisionmaking authority over certification of that particular food.

(3) Have no financial interest in the sale of the food, except that fees charged by the certification organization to cover the reasonable costs of operating the certification organization do not constitute a financial interest for purposes of this section.

(d) Effective January 1, 1992, a certification organization that certifies processed food sold as organic, except for processed meat, fowl, or dairy products, shall register with the director and shall thereafter annually renew the registration unless no longer engaged in the activities requiring the registration. Registration shall be on a form provided by the director, shall include the filing of a certification plan as specified in Section 110865 and payment of the fee specified in subdivision (f). The director shall make forms available for this purpose on or before December 1, 1993. The registration form shall include a written statement affirming compliance with all requirements for certification organizations specified in Section 110850 to 110870, inclusive, and confirmation that each component of the organization's certification plan has been filed as specified in Section 110865. The director shall reject a registration submission that is incomplete or not in compliance with this article.

(e) Commencing July 31, 1991, the director may, upon the request of a sufficient number of persons to fund the program's cost, establish and maintain a certification program for processors of food sold as organic and shall establish and collect a fee from all processors of food certified under that program to cover all of the department's costs of administering the program. The certification program shall be subject to all provisions regarding certification organizations contained in this article, except that the requirements of subdivisions (c) and (d) shall not apply, and the program shall meet all of the requirements for federal certification programs, including federal accreditation.

(f) The registration fee shall be five hundred dollars ($500), unless the certification organization is also registered as a certifier of producers by the Secretary of Food and Agriculture under Section 46009 of the Food and Agricultural Code, in that case the registration fee shall be one hundred dollars ($100).

(g) The director may audit the organization's certification procedures and records at any time. Records of certification organizations not otherwise required to be released upon request or made publicly available shall not be released by the director except to other employees of the department, the Department of Food and Agriculture, a county agricultural commissioner, the Attorney General, any prosecuting attorney, or any government agency responsible for enforcing laws related to the activities of the person subject to this part.

SEC. 243. Section 27508 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113731. (a) Any person requesting the department to undertake any activity pursuant to Section 113845, 114056, 114065, paragraph (2) of subdivision (c) of Section 114090, 114140, subdivision (b) of Section 114290, or 114367 shall pay the department's costs incurred in undertaking the activity. The department's services shall be assessed at the rate of fifty-five dollars ($55) per hour, and it shall be entitled to recover any other costs reasonably and actually incurred in performing those activities, including, but not limited to, the costs of additional inspection and laboratory testing. For purposes of this section, the department's hourly rate shall be adjusted annually in accordance with Section 100425.

(b) The department shall provide to the person paying the required fee a statement, invoice, or similar document that describes in reasonable detail the costs paid.

(c) For purposes of this section only, the term "person" does not include any city, county, city and county, or other political subdivision of the state or local government.

SEC. 244. Section 27510 of the Health and Safety Code is amended and renumbered to read:

113735. "Adulterated" means food that bears or contains any poisonous or deleterious substance that may render the food impure or injurious to health. Food is also adulterated if it is manufactured, prepared, or stored in a manner that deviates from an HACCP plan as defined in Section 113797 and adopted pursuant to Section 114055 or 114056 so as to pose a discernable increase in hazard risk.

SEC. 245. Section 27511 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113740. (a) "Approved" means acceptable to the enforcement agency based on a determination of conformity with applicable laws, or, in the absence of applicable laws, current public health principles, practices, and generally recognized industry standards that protect public health.

(b) "Approved source" means a producer, manufacturer, distributor, or food establishment that is acceptable to the enforcement agency based on a determination of conformity with applicable laws, or, in the absence of applicable laws, with current public health principles and practices, and generally recognized industry standards that protect public health.

SEC. 246. Section 27512 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113745. "Certified farmers' market" means a location certified by the county agricultural commissioner and operated as specified in Article 6.5 (commencing with Section 1392) of Title 3 of the California Code of Regulations.

SEC. 247. Section 27512.5 of the Health and Safety Code, as added by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113746. "Comminuted" means reduced in size by methods including chopping, flaking, grinding, or mincing. Comminuted includes fish and other animal products that are reduced in size and restructured or reformulated, including, but not limited to, gefilte fish, formed roast beef, gyros, ground beef, and sausage; and a mixture of two or more types of those products that have been reduced in size and combined, including, but not limited to, sausages made from two or more of those products.

SEC. 248. Section 27514 of the Health and Safety Code, as added by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113751. "Control point" means any distinct procedure or step in receiving, storing, handling, preparing, displaying, or dispensing a food.

SEC. 249. Section 27514.1 of the Health and Safety Code, as added by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113752. "Critical control point" means a control point where any loss of control may result in an unacceptable health risk pertaining to a food.

SEC. 250. Section 27514.2 of the Health and Safety Code, as added by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113753. "Critical limit" means the maximum or minimum value to which a physical, biological, or chemical parameter shall be controlled at a critical control point to minimize the risk that an identified food safety hazard may occur.

SEC. 251. Section 27517 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113765. "Enforcement officer" means the director, agents, or environmental health specialists appointed by the Director of Health Services, and all local health officers, directors of environmental health, and their duly authorized registered environmental health specialists and environmental health specialist trainees.

SEC. 252. Section 27518.5 of the Health and Safety Code, as added by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113773. "Fish" means fresh or saltwater finfish, molluscan shellfish, crustaceans, and other forms of aquatic animal life other than birds or mammals and includes any edible human food product derived in whole or in part from fish, including fish that has been processed in any manner.

SEC. 253. Section 27519 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113775. "Food" means any raw or processed substance, ice, beverage, including water, or ingredient intended to be used as food, drink, confection, or condiment for human consumption.

SEC. 254. Section 27519.1 of the Health and Safety Code, as added by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113776. "Food condiment" means nonpotentially hazardous relishes, spices, sauces, confections, or seasonings, that require no additional preparation, and that are used on a food item, including, but not limited to, ketchup, mustard, mayonnaise, sauerkraut, salsa, salt, sugar, pepper, or chile peppers.

SEC. 255. Section 27519.2 of the Health and Safety Code, as added by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113777. "Food contact surface" means a surface of equipment or a utensil with which food normally comes into contact.

SEC. 256. Section 27523 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113795. "Frozen food" means a food maintained at a temperature at which all moisture therein is in a solid state.

SEC. 257. Section 27523.1 of the Health and Safety Code, as added by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113796. "HACCP" means Hazard Analysis Critical Control Point.

SEC. 258. Section 27523.2 of the Health and Safety Code, as added by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113797. "HACCP plan" means a written document that delineates the formal procedures for following the Hazard Analysis Critical Control Point principles that were developed by the National Advisory Committee on Microbiological Criteria for Foods and complies with the requirements of Section 114055.

SEC. 259. Section 27523.3 of the Health and Safety Code, as added by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113798. (a) "HACCP principles" means the seven basic steps of HACCP, as prescribed in subdivision (b).

(b) (1) The completion of hazard analysis identification by identifying the likely hazards to consumers presented by a specific food.

(2) The determination of critical control points in receiving, storage, preparation, display, and dispensing of a food.

(3) The setting of measurable critical limits for each critical control point determined.

(4) Developing and maintaining monitoring practices to determine if critical limits are being met.

(5) Developing and utilizing corrective action plans when failure to meet critical limits is detected.

(6) Establishing and maintaining a recordkeeping system to verify adherence to a HACCP plan.

(7) Establishing a system of audits to:

(A) Initially verify the effectiveness of the critical limits set and appropriateness of the determination of critical control points.

(B) Periodically verify the effectiveness of the HACCP plan.

SEC. 260. Section 27523.4 of the Health and Safety Code, as added by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113799. "Hazard" means a biological, chemical, or physical property that may cause an unacceptable public health risk.

SEC. 261. Section 27523.8 of the Health and Safety Code, as added by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113803. "Hermetically sealed container" means a container that is designed and intended to be secure against the entry of micro-organisms and, in the case of low-acid canned foods, to maintain the commercial sterility of its contents after processing.

SEC. 262. Section 27525.1 of the Health and Safety Code, as added by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113813. "Injected" means manipulating a meat so that infectious or toxigenic micro-organisms may be introduced from its surface to its interior through tenderizing with deep penetration or injecting the meat such as with juices that may be referred to as "injecting," "pinning," or "stitch pumping."

SEC. 263. Section 27531 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113845. "Potentially hazardous food" means food that is in a form capable of (1) supporting rapid and progressive growth of infectious or toxigenic micro-organisms that may cause food infections or food intoxications, or (2) supporting the growth or toxin production of Clostridium botulinum. "Potentially hazardous food" does not include foods that have a pH level of 4.6 or below, foods that have a water activity (a_w) value of 0.85 or less under standard conditions, food products in hermetically sealed containers processed to prevent spoilage, or food that has been shown by appropriate microbial challenge studies approved by the enforcement agency not to support the rapid and progressive growth of infectious or toxigenic micro-organisms that may cause food infections or food intoxications, or the growth and toxin production of Clostridium botulinum.

SEC. 264. Section 27531.5 of the Health and Safety Code, as added by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113847. "Premises" means the food facility, its contents, and the contiguous land or property and its facilities and contents that are under the control of the permitholder that may impact food establishment personnel, facilities, or operations.

SEC. 265. Section 27533.5 of the Health and Safety Code, as added by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113857. "Ready-to-eat food" means food that is in a form that is edible without additional washing, cooking, or preparation by the food facility or the consumer and that is reasonably expected to be consumed in that form.

SEC. 266. Section 27534 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113860. "Refrigeration unit" means a mechanical unit that extracts heat from an area through liquification and evaporation of a fluid by a compressor, flame, or thermoelectric device, and includes a mechanical thermostatic control device that regulates refrigerated blown air into an enclosed area at or below the minimum required food storage temperature of potentially hazardous foods in conformance with Section 113995.

SEC. 267. Section 27535 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113865. "Remodel" means construction, building, or repair to the food facility that requires a permit from the local building authority. For purposes of Article 11 (commencing with Section 114250), Article 12 (commencing with Section 114285), and Article 17 (commencing with Section 114363), remodel means any replacement or significant modification of an integral piece of equipment.

SEC. 268. Section 27536.3 of the Health and Safety Code, as added by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113877. "Sanitization" means the application of heat or approved chemical sanitizer on cleaned food contact surfaces.

SEC. 269. Section 27550 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113915. A person proposing to build or remodel a food facility shall submit complete, easily readable plans, drawn to scale, and specifications to the local enforcement agency for review and approval before starting any new construction or remodeling of any facility for use as a retail food facility as defined in this chapter. Plans and specifications may also be required by the local enforcement

agency if it determines that they are necessary to assure compliance with the requirements of this chapter. The plans shall be approved or rejected within 20 working days after receipt by the local enforcement agency and the applicant shall be notified of the decision. Unless the plans are approved or rejected within 20 working days, they shall be deemed approved. The building department shall not issue a building permit for a food facility until after it has received plan approval by the local enforcement agency. Nothing in this section shall require that plans or specifications be prepared by someone other than the applicant.

SEC. 270. Section 27560 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113925. Enforcement officers are charged with the enforcement of this chapter and all regulations adopted pursuant to it.

An enforcement officer may enter, inspect, issue citations, and secure any sample, photographs, or other evidence from any food facility, or any facility suspected of being a food facility, for the purpose of enforcing this chapter. If a food facility is operating under a HACCP plan, as defined in Section 113797 and adopted pursuant to Section 114055 or 114056, then the enforcement officer may inspect and secure as evidence any documents, or copies thereof, bearing upon the facility's adherence to the HACCP plan for the purpose of determining compliance with the plan. A written report of the inspection shall be made and a copy shall be supplied or mailed to the owner, manager, or operator of the food facility.

SEC. 271. Section 27601 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113995. (a) Except as otherwise provided in this section, all potentially hazardous food, excluding raw shell eggs, shall be held at or below 7 degrees Celsius (45 degrees Fahrenheit) or shall be kept at or above 60 degrees Celsius (140 degrees Fahrenheit) at all times. Storage and display of raw shell eggs shall be governed by Sections 113997 and 114351.

(b) (1) Commencing January 1, 1997, all potentially hazardous food shall be held at or below 5 degrees Celsius (41 degrees Fahrenheit) or shall be kept at or above 60 degrees Celsius (140 degrees Fahrenheit) at all times, except for the following:

(A) Unshucked live molluscan shellfish shall not be stored or displayed at a temperature above 7 degrees Celsius (45 degrees Fahrenheit).

(B) Frozen potentially hazardous foods shall be stored and displayed in their frozen state unless being thawed in accordance with Section 114085.

(C) Potentially hazardous foods held for dispensing in serving lines and salad bars during periods not to exceed 12 hours in any 24-hour period or held in vending machines may not exceed 7

degrees Celsius (45 degrees Fahrenheit). For purposes of this subdivision, a display case shall not be deemed to be a serving line.

(D) Pasteurized milk and pasteurized milk products in original, sealed containers shall not be held at an ambient temperature above 7 degrees Celsius (45 degrees Fahrenheit).

(2) Nothing in this subdivision shall be deemed to require any person to replace or modify any existing refrigeration equipment owned by that person on January 1, 1997, until January 1, 2002. For purposes of this paragraph, neither a simple adjustment of temperature controls nor a needed repair shall constitute a modification.

(c) Potentially hazardous foods may be held at temperatures other than those specified in this section when being heated or cooled, or when the food facility operates pursuant to a HACCP plan adopted pursuant to Section 114055 or 114056. If it is necessary to remove potentially hazardous food from specified holding temperatures to facilitate preparations, this preparation shall be diligent, and in no case shall the period of an ambient-temperature preparation step exceed two hours without a return to the specified holding temperatures. The total ambient-temperature holding of a potentially hazardous food for the purposes of preparation shall not exceed a total cumulative time of four hours. For purposes of this subdivision, preparation shall be deemed to be "diligent" with respect to raw shell eggs held for the preparation of egg-containing foods that are prepared to the specific order of the customer as long as the total ambient-temperature holding of these eggs does not exceed a total time of four hours.

(d) A thermometer accurate to plus or minus 1 degree Celsius (2 degrees Fahrenheit) shall be provided for each refrigeration or freezer unit, shall be located to indicate the air temperature in the warmest part of the unit and, except for vending machines, shall be affixed to be readily visible. Except for vending machines, an accurate easily readable metal probe thermometer suitable for measuring the temperature of food shall be readily available on the premises.

SEC. 272. Section 27601.5 of the Health and Safety Code, as added by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113997. (a) Commencing January 1, 1998, and until January 1, 2000, raw shell eggs shall be stored and displayed at an ambient temperature of 7 degrees Celsius (45 degrees Fahrenheit) or below.

(b) Notwithstanding subdivision (a), raw shell eggs may be stored and displayed unrefrigerated if all of the following conditions are met:

(1) Not more than four days have elapsed from the date of pack.

(2) The eggs were not previously refrigerated.

(3) The eggs are not stored or displayed at an ambient temperature above 32 degrees Celsius (90 degrees Fahrenheit).

(4) Retail egg containers are prominently labeled "REFRIGERATE AFTER PURCHASE" or a conspicuous sign is posted advising consumers that these eggs are to be refrigerated as soon as practical after purchase.

(5) Retail egg containers are conspicuously identified with the date of the pack.

(6) Any eggs that are unsold after four days from the date of the pack shall be stored and displayed pursuant to subdivision (a), diverted to pasteurization, or destroyed in a manner approved by the enforcement agency.

SEC. 273. Section 27602.3 of the Health and Safety Code, as added by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

114002. (a) Whenever food has been prepared so that it becomes potentially hazardous, or is potentially hazardous food that has been heated, it shall be rapidly cooled if not held at or above 60 degrees Celsius (140 degrees Fahrenheit).

(b) After heating or hot holding, potentially hazardous food shall be cooled rapidly according to the following:

(1) From 60 degrees Celsius, (140 degrees Fahrenheit) to 21 degrees Celsius (70 degrees Fahrenheit) within two hours.

(2) From 21 degrees Celsius (70 degrees Fahrenheit) to 5 degrees Celsius (41 degrees Fahrenheit) or below within four hours.

(c) If prepared at ambient temperature, potentially hazardous food shall be cooled rapidly from ambient temperature to 5 degrees Celsius (41 degrees Fahrenheit) or below within four hours.

(d) The rapid cooling of potentially hazardous food shall be completed by one or more of the following methods based on the type of food being cooled:

(1) Placing the food in shallow, heat-conducting pans.

(2) Separating the food into smaller or thinner portions.

(3) Using rapid-cooling equipment.

(4) Using containers that facilitate heat transfer.

(5) Adding ice as an ingredient.

(6) Inserting appropriately designed containers in an ice bath and stirring frequently.

(7) In accordance with a HACCP plan adopted pursuant to Section 114055 or 114056.

(8) Utilizing other effective means that have been approved by the enforcement agency.

(e) When potentially hazardous food is placed in cooling or cold-holding equipment, food containers in which the food is being cooled shall be:

(1) Arranged in the equipment, to the extent practicable, to provide maximum heat transfer through the container walls.

(2) Loosely covered, or uncovered if protected from overhead contamination, to facilitate heat transfer from the surface of the food.

(3) Stirred as necessary to evenly cool a liquid or a semiliquid food.

(f) Notwithstanding subdivision (e), other methods of cooling potentially hazardous food may be utilized, unless deemed unacceptable by the enforcing agency, including, but not limited to, a HACCP plan adopted pursuant to Section 114055 or 114056.

SEC. 274. Section 27602.4 of the Health and Safety Code, as added by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

114003. (a) Food shall be inspected as soon as practicable upon receipt and prior to any use, storage, or resale.

(b) Food shall be accepted only if the inspection conducted upon receipt determines that the food satisfies all of the following:

(1) Was prepared by and received from approved sources.

(2) Is received in a wholesome condition.

(3) Is in containers that are not contaminated or damaged in a manner as to permit contamination of food.

(4) Is in containers and on pallets that are not infested with vermin.

(c) Potentially hazardous food shall be inspected for signs of spoilage and randomly checked for adherence to the temperature requirements set forth in Section 113995. No temperatures need be taken of foods that are hard-frozen or are visibly well packed in ice.

(d) Shell eggs shall be clean and unbroken upon receipt.

(e) (1) No raw or raw frozen molluscan shellfish shall be accepted unless each container is properly labeled with the species, quantity, harvest site, date of harvest, and name and certification number of the harvester or original shipper or both. The shellfish certification tag or label shall be maintained upon the original container until emptied and then retained for a period of not less than 90 days from the date of receipt. In the case of a food establishment that sells full containers of shucked or unshucked shellfish, an invoice or written record containing all of the required shellfish information may be maintained, for a period of not less than 90 days from the date of receipt, in lieu of maintaining the certification tag or label as provided in the preceding sentence.

(2) Live molluscan shellfish may not be accepted unless received at an internal temperature of 7 degrees Celsius (45 degrees Fahrenheit) or below; provided, however, that the shellfish may be accepted at a temperature above 7 degrees Celsius (45 degrees Fahrenheit) if received on the date of harvest.

(f) Frozen food shall be accepted only if there are no visible signs of thawing or refreezing.

SEC. 275. Section 27606 of the Health and Safety Code, as added by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

114025. (a) Only those insecticides, rodenticides, and other pesticides that are specifically approved for use in a food facility may be used.

(b) All poisonous substances, detergents, bleaches, cleaning compounds, and all other injurious or poisonous materials shall be used and stored in containers specifically and plainly labeled as to contents, hazard, and use, except for those products held for retail sale.

(c) All poisonous substances, detergents, bleaches, cleaning compounds, and all other injurious or poisonous materials shall be stored and used only in a manner that is not likely to cause contamination or adulteration of food, food contact surfaces, utensils, or packaging materials.

SEC. 276. Section 27612 of the Health and Safety Code, as added by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

114055. (a) Food facilities may operate pursuant to a HACCP plan.

(b) The person operating a food facility pursuant to a HACCP plan shall designate at least one person to be responsible for developing HACCP plans, verifying that HACCP plans are effective, and training employees.

(1) The designated person shall have knowledge in the causes of foodborne illness.

(2) The designated person shall have knowledge of HACCP principles and their application.

(c) A minimum of one person per shift shall be designated who is knowledgeable in the HACCP plan or plans adopted by the operator to be responsible for adherence to any HACCP plan used, take corrective actions when necessary, and assure monitoring records are properly completed.

(d) Food receiving, storage, display, and dispensing procedures may be addressed under a general HACCP plan if the foods have common hazards and critical control points.

(e) Food facilities may engage in the following only pursuant to a HACCP plan adopted pursuant to this section or Section 114056: (1) acidification of potentially hazardous foods to prevent bacterial growth; (2) packing potentially hazardous foods in an oxygen-reduced atmosphere for a period that exceeds 10 days; (3) storing partially cooked meals in sealed containers at temperatures above negative 17 degrees Celsius (0 degrees Fahrenheit) for a period that exceeds 10 days; (4) preserving foods by smoking, curing, or using food additives; or (5) controlling the safety of potentially hazardous foods by using time limits.

(f) All critical limit monitoring equipment shall be suitable for its intended purpose and be calibrated as specified by its manufacturer. The food facility shall maintain all calibration records for a period not less than two years.

(g) No verification of the effectiveness of a critical limit is required if the critical limits used in the HACCP plan do not differ

from the critical limits set forth in Sections 113845, 113995, and 114003.

(h) HACCP training of employees shall be documented and HACCP training records of an employee shall be retained for the duration of employment or a period not less than two years, whichever is greater. Training given to employees shall be documented as to date, trainer, and subject.

(i) All critical control point monitoring records shall be retained for a period not less than 90 days.

(j) Nothing in this section shall be deemed to require the enforcement agency to review or approve a HACCP plan.

SEC. 277. Section 27612.1 of the Health and Safety Code, as added by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

114056. (a) Any HACCP plan that uses only time as a critical limit to assure the safety of a potentially hazardous food or uses critical limits other than those stated in Sections 113845, 113995, and 114003 shall not be implemented without prior review and approval by the enforcement agency.

(b) Any HACCP plan using acidification or water activity to prevent the growth of Clostridium botulinum shall not be implemented without prior review and approval by the department.

(c) The enforcement agency shall collect fees sufficient only to cover the costs for review, inspections, and any laboratory samples taken.

(d) Any HACCP plan may be disapproved if it does not comply with HACCP principles.

(e) The enforcement agency may suspend or revoke, as set forth in this subdivision, its approval of a HACCP plan without prior notice if the plan: is determined to pose a public health risk due to changes in scientific knowledge or the hazards present; or there is a finding that the food facility does not have the ability to follow its HACCP plan; or there is a finding that the food facility does not consistently follow its HACCP plan.

(1) Within 30 days of written notice of suspension or revocation of approval, the food facility may request a hearing to present information as to why the HACCP plan suspension or revocation should not have taken place or to submit HACCP plan changes.

(2) The hearing shall be held within 15 working days of the receipt of a request for a hearing. Upon written request of the permittee the hearing officer may postpone any hearing date, if circumstances warrant that action.

(3) The hearing officer shall issue a written notice of decision within five working days following the hearing. If the decision is to suspend or revoke approval, the reason for suspension or revocation shall be included in the written decision.

SEC. 278. Section 27613 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

114060. (a) Manual sanitization shall be accomplished in the final sanitizing rinse by one of the following:

(1) Contact with a solution of 100 ppm available chlorine solution for 30 seconds.

(2) Contact with a solution of 25 ppm available iodine for one minute.

(3) Contact with a solution of 200 ppm quaternary ammonium for one minute.

(4) Contact with water of at least 82 degrees Celsius (180 degrees Fahrenheit) for 30 seconds.

(5) Contact with any other chemical sanitizer that meets the requirements of Section 178.1010 of Title 21 of the Code of Federal Regulations when used in accordance with the manufacturer's use directions as specified on the product label.

(b) In-place sanitizing shall be as described in paragraph (1), (2), (3), or (4) of subdivision (a).

(c) Other methods may be used if approved by the department.

(d) Testing equipment and materials shall be provided to adequately measure the applicable sanitization method.

SEC. 279. Section 27614 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

114065. All new and replacement food-related and utensil-related equipment shall meet or be equivalent to approved applicable sanitation standards.

The department, in consultation with the California Conference of Directors of Environmental Health, shall approve the sanitation standards, shall recognize which testing organizations are qualified to perform evaluations in accordance with those standards, and shall develop sanitation standards where necessary. In the absence of approved applicable sanitation standards, food-related and utensil-related equipment shall be approved by the enforcement agency.

Nothing in this section shall preclude the department from approving nationally recognized sanitation standards. Until the department approves standards pursuant to this section, standards adopted by nationally recognized testing organizations, as of January 1, 1997, may be used.

SEC. 280. Section 27621 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

114080. (a) Adequate and suitable space shall be provided for the storage of food. Except for large or bulky food containers, all food shall be stored at least 15 centimeters (6 inches) off the floor or under other conditions that are approved. Containers may be stored on

dollies, racks, or pallets not meeting this height requirement, if these items are easily movable. All cartons, boxes, or other materials used in the packaging of any food shall be protected at all times from dirt, vermin, and other forms of contamination or adulteration. All returned or damaged food products and food product from which the label has been removed shall be separated and stored in a separate area and in a manner that shall prevent adulteration of other foods and shall not contribute to a vermin problem. Bulk food not stored in original packaging shall be stored in containers identifying the food by common name.

(b) Unpackaged food may be displayed in bulk for customer self-service under the following conditions:

(1) Produce and food requiring further processing may be displayed on open counters or in containers.

(2) Salad bars, buffet-type food service, and other ready-to-eat food shall:

(A) Be shielded so as to intercept a direct line between the customer's mouth and the food being displayed, or shall be in a container that has a tight-fitting, securely attached lid, or may be dispensed from approved mechanical dispensers.

(B) Be stored so as to be protected from vermin or other contamination.

(C) When displayed in a self-service container, shall be provided with a utensil with a handle or other approved device or mechanism for dispensing the product.

(3) Except for salad bar and buffet-type food service, a label is conspicuously displayed in plain view of the customer and securely attached to each self-service container, or in clear relationship thereto, that contains all of the following:

(A) The common name of the product.

(B) A declaration of the ingredients used by their common or usual name in descending order of predominance by weight. The declaration shall be provided in writing to the food establishment by the manufacturer, packer, or distributor.

(4) Nonfood items shall be displayed and stored in an area separate from food.

(c) Unpackaged food may be displayed and sold in bulk in other than self-service containers if both of the following conditions are satisfied:

(1) The food is served by an employee of the food establishment directly to a consumer.

(2) The food is displayed in clean, sanitary, and covered or otherwise protected containers.

(d) If the director makes a specific finding that a disease is actually transmitted by the method of dispensing unpackaged foods, as prescribed by this section, the director may establish by regulation greater restrictions on the sale of that food than are required by this section. These regulations shall bear directly on the specific

relationship between the disease actually transmitted and the dispensing methods permitted by this section.

SEC. 281. Section 27622 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

114085. (a) Frozen food that has been thawed shall be cooked or otherwise processed before it may be refrozen.

(b) Potentially hazardous frozen foods shall be thawed only:

(1) In refrigeration units.

(2) Under potable running water for a period not to exceed two hours. The water temperature shall not exceed 24 degrees Celsius (75 degrees Fahrenheit) and shall be of sufficient velocity to flush loose food particles into the sink drain.

(3) In a microwave oven.

(4) As part of the cooking process.

SEC. 282. Section 27622.5 of the Health and Safety Code, as added by Chapter 329 of the Statutes of 1995, is amended and renumbered to read:

114086. It is the intent of the Legislature that the California Uniform Retail Food Facilities Law Revision Committee, in its effort to bring forward a uniform state food health code that is appropriate for every type of retail food facility, recommend internal cooking temperatures and time ratios that kill the Escherichia Coli 0157: H_7 (E-Coli) bacteria in ground beef of 145 degrees Fahrenheit for three minutes; 150 degrees Fahrenheit for one minute; or 155 degrees Fahrenheit for 15 seconds, or as otherwise approved by the State Department of Health Services.

SEC. 283. Section 27623 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

114090. (a) All utensils and equipment shall be scraped, cleaned, or sanitized as circumstances require.

(b) All food establishments in which food is prepared or in which multiservice kitchen utensils are used shall have a sink with at least three compartments with two integral metal drainboards. Additional drainage space may be provided that is not necessarily attached to the sink. The sink compartments and drainage facilities shall be large enough to accommodate the largest utensil or piece of equipment to be cleaned therein. A one-compartment or two-compartment sink that is in use on January 1, 1996, may be continued in use until replaced. The enforcement officer may approve the continued use of a one-compartment or two-compartment sink even upon replacement if the installation of a three-compartment sink would not be readily achievable and where other approved sanitation methods are used.

(c) All food establishments in which multiservice consumer utensils are used shall clean the utensils in one of the following ways:

(1) Handwashing of utensils using a three-compartment metal sink with dual integral metal drainboards where the utensils are first washed by hot water and a cleanser until they are clean, then rinsed in clear, hot water before being immersed in a final warm solution meeting the requirements of Section 114060.

(2) Machine washing of utensils in machines using a hot water or chemical sanitizing rinse shall meet or be equivalent to sanitation standards approved pursuant to Section 114065 and shall be installed and operated in accordance with those standards. The machines shall be of a type, and shall be installed and operated as approved by the department. The velocity, quantity, and distribution of the washwater, type and concentration of detergent used therein, and the time the utensils are exposed to the water, shall be sufficient to clean the utensils. All new spray-type dish machines designed for hot water sanitizing shall be equipped with a self-sealing temperature and pressure test plug. The test plug shall be located immediately upstream of the rinse manifold in a horizontal position and on the machine exterior.

(3) A two-compartment metal sink, having metal drainboards, equipped for hot water sanitization, that is in use on January 1, 1985, may be continued in use until replaced.

(4) Other methods may be used after approval by the department.

(d) Hot and cold water under pressure shall be provided through a mixing valve to each sink compartment in all food establishments constructed on or after January 1, 1985.

(e) All utensil washing equipment, except undercounter dish machines, shall be provided with two integral metal drainboards of adequate size and construction. One drainboard shall be attached at the point of entry for soiled items and one shall be attached at the point of exit for cleaned and sanitized items. Where an undercounter dish machine is used, there shall be two metal drainboards, one for soiled utensils and one for clean utensils, located adjacent to the machine. The drainboards shall be sloped and drained to an approved waste receptor. This requirement may be satisfied by using the drainboards appurtenant to sinks as required in subdivision (b) and paragraph (1) of subdivision (c), if the facilities are located adjacent to the machine.

(f) The handling of cleaned and soiled utensils, equipment, and kitchenware shall be undertaken in a manner which will preclude possible contamination of cleaned items with soiled items.

(g) All utensils, display cases, windows, counters, shelves, tables, refrigeration units, sinks, dishwashing machines, and other equipment or utensils used in the preparation, sale, service, and display of food shall be made of nontoxic, noncorrosive materials, shall be constructed, installed, and maintained to be easily cleaned, and shall be kept clean and in good repair.

(h) Utensils and equipment shall be handled and stored so as to be protected from contamination. Single-service utensils shall be obtained only in sanitary containers or approved sanitary dispensers, stored in a clean, dry place until used, handled in a sanitary manner, and used once only.

(i) Equipment food-contact surfaces and utensils shall be cleaned and sanitized as follows:

(1) Each time there is a change in processing between types of animal products except when products are handled in the following order: any cooked ready-to-eat products first; raw beef and lamb products second; raw fish products third; and raw pork or poultry products last.

(2) Each time there is a change from working with raw foods of animal origin to working with ready-to-eat foods.

(3) Between uses with raw fruits or vegetables and with potentially hazardous food.

(4) Before each use of a food temperature measuring device.

(5) At any time during the food handling operation when contamination may have occurred.

(j) (1) Except as provided in paragraphs (2) and (3) of this subdivision, if used with potentially hazardous food, equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every four hours.

(2) Equipment food-contact surfaces and utensils may be cleaned less frequently than every four hours if the utensils and equipment are used to prepare food in a refrigerated room, at or below 13 degrees Celsius (55 degrees Fahrenheit), and the utensils and equipment are cleaned at least every 24 hours.

(3) Equipment food-contact surfaces and utensils may be cleaned less frequently than every four hours if the enforcement agency approves the cleaning schedule utilized based on a consideration of the following factors:

(A) Characteristics of the equipment and its use.

(B) The type of food involved.

(C) The amount of food residue accumulation.

(D) The temperature at which the food is maintained during the operation and the potential for the rapid and progressive growth of infectious or toxicogenic micro-organisms that may cause food infections or food intoxications.

(k) Nonfood contact surfaces of equipment shall be cleaned at a frequency necessary to prevent accumulation of residue.

SEC. 284. Section 27625 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

114100. All plumbing and plumbing fixtures shall be installed in compliance with local plumbing ordinances, shall be maintained so as to prevent any contamination, and shall be kept clean, fully operative, and in good repair.

All liquid wastes shall be disposed of through the plumbing system that shall discharge into the public sewerage or into an approved private sewage disposal system.

All steam tables, ice machines and bins, food preparation sinks, utensil washing sinks, display cases, and other similar equipment that discharge liquid waste shall be drained by means of indirect waste pipes, and all wastes drained by them shall discharge through an airgap into an open floor sink or other approved type of receptor that is properly connected to the drainage system. Drainage from refrigeration units shall be conducted in a sanitary manner to a floor sink or other approved device by an indirect connection or to a properly installed and functioning evaporator. Indirect waste receptors shall be located to be readily accessible for inspection and cleaning. Dishwashing machines may be connected directly to the sewer immediately downstream from a floor drain or they may be drained through an approved indirect connection. Utensil washing sinks in use on January 1, 1996, that are directly plumbed may be continued in use.

SEC. 285. Section 27627 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

114115. Handwashing facilities shall be provided within or adjacent to toilet rooms and shall be equipped with an adequate supply of hot and cold running water under pressure. Facilities constructed on or after January 1, 1985, shall have the water provided from a combination faucet, or water from a premixing faucet that supplies warm water for a minimum of 10 seconds while both hands are free for washing. The number of handwashing facilities required shall be in accordance with local building and plumbing ordinances. Handwashing cleanser and single-use sanitary towels or hot-air blowers shall be provided in dispensers at, or adjacent to, handwashing facilities. Food establishments beginning construction or extensive remodeling on or after January 1, 1996, shall provide facilities exclusively for handwashing in food preparation areas, that are sufficient in number and conveniently located so as to be accessible at all times for use by food handlers.

SEC. 286. Section 27629 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

114140. Ventilation shall be provided to remove toxic gases, heat, grease, vapors, and smoke from the food establishment.

All areas shall have sufficient ventilation to facilitate proper food storage and to provide a reasonable condition of comfort for each employee, consistent with the job performed by the employee. On or after January 1, 1985, there shall be provided mechanical exhaust ventilation at or above all newly installed cooking equipment as required in Article 10.4 (commencing with Section 13670) of Title 17

of, and Chapter 4-20 (commencing with Section 4-2000) of Part 4 of Title 24 of, the California Code of Regulations.

This section shall not apply to cooking equipment when the equipment has been submitted to the department for evaluation, and it has found that the equipment does not produce toxic gases, smoke, grease, vapors, or heat when operated under conditions recommended by the manufacturer. The department may recognize a testing organization to perform any necessary evaluations.

Toilet rooms shall be vented to the outside air by means of an openable, screened window, an air shaft, or a light-switch-activated exhaust fan, consistent with the requirements of local building codes.

SEC. 287. Section 27632 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

114155. (a) Except as provided in subdivision (b) the walls and ceilings of all rooms shall be of a durable, smooth, nonabsorbent, light-colored, and washable surface.

For purposes of this chapter, light colored shall mean having a light reflectance value of 70 percent or greater.

(b) This section shall not apply to the following areas:

(1) Walls and ceilings of bar areas in which alcoholic beverages are sold or served directly to the patrons, except wall areas adjacent to bar sinks and areas where food is prepared.

(2) Areas where food is stored only in unopened bottles, cans, cartons, sacks, or other original shipping containers.

(3) Dining and sales areas.

(4) Offices.

(5) Restrooms that are used exclusively by the patrons; provided, however, that the walls and ceilings in the restrooms shall be of a nonabsorbent and washable surface.

(c) Acoustical paneling may be utilized providing it is installed not less than 1.8 meters (6 feet) above the floor. Any perforations shall not penetrate the entire depth of the panel, shall not be greater than 3 millimeters ($^1/_8$ inch) in any dimension, and shall not comprise more than 25 percent of the exposed panel surface. The paneling shall otherwise meet the requirements of this section.

(d) Conduits of all types shall be installed within walls as practicable. When otherwise installed, they shall be mounted or enclosed so as to facilitate cleaning.

SEC. 288. Section 27675 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

114275. Vehicles on which nonprepackaged hot dogs, popcorn, or snowcones are sold or offered for sale shall, in addition to the requirements of Section 114260, be constructed and equipped as follows:

(a) The food compartment shall be completely closed. The opening to the food compartment shall be sufficiently large to permit

food assembly and service operations and shall be provided with a tightly fitted closure that, when closed, protects interior surfaces from dust, debris, and vermin. All food compartments and food contact surfaces shall be constructed so as to be smooth, easily accessible, and easily cleanable.

(b) A one-compartment metal sink, handwashing cleanser and single-service towels shall be provided. The sink shall be furnished with warm running water that is at least 38 degrees Celsius (101 degrees Fahrenheit) and cold water. The warm and cold water shall be provided through a mixing valve. The sink shall be of a size suitable for washing hands and shall be large enough to accommodate the largest utensils washed. The location of the sink, handwashing cleanser and single service towels shall be easily accessible and unobstructed to the operator in the working area. The minimum warm water holding capacity shall be one-half gallon.

(c) A water supply tank of at least 18 liters (5 gallons) capacity.

(d) A wastewater tank of at least 28 liters (7.5 gallons) capacity.

SEC. 289. Section 27677 of the Health and Safety Code, as added by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

114281. Vehicles that are occupied during normal business operations shall have a clear, unobstructed height over the aisle-way portion of the unit of at least 188 centimeters (74 inches) from floor to ceiling, and a minimum of 76 centimeters (30 inches) of unobstructed horizontal aisle space. This section shall not apply to vehicles under permit prior to January 1, 1996.

SEC. 290. Section 27791 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

114290. (a) All mobile food preparation units, stationary mobile food preparation units, commissaries, and other approved facilities shall meet the applicable requirements in Article 6 (commencing with Section 113975), Article 7 (commencing with Section 113990), and Article 8 (commencing with Section 114075), unless specifically exempted from any of these provisions as provided in this article, and shall meet the provisions of Article 10 (commencing with Section 13600) of, and Article 10.1 (commencing with Section T17-13611) of Subchapter 2 of Chapter 5 of Part 1 of Title 17 of the California Code of Regulations, except that a hose used for filling water tanks and used for cleaning the interior of a mobile food preparation unit from a commissary that services mobile food preparation units is not required to be kept at least four feet above the ground at all times if the hose is equipped with a quick disconnect device, retrofitted on the end of the hose so that it seals the opening when not in use. Hoses inside the mobile preparation unit and potable water tank connectors shall have matching connecting devices. Devices for external cleaning may not be used inside the mobile preparation unit for potable water purposes. Hoses and faucets equipped with quick

connect and disconnect devices for these purposes shall be deemed to meet the requirements of Section T17-13613 of Title 17 of the California Code of Regulations. Mobile food preparation units and stationary mobile food preparation units shall be exempt from the requirements of Sections 114105 and 114135, and subdivision (b) of Section 114165.

(b) Each stationary mobile food preparation unit shall be certified pursuant to Article 10 (commencing with Section 13600) of Subchapter 2 of Chapter 5 of Part 1 of Title 17 of the California Code of Regulations before commencing operation each calendar year. The local enforcement agency shall address all applicable construction standards and submit proof of certification to the department. Construction recertification within a calendar year shall not be required unless either of the following occurs:

(1) Where structural modifications are made.

(2) Where otherwise required by the department.

The department may issue an annual certificate of compliance for each certified vehicle, as required by regulation.

SEC. 291. Section 27832 of the Health and Safety Code, as added by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

114351. Raw shell eggs may be stored and displayed without refrigeration if all of the following conditions are met:

(a) The eggs were produced by poultry owned by the seller and collected on the seller's property.

(b) The eggs are not placed in direct sunlight during storage or display.

(c) Retail egg containers are prominently labeled "REFRIGERATE AFTER PURCHASE" or the seller posts a conspicuous sign advising consumers that the eggs are to be refrigerated as soon as practical after purchase.

(d) Retail egg containers are conspicuously identified as to the date of the pack.

(e) The eggs have been cleaned and sanitized.

(f) The eggs are not checked, cracked, or broken.

(g) Any eggs that are stored and displayed at temperatures of 90 degrees Fahrenheit or below and that are unsold after four days from the date of pack shall be stored and displayed at an ambient temperature of 7 degrees Celsius (45 degrees Fahrenheit) or below, diverted to pasteurization, or destroyed in a manner approved by the enforcement agency.

(h) Any eggs that are stored and displayed at temperatures above 90 degrees Fahrenheit that are unsold after four days from the date of pack shall be diverted to pasteurization or destroyed in a manner approved by the enforcement agency.

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

SEC. 292. Section 27844 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered, immediately preceeding Section 114363, to read:

114362. The onsite food establishment shall support a satellite food distribution facility as defined in subdivision (b) of Section 113880 by doing all of the following where appropriate:

(a) Unpacking from bulk potentially hazardous foods.

(b) Filling suitable dispensers with condiments.

(c) Mixing, blending, forming, cooking or otherwise preparing all unpackaged potentially hazardous foods.

(d) Heating to a minimum temperature of 140 degrees Fahrenheit all potentially hazardous foods that are intended to be served or held hot.

(e) Cooling, to the temperatures specified in Section 113995, potentially hazardous foods that are intended to be served or held cold.

(f) Packing any unpackaged food into suitable, covered containers prior to transport.

(g) Providing storage for foods not described in Section 114361 during periods of inoperation.

(h) Cleaning and sanitizing all multiuse utensils and easily removable food contact surfaces in accordance with the requirements of Section 114090.

SEC. 293. Section 27845 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered, immediately following Section 114362, to read:

114363. Restrooms shall comply with Section 114105 or Section 114110.

SEC. 294. Section 27849 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered, immediately following Section 114365 as added by Section 115, to read:

114367. The enforcement agency shall review and approve written procedures, schedules, and record exemplars to assure all of the following:

(a) That in-place cleaning procedures for equipment and structures are adequate in frequency, soil removal, sanitizing, and disposal of wastewater, washwater, and refuse.

(b) That food transported to and from the onsite food establishment will not be exposed to contamination.

(c) That potentially hazardous food will be held at or below 7 degrees Celsius (45 degrees Fahrenheit) or at or above 60 degrees Celsius (140 degrees Fahrenheit) at all times.

This section shall apply to vehicles that operate within a defined and securable perimeter as prescribed in subdivision (b) of Section 113880.

SEC. 295. Section 32121 of the Health and Safety Code, as amended by Chapter 35 of the Statutes of 1995, is amended to read:

32121. Each local district shall have and may exercise the following powers:

(a) To have and use a corporate seal and alter it at its pleasure.

(b) To sue and be sued in all courts and places and in all actions and proceedings whatever.

(c) To purchase, receive, have, take, hold, lease, use, and enjoy property of every kind and description within and without the limits of the district, and to control, dispose of, convey, and encumber the same and create a leasehold interest in the same for the benefit of the district.

(d) To exercise the right of eminent domain for the purpose of acquiring real or personal property of every kind necessary to the exercise of any of the powers of the district.

(e) To establish one or more trusts for the benefit of the district, to administer any trust declared or created for the benefit of the district, to designate one or more trustees for trusts created by the district, to receive by gift, devise, or bequest, and hold in trust or otherwise, property, including corporate securities of all kinds, situated in this state or elsewhere, and where not otherwise provided, dispose of the same for the benefit of the district.

(f) To employ legal counsel to advise the board of directors in all matters pertaining to the business of the district, to perform the functions in respect to the legal affairs of the district as the board may direct, and to call upon the district attorney of the county in which the greater part of the land in the district is situated for legal advice and assistance in all matters concerning the district, except that if that county has a county counsel, the directors may call upon the county counsel for legal advice and assistance.

(g) To employ any officers and employees, including architects and consultants, the board of directors deems necessary to carry on properly the business of the district.

(h) To prescribe the duties and powers of the health care facility administrator, secretary, and other officers and employees of any health care facilities of the district, to establish offices as may be appropriate and to appoint board members or employees to those offices, and to determine the number of, and appoint, all officers and employees and to fix their compensation. The officers and employees shall hold their offices or positions at the pleasure of the boards of directors.

(i) To do any and all things that an individual might do that are necessary for, and to the advantage of, a health care facility and a nurses' training school, or a child care facility for the benefit of employees of the health care facility or residents of the district.

(j) To establish, maintain, and operate, or provide assistance in the operation of, one or more health facilities or health services, including, but not limited to, outpatient programs, services, and facilities, retirement programs, services, and facilities, chemical dependency programs, services, and facilities, or other health care

programs, services, and facilities and activities at any location within or without the district for the benefit of the district and the people served by the district.

"Health care facilities," as used in this subdivision, means those facilities defined in subdivision (b) of Section 32000.1 and specifically includes freestanding chemical dependency recovery units. "Health facilities," as used in this subdivision, may also include those facilities defined in subdivision (d) of Section 15432 of the Government Code.

(k) To do any and all other acts and things necessary to carry out this division.

(*l*) To acquire, maintain, and operate ambulances or ambulance services within and without the district.

(m) To establish, maintain, and operate, or provide assistance in the operation of, free clinics, diagnostic and testing centers, health education programs, wellness and prevention programs, rehabilitation, aftercare, and any other health care services provider, groups, and organizations that are necessary for the maintenance of good physical and mental health in the communities served by the district.

(n) To establish and operate in cooperation with its medical staff a coinsurance plan between the hospital district and the members of its attending medical staff.

(o) To establish, maintain, and carry on its activities through one or more corporations, joint ventures, or partnerships for the benefit of the health care district.

(p) (1) To transfer, at fair market value, any part of its assets to one or more nonprofit corporations to operate and maintain the assets. A transfer pursuant to this paragraph shall be deemed to be at fair market value if an independent consultant, with expertise in methods of appraisal and valuation and in accordance with applicable governmental and industry standards for appraisal and valuation, determines that fair and reasonable consideration is to be received by the district for the transferred district assets. Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more nonprofit corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(2) To transfer, for the benefit of the communities served by the district, in the absence of adequate consideration, any part of the assets of the district, including without limitation real property,

equipment, and other fixed assets, current assets, and cash, relating to the operation of the district's health care facilities to one or more nonprofit corporations to operate and maintain the assets.

(A) A transfer of 50 percent or more of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if all of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least five properly noticed open and public meetings in compliance with the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code, and Section 32106.

(ii) The transfer agreement provides that the hospital district shall approve all initial board members of the nonprofit corporation and any subsequent board members as may be specified in the transfer agreement.

(iii) The transfer agreement provides that all assets transferred to the nonprofit corporation, and all assets accumulated by the corporation during the term of the transfer agreement arising out of or from the operation of the transferred assets, are to be transferred back to the district upon termination of the transfer agreement, including any extension of the transfer agreement.

(iv) The transfer agreement commits the nonprofit corporation to operate and maintain the district's health care facilities and its assets for the benefit of the communities served by the district.

(v) The transfer agreement requires that any funds received from the district at the outset of the agreement or any time thereafter during the term of the agreement be used only to reduce district indebtedness, to acquire needed equipment for the district health care facilities, to operate, maintain, and make needed capital improvements to the district's health care facilities, to provide supplemental health care services or facilities for the communities served by the district, or to conduct other activities that would further a valid public purpose if undertaken directly by the district.

(B) A transfer of 33 percent or more but less than 50 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if both of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed open and public meetings in compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and Section 32106.

(ii) The transfer agreement meets all of the requirements of clauses (ii) to (v), inclusive, of subparagraph (A).

(C) A transfer of 10 percent or more but less than 33 percent of the district's assets, in sum or by increment, pursuant to this paragraph shall be deemed to be for the benefit of the communities served by the district only if both of the following occur:

(i) The transfer agreement and all arrangements necessary thereto are fully discussed in advance of the district board decision to transfer the assets of the district in at least two properly noticed open and public meetings in compliance with the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), and Section 32106.

(ii) The transfer agreement meets all of the requirements of (iii) to (v), inclusive, of subparagraph (A).

(D) Before the district transfers, pursuant to this paragraph, 50 percent or more of the district's assets to one or more nonprofit corporations, in sum or by increment, the elected board shall, by resolution, submit to the voters of the district a measure proposing the transfer. The measure shall be placed on the ballot of a special election held upon the request of the district or the ballot of the next regularly scheduled election occurring at least 88 days after the resolution of the board. If a majority of the voters voting on the measure vote in its favor, the transfer shall be approved. The campaign disclosure requirements applicable to local measures provided under Chapter 4 (commencing with Section 84100) of Title 9 of the Government Code shall apply to this election.

(E) Notwithstanding the other provisions of this paragraph, a hospital district shall not transfer any portion of its assets to a private nonprofit organization that is owned or controlled by a religious creed, church, or sectarian denomination in the absence of adequate consideration.

(3) If the district board has previously transferred less than 50 percent of the district's assets pursuant to this subdivision, before any additional assets are transferred the board shall hold a public hearing and shall make a public determination that the additional assets to be transferred will not, in combination with any assets previously transferred, equal 50 percent or more of the total assets of the district.

(4) The amendments to this subdivision made during the 1991–92 Regular Session, and the amendments made to this subdivision and to Section 32126 made during the 1993–94 Regular Session, shall only apply to transfers made on or after the effective dates of the acts amending this subdivision. The amendments to this subdivision made during those sessions shall not apply to any of the following:

(A) A district that has discussed and adopted a board resolution, prior to September 1, 1992, that authorizes the development of a business plan for an integrated delivery system.

(B) A lease agreement, transfer agreement, or both between a district and a nonprofit corporation that were in full force and effect as of September 1, 1992, for as long as that lease agreement, transfer agreement, or both remain in full force and effect.

(5) Notwithstanding paragraph (4), if substantial amendments are proposed to be made to a transfer agreement described in subparagraph (A) or (B) of paragraph (4), the amendments shall be fully discussed in advance of the district board's decision to adopt the amendments in at least two properly noticed open and public meetings in compliance with Section 32106 and the Ralph M. Brown Act, (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code).

(6) Notwithstanding paragraphs (4) and (5), a transfer agreement described in subparagraph (A) or (B) of paragraph (4) that provided for the transfer of less than 50 percent of a district's assets shall be subject to the requirements of subdivision (p) of Section 32121 when subsequent amendments to that transfer agreement would result in the transfer, in sum or by increment, of 50 percent or more of a district's assets to the nonprofit corporation.

(7) For purposes of this subdivision, a "transfer" means the transfer of ownership of the assets of a district. A lease of the real property or the tangible personal property of a district shall not be subject to this subdivision except as specified in Section 32121.4 and as required under Section 32126.

(8) Districts that request a special election pursuant to paragraph (1) or (2) shall reimburse counties for the costs of that special election as prescribed pursuant to Section 10520 of the Elections Code.

(9) Nothing in this section, including subdivision (j), shall be construed to permit a local district to obtain or be issued a single consolidated license to operate a separate physical plant as a skilled nursing facility or an intermediate care facility that is not located within the boundaries of the district.

(10) A transfer of any of the assets of a district to one or more nonprofit corporations to operate and maintain the assets shall not be required to meet paragraphs (1) to (9), inclusive, of this subdivision if all of the following conditions apply at the time of the transfer:

(A) The district has entered into a loan that is insured by the State of California under Chapter 1 (commencing with Section 129000) of Part 6 of Division 107.

(B) The district is in default of its loan obligations, as determined by the Office of Statewide Health Planning and Development.

(C) The Office of Statewide Health Planning and Development and the district, in their best judgment, agree the transfer of some or all of the assets of the district to a nonprofit corporation or corporations is necessary to cure the default, and will obviate the need for foreclosure. This cure of default provision shall be applicable prior to the office foreclosing on district hospital assets. After the office has foreclosed on district hospital assets, or otherwise taken possession in accordance with law, the office may exercise all of its powers to deal with and dispose of hospital property.

(D) The transfer and all arrangements necessary thereto are discussed in advance of the transfer in at least one properly noticed open and public meeting in compliance with the Ralph M. Brown Act, Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code and Section 32106. The meeting referred to in this paragraph shall be noticed and held within 90 days of notice in writing to the district by the office of an event of default. If the meeting is not held within this 90-day period, the district shall be deemed to have waived this requirement to have a meeting.

(11) If a transfer under paragraph (10) is a lease, the lease shall provide that the assets shall revert to the district at the conclusion of the leasehold interest. If the transfer is a sale, the proceeds shall be used first to retire the obligation insured by the office, then to retire any other debts of the district. After providing for debts, any remaining funds shall revert to the district.

(q) To contract for bond insurance, letters of credit, remarketing services, and other forms of credit enhancement and liquidity support for its bonds, notes, and other indebtedness and to enter into reimbursement agreements, monitoring agreements, remarketing agreements, and similar ancillary contracts in connection therewith.

(r) To establish, maintain, operate, participate in, or manage capitated health care plans, health maintenance organizations, preferred provider organizations, and other managed health care systems and programs properly licensed by the Department of Insurance or the Department of Corporations, at any location within or without the district for the benefit of residents of communities served by the district. However, that activity shall not be deemed to result in or constitute the giving or lending of the district's credit, assets, surpluses, cash, or tangible goods to, or in aid of, any person, association, or corporation in violation of Section 6 of Article XVI of the California Constitution.

Nothing in this section shall authorize activities that corporations and other artificial legal entities are prohibited from conducting by Section 2400 of the Business and Professions Code.

Any agreement to provide health care coverage that is a health care service plan, as defined in subdivision (f) of Section 1345, shall be subject to the provisions of Chapter 2.2 (commencing with Section 1340) of Division 2, unless exempted pursuant to Section 1343 or 1349.2.

A district shall not provide health care coverage for any employee of an employer operating within the communities served by the district, unless the Legislature specifically authorizes, or has authorized in this section or elsewhere, the coverage.

This section shall not authorize any district to contribute its facilities to any joint venture that could result in transfer of the facilities from district ownership.

(s) To provide health care coverage to members of the district's medical staff, employees of the medical staff members, and the dependents of both groups, on a self-pay basis.

SEC. 296. Section 32127.2 of the Health and Safety Code is amended to read:

32127.2. Exclusively for the purpose of securing state insurance of financing for the construction of new health facilities, the expansion, modernization, renovation, remodeling and alteration of existing health facilities, and the initial equipping of any such health facilities under Chapter 1 (commencing with Section 129000) of Part 6 of Division 107, and notwithstanding any provision of this division or any other provision or holding of law, the board of directors of any district may (a) borrow money or credit, or issue bonds, as well as by the financing methods specified in this division, and (b) execute in favor of the state first mortgages, first deeds of trust, and other necessary security interests as the Office of Statewide Health Planning and Development may reasonably require in respect to a health facility project property as security for the insurance. No payments of principal, interest, insurance premium and inspection fees, and all other costs of state-insured loans obtained under the authorization of this section shall be made from funds derived from the district's power to tax. It is hereby declared that the authorizations for the executing of the mortgages, deeds of trust and other necessary security agreements by the board and for the enforcement of the state's rights thereunder is in the public interest in order to preserve and promote the health, welfare, and safety of the people of this state by providing, without cost to the state, a state insurance program for health facility construction loans in order to stimulate the flow of private capital into health facilities construction to enable the rational meeting of the critical need for new, expanded and modernized public health facilities.

SEC. 297. Section 32132 of the Health and Safety Code is amended to read:

32132. (a) Except as otherwise provided in this section, or in Chapter 3.2 (commencing with Section 4217.10) of Division 5 of Title 1 of the Government Code, the board of directors shall let any contract involving an expenditure of more than twenty-five thousand dollars ($25,000) for materials and supplies to be furnished, sold, or leased to the district, or any contract involving an expenditure of more than twenty-five thousand dollars ($25,000) for work to be done, to the lowest responsible bidder who shall give the security the board requires, or else reject all bids.

Except as otherwise provided in this section, for a local health care district that is a small and rural hospital, as defined in Section 124840, the board of directors shall acquire materials and supplies that cost more than twenty-five thousand dollars ($25,000), but less than fifty thousand dollars ($50,000), through competitive means, except when the board determines either that (1) the materials and supplies

proposed for acquisition are the only materials and supplies that can meet the district's need, or (2) the materials and supplies are needed in cases of emergency where immediate acquisition is necessary for the protection of the public health, welfare, or safety. As used in this paragraph, "competitive means" has the same meaning as used in subdivision (b) of Section 32138.

(b) Subdivision (a) shall not apply to medical or surgical equipment or supplies, to professional services, or to electronic data processing and telecommunications goods and services.

(c) Bids need not be secured for change orders that do not materially change the scope of the work as set forth in a contract previously made if the contract was made after compliance with bidding requirements, and if each individual change order does not total more than 5 percent of the contract.

(d) As used in this section, "medical or surgical equipment or supplies" includes only equipment or supplies commonly, necessarily, and directly used by, or under the direction of, a physician and surgeon in caring for or treating a patient in a hospital.

(e) Nothing in this section shall prevent any district health care facility from participating as a member of any organization described in Section 23704 of the Revenue and Taxation Code, nor shall this section apply to any purchase made, or services rendered, by the organization on behalf of a district health care facility that is a member of the organization.

SEC. 298. Section 32221 of the Health and Safety Code is amended to read:

32221. The board of directors may establish a fund for capital outlays; provided, that no part of said fund shall be used for acquisition of additional patient bed capacity by lease or purchase of any hospital buildings or facilities or for new construction of additional patient bed capacity for an existing hospital without the approval of the appropriate voluntary area health planning agency established pursuant to Section 127155. If the fund is established, it shall include in the estimate required to be furnished to the board of supervisors a statement of the amount to be included in the annual assessment for this purpose. The amount to be raised shall be included in the tax limitation prescribed by Section 32203.

Notwithstanding any other provision of law, the board of supervisors may levy a tax in excess of the maximum tax levy specified in Section 32203 to be used for capital outlay if a majority of the district electors voting at an election held for that purpose approve the imposition of the tax.

SEC. 299. Section 38072 of the Health and Safety Code is amended to read:

38072. For purposes of this division, the following definitions shall apply:

(a) "Cooperative agreement" means an agreement between the department and a unit of local government, any other unit of state

government, or a nonprofit organization that provides for a contract under any of the following programs:

(1) California AIDS Program (Chapter 2 (commencing with Section 120800) of Part 4 of Division 105).

(2) Health of Seasonal Agricultural and Migratory Workers (Chapter 3 (commencing with Section 124550) of Part 4 of Division 106).

(3) American Indian Health Services (Chapter 4 (commencing with Section 124575) of Part 4 of Division 106).

(4) Rural Health Services Development (Chapter 5 (commencing with Section 124600) of Part 4 of Division 106).

(5) Grants-In-Aid for Clinics (Article 1 (commencing with Section 124875) of Chapter 7 of Part 4 of Division 106).

(6) Expanded Access to Primary Care (Article 2 (commencing with Section 124900) of Chapter 7 of Part 4 of Division 106).

(7) Birth Defects Monitoring Program (Chapter 1 (commencing with Section 103825) of Part 2 of Division 102).

(8) Maternal and child health programs, including, but not limited to, Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 and as set forth in subdivision (c) of Section 27.

(9) Special Supplemental Food Program for Women, Infants, and Children (Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106).

(10) Perinatal Health Care (Article 4 (commencing with Section 123550) of Chapter 2 of Part 2 of Division 106).

(11) Family planning services (Section 14503 of the Welfare and Institutions Code).

(12) Hereditary Disorders Programs (subdivision (b) of Section 27).

(13) Other public health programs for the protection, preservation, and advancement of public health authorized pursuant to Section 100185 or pursuant to an annual Budget Act provision.

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

SEC. 300. Section 38079 of the Health and Safety Code is amended to read:

38079. (a) All cooperative agreements, regardless of the size of the contracting nonprofit organization, shall be subject to the late payment provisions set forth in Section 926.15 of the Government Code.

(b) In implementing this division, the department shall have the authority of, and be subject to, the provisions set forth in Chapter 2 (commencing with Section 124475) of Part 4 of Division 106, except that those provisions shall apply to all cooperative agreements, not only those agreements with clinics. However, notwithstanding Section 124500, moneys in the Clinic Revolving Fund of the State Department of Health Services shall be used for purposes of this

division only upon appropriation of funds by the Legislature for that purpose.

SEC. 301. Section 39660.5 of the Health and Safety Code is amended to read:

39660.5. (a) In evaluating the level of potential human exposure to toxic air contaminants, the state board shall assess that exposure in indoor environments as well as in ambient air conditions.

(b) The state board shall consult with the State Department of Health Services, pursuant to the program on indoor environmental quality established under Chapter 7 (commencing with Section 105400) of Part 5 of Division 103, concerning what potential toxic air contaminants may be found in the indoor environment and on the best methodology for measuring exposure to these contaminants.

(c) When the state board identifies toxic air pollutants that have been found in any indoor environment, the state board shall refer all available data on that exposure and the suspected source of the pollutant to the State Department of Health Services, the Division of Occupational Safety and Health of the Department of Industrial Relations, the State Energy Resources Conservation and Development Commission, the Department of Housing and Community Development, and the Department of Consumer Affairs.

(d) In assessing human exposure to toxic air contaminants in indoor environments pursuant to this section, the state board shall identify the relative contribution to total exposure to the contaminant from indoor concentrations, taking into account both ambient and indoor air environments.

SEC. 301.1. Section 100125 of the Health and Safety Code is amended to read:

100125. Notwithstanding any other provision of state law, the department shall develop a proposal for consolidation of various programs affecting the health of mothers and children. The department, in developing the proposal, shall consult with the State Maternal Child and Adolescent Health Board, the California Conference of Local Health Officers, the California State Association of Counties, the Primary Care Clinic Advisory Committee, and other organizations interested in health services for women and children, as determined by the department, that shall assist it in identifying waivers of state and federal requirements that would be necessary to implement the proposal. The proposal shall consider administrative cost savings that may result from this consolidation. The department shall obtain waivers from state and federal requirements that the department determines are necessary to make the proposal viable. Any problem in obtaining the waivers shall be reported to the Legislature with the proposals. The department shall submit its proposal to the Legislature on or before January 1, 1984. Programs may include, but need not be limited to, the following:

(a) California Children's Services.

(b) WIC—Special Supplemental Food.
(c) Child Health and Disability Prevention.
(d) California Immunization Assistance Program.
(e) Children and Youth Project.
(f) Dental Disease Prevention.
(g) Rural Health.
(h) Indian Health.
(i) Pediatric Renal Failure Centers.
(j) Prepaid Health Plans.
(k) Family Planning.
(*l*) Infant Medical Dispatch Centers Program.
(m) Childhood Lead Program.
(n) Tuberculosis Control Program.
(o) Venereal Disease.
(p) SSI Disabled Children's Program.
(q) Other maternal and child health programs, including, but not limited to, the following:
(1) Sickle Cell.
(2) Prenatal Testing.
(3) Tay Sachs.
(4) Huntington's Disease.
(5) Prenatal Access.
(6) High Risk Followup.
(7) O.B. Access.
(8) Perinatal Health Clinics.
(9) Primary Care Clinics.
(10) Maternal and Child Health Grants.

Consolidation may include combining two or more specialized programs or the development of a single planning, evaluation, budgeting and reporting process for two or more programs that share a common target population. The department may submit more than one proposal for consolidation if two or more groupings of programs merit consolidation.

Each proposal shall be developed after a review by the department of consolidation efforts proposed or developed by the counties. In the design of the proposal, the department shall consider how state level plans may assist further development of these local efforts.

The department shall consult with the Department of Finance to develop a simplified budget and reporting format for programs that are recommended for consolidation.

The Department of Finance shall make modifications in the California Fiscal Information System as it deems necessary to accommodate the proposed program consolidation.

The office shall consult with the department with respect to the implementation of this section. The office shall incorporate recommendations for the consolidation of maternal, child, and adolescent health services in applicable policy plans adopted after January 1, 1983.

SEC. 301.2. Section 100333 is added to the Health and Safety Code, to read:

100333. (a) The department shall annually compile and publish the laws relating to the use, handling, transportation, storage, and disposal of hazardous materials, including, but not limited to, hazardous wastes, flammable materials, corrosives, explosives, pesticides, and radioactive materials together with laws relating to administration, enforcement, and emergency response. The compilation shall reflect the amendments, additions, and deletions enacted each year.

(b) The department may contract with the Legislative Counsel to prepare the compilation of laws required by subdivision (a) and with the Department of General Services to print and distribute the compilation. Copies of the compilation shall be distributed at cost.

(c) During the 1985–86 fiscal year, the department shall absorb the costs of preparing the compilation from existing appropriations. It is the intent of the Legislature, commencing with the 1986–87 fiscal year, to appropriate revenues received from the distribution of the compilation to the department for carrying out the purposes of this section.

SEC. 301.3. Section 100450 of the Health and Safety Code is amended to read:

100450. (a) The fees or charges required to accompany an application for the issuance or renewal of any license pursuant to Section 1300 of the Business and Professions Code or pursuant to Section 1616 shall be adjusted annually by the percentage change printed in the Budget Act and determined by dividing the General Fund appropriation to Laboratory Field Services in the current state fiscal year by the General Fund appropriation to Laboratory Field Services in the preceding state fiscal year. The fees or charges subject to adjustment pursuant to this subdivision shall be the fees or charges that would have been payable in the prior calendar year without regard to the provisions of subdivision (c).

(b) Commencing January 1, 1995, upon establishment of the Clinical Laboratory Improvement Fund, the annual adjustment required under subdivision (a) and printed in the annual Budget Act shall be determined by dividing the current fiscal year appropriation to the Clinical Laboratory Improvement Fund by the General Fund appropriation to Laboratory Field Services of the department in the preceding fiscal year. Thereafter, the annual adjustment required by subdivision (a) and printed in the annual Budget Act shall be determined by dividing the current fiscal year appropriation to the Clinical Laboratory Improvement Fund by the Clinical Laboratory Improvement Fund appropriation in the preceding fiscal year.

(c) The fees or charges shall also be adjusted annually by a percentage determined by dividing the total amount of federal funds available for all programs in Laboratory Field Services of the department during the federal fiscal year ending on September 30

of the year immediately preceding the effective date of the change in fees, less federal funds available for the federal fiscal year that began on October 1 of the year immediately preceding the effective date of the change in fees as indicated in any grant award letter received from the federal Department of Health and Human Services on or before November 1 of that federal fiscal year, by the total estimated revenue derived pursuant to Section 1300 of the Business and Professions Code and Section 1616 for the fiscal year beginning July 1 of the year immediately preceding the effective date of the change in fees.

(d) The department shall by January 1 of each year publish a list of actual numerical fee charges as adjusted pursuant to this section. This adjustment of fees and the publication of the fee list shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 301.4. Section 100700 of the Health and Safety Code is amended to read:

100700. The department shall adopt and publish regulations to be used in approving and governing the operation of laboratories engaging in the performance of tests referred to in Sections 100710 and 100715, including the qualifications of the employees who perform the tests, that it determines are reasonably necessary to ensure the competence of the laboratories and employees to prepare, analyze, and report the results of the tests.

SEC. 301.5. Section 100725 of the Health and Safety Code is amended to read:

100725. On or after January 1, 1971, the department shall enforce this chapter and regulations adopted by the department.

SEC. 301.6. Section 100865 of the Health and Safety Code is amended to read:

100865. In order to carry out the purpose of this article, any duly authorized representative of the department may do the following:

(a) Enter and inspect a laboratory that is certified pursuant to this article or that has applied for certification.

(b) Inspect and photograph any portion of the laboratory, equipment, any activity, or any samples taken, copy and photograph any records, reports, test results, or other information related solely to certification under this article or regulations adopted pursuant to this article.

(c) It shall be a misdemeanor for any person to prevent, interfere with, or attempt to impede in any way, any duly authorized representative of the department from undertaking the activities authorized by this section.

SEC. 301.7. Section 100880 of the Health and Safety Code is amended to read:

100880. If the department determines that a laboratory is in violation of this article or any regulation or order issued or adopted

pursuant to this article, the department may issue a citation to the owner of the laboratory.

(a) The citation shall be served personally or by registered mail.

(b) Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the statutory provision, order, or regulation alleged to have been violated.

(c) The citation shall fix the earliest feasible time for elimination or correction of the condition constituting the violation.

(d) Citations issued pursuant to this section shall specify a civil penalty for each violation, not to exceed one thousand dollars ($1,000), for each day that the violation occurred.

(e) If the owner fails to correct a violation within the time specified in the citation, the department may assess a civil penalty as follows:

(1) For failure to comply with any citation issued for a violation of this article or a regulation, an amount not to exceed two hundred fifty dollars ($250) for each day that the violation continues beyond the date specified for correction in the citation.

(2) For failure to comply with any citation issued for violation of any department-issued order, an amount not to exceed two hundred dollars ($200) for each day the violation continues beyond the date specified for correction in the citation.

SEC. 301.8. An Article 4 heading is added to Chapter 4 of Part 1 of Division 101 of the Health and Safety Code, immediately following Section 100920, to read:

Article 4. Freestanding Cardiac Catheterization Laboratories

SEC. 301.9. Section 101095 of the Health and Safety Code is amended to read:

101095. Any person failing or refusing to furnish technical, toxicological, or other information required pursuant to Section 101085, or falsifying any information provided pursuant to Section 101085 is guilty of a misdemeanor and is also subject to any other criminal or civil penalties provided by statute.

SEC. 302. Section 101140 of the Health and Safety Code is amended to read:

101140. The dentist or dental hygienist shall attend to dental conditions of the county, as the board of supervisors may assign. Compensation for the dentist or dental hygienist shall be determined by that board.

SEC. 302.1. Article 5 (commencing with Section 101150) is added to Chapter 2 of Part 3 of Division 101 of the Health and Safety Code, to read:

Article 5. Municipal and County Laboratories

101150. For the purpose of protecting the community and the public health, the local health department of a city or county shall have available the services of a public health laboratory for the examination of specimens from suspected cases of infectious and environmental diseases, that may include, but need not be limited to, the examination of specimens from milk, milk products, waters, food products, vectors, and the environment. The public health laboratory shall also provide the analyses required to assist in community disease surveillance and to meet the responsibilities and support the programs of the local health department.

101155. The cost of establishment and maintenance of the public health laboratory is a legal expenditure from any city or county funds that are for disbursement under the direction of the city or county health officer to protect public health.

101160. Any city or county public health laboratory established for the purposes set forth in this chapter shall use only equipment and quality assurance programs and employ only technical personnel that meet with the approval of the State Department of Health Services.

101165. Nothing in this article, or any other provision of law, shall be construed to restrict, limit, or prevent individuals certified under authority of this part or Article 1 (commencing with Section 106600) of Chapter 4 of Part 1 of Division 104 from performing their duties for the protection of the public health.

SEC. 302.2. Section 101185 of the Health and Safety Code is amended to read:

101185. For the purposes of this chapter a "local health department" shall be interpreted to mean any one of the following public health administrative organizations:

(a) A local health department serving one or more counties that shall provide services to all cities whose population is less than 50,000 in addition to the unincorporated territory of the county or counties.

(b) A county health department that does not serve all of the cities of less than 50,000 population, but that has the provisional approval of the department, in accordance with Section 101225.

(c) The health department of a city of 50,000 or greater population, except that the governing body of the city by resolution may declare its intention to be included under the jurisdiction of the county health department, as provided by existing statutes.

(d) The local health department of any county that had under its jurisdiction on September 19, 1947, a population in excess of 1,000,000, or the local health department of any city and county.

SEC. 302.3. Section 101225 of the Health and Safety Code is amended to read:

101225. Provisional approval may be given by the department to a county health department that meets minimum standards as

specified in this chapter, Section 100295, and Part 3 (commencing with Section 124300) of Division 106, but that does not serve all cities of less than 50,000 population within the county.

SEC. 302.4. Section 101275 of the Health and Safety Code is amended to read:

101275. Notwithstanding Section 101260, a county board of supervisors may, with the concurrence of the director, transfer the total function of providing environmental health and sanitation services and programs to a comprehensive environmental agency of the county other than the county health department. The county shall continue to receive funds appropriated for the purposes of this article if it complies with all other minimum standards established by the department and if the environmental health and sanitation services and programs are maintained at levels of quality and efficiency equal to or higher than the levels of the services and programs formerly provided by the county health department.

SEC. 302.5. Section 101280 of the Health and Safety Code is amended to read:

101280. If a transfer authorized by Section 101275 is made:

(a) Each agency shall employ as the immediate supervisor of the environmental health and sanitation services a director of environmental health who is a registered environmental health specialist and the agency shall employ an adequate number of registered environmental health specialists to carry on the program of environmental health and sanitation services.

(b) Wherever, in any statute, regulation, resolution, or order, a power is granted to, or a duty is imposed upon, a county health officer or county health department pertaining to environmental health and sanitation services and programs transferred by the board of supervisors, these powers and duties shall be delegated by the local health officer to the director of environmental health, who shall thereafter administer these powers and duties.

(c) The department shall adopt regulations pertaining to minimum program and personnel requirements of environmental health and sanitation services and programs. The department shall periodically review these programs to determine if minimum requirements are met.

(d) Whenever the board of supervisors determines that the expenses of its environmental health director in the enforcement of any statute, order, quarantine, or regulation prescribed by a state officer or department relating to environmental health and sanitation are not met by any fees prescribed by the state, the board may adopt an ordinance or resolution prescribing fees that will pay the reasonable expenses of the environmental health director incurred in enforcement. The schedule of fees prescribed by ordinance or resolution of the board of supervisors shall be applicable in the area in which the environmental health director enforces any statute, order, quarantine, rule, or regulation prescribed by a state

officer or department relating to environmental health and sanitation.

SEC. 302.6. Section 101300 of the Health and Safety Code is amended to read:

101300. (a) (1) The board of supervisors of a county with a population of less than 40,000 may enter into a contract with the department and the department may enter into a contract with that county to organize and operate a local public health service in that county.

(2) The department may conduct the local public health service either directly, or by contract with other agencies, or by some combination of these methods as agreed upon by the department and the board of supervisors of the county concerned.

(3) The board of supervisors may create a county board of public health or similar local advisory group.

(b) Any county proposing to contract with the department pursuant to this section in the 1992–93 fiscal year and each fiscal year thereafter shall submit to the department a notice of intent to contract adopted by the board of supervisors no later than March 1 of the fiscal year preceding the fiscal year for which the agreement will be in effect in accordance with procedures established by the department. A county may withdraw this notice no later than May 1 of the fiscal year preceding the fiscal year for which the agreement will be in effect in accordance with procedures established by the department. If a county fails to withdraw its notice by this date, it shall be responsible for any and all necessary costs incurred by the department in providing or preparing to provide public health services in that county.

(c) A county contracting with the department pursuant to this section shall not be relieved of its public health care obligation under Section 101025.

(d) (1) Any county contracting with the department pursuant to this section shall pay, by the 15th of each month, the agreed contract amount.

(2) If a county does not make the agreed monthly payment, the department may terminate the county's participation in the program.

(e) The counties and the department shall work collectively to ensure that expenditures do not exceed the funds available for the program in any fiscal year.

(f) The Legislature hereby determines that an expedited contract process for contracts under this section is necessary. Contracts under this section shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(g) The state shall not incur any liability except as specified in this section.

SEC. 302.7. Section 101310 of the Health and Safety Code is amended to read:

101310. In the event a health emergency is declared by the board of supervisors in a county, or in the event a county health emergency is declared by the county health officer pursuant to Section 101080, the local health officer shall have supervision and control over all environmental health and sanitation programs and personnel employed by the county during the state of emergency.

SEC. 302.8. Section 101325 of the Health and Safety Code is amended to read:

101325. Whenever the governing body of any city or county determines that the expenses of the local health officer or other officers or employees in the enforcement of any statute, order, quarantine, or regulation prescribed by a state officer or department relating to public health, requires or authorizes its health officer or other officers or employees to perform specified acts that are not met by fees prescribed by the state, the governing body may adopt an ordinance or resolution prescribing fees to pay the reasonable expenses of the health officer or other officers or employees incurred in the enforcement, and may authorize a direct assessment against the real property in cases where the real property is owned by the operator of a business and the property is the subject of the enforcement. The schedule of fees prescribed by ordinance or resolution of the governing body shall be applicable in the area in which the local health officer or other officers or employees enforce any statute, order, quarantine, or regulation prescribed by a state officer or department relating to public health.

SEC. 303. Section 101405 of the Health and Safety Code is amended to read:

101405. Whenever a contract has been duly entered into, the county health officer and his or her deputies shall exercise the same powers and duties in the city as are conferred upon city health officers by law.

SEC. 303.1. Section 101425 of the Health and Safety Code is amended to read:

101425. The board of supervisors or the governing body of any city may contract with the county superintendent of schools or with the governing board of any school district located wholly or partially in the county or city for the performance by local health officers or other public health department employees of any or all of the functions and duties set forth in Chapter 9 (commencing with Section 49400) of Part 27 of the Education Code, relating to the health supervision of school buildings and of pupils enrolled in the schools of any or all school districts over which the county superintendent of schools, or the governing board or a school district, has jurisdiction.

The contract may specify payment dates as agreed upon by the parties to the contract; payment shall be made as specified in the contract to the county treasurer or city treasurer.

SEC. 303.2. Section 101460 of the Health and Safety Code is amended to read:

101460. Every governing body of a city shall appoint a health officer, except when the city has made other arrangements, as specified in this code, for the county to exercise the same powers and duties within the city, as are conferred upon city health officers by law.

SEC. 303.3. Article 5 (commencing with Section 101480) is added to Chapter 4 of Part 2 of Division 101 of the Health and Safety Code, to read:

Article 5. Released Waste

101480. (a) For purposes of this article, the following definitions apply:

(1) "Local officer" means a county health officer, city health officer, or county director of environmental health.

(2) "Person" has the same meaning as set forth in Section 25118.

(3) "Release" has the same meaning as set forth in Section 25320.

(4) "Remedial action" means any action taken by a responsible party to clean up a released waste, to abate the effects of a released waste, or to prevent, minimize, or mitigate damages that may result from the release of a waste. "Remedial action" includes the restoration, rehabilitation, or replacement of any natural resource damaged or lost as a result of the release of a waste.

(5) "Responsible party" means a person who, pursuant to this section, requests the local officer to supervise remedial action with respect to a released waste.

(6) "Waste" has the same meaning as set forth in subdivision (b) of Section 101075.

(b) Whenever a release of waste occurs and remedial action is required, the responsible party for the release may request the local officer to supervise the remedial action. The local officer may agree to supervise the remedial action if he or she determines, based on available information, that adequate staff resources and the requisite technical expertise and capabilities are available to adequately supervise the remedial action.

(c) Remedial action carried out under this section shall be carried out only pursuant to a remedial action agreement entered into by the local officer and the responsible party. The remedial action agreement shall specify the testing, monitoring, and analysis the responsible party will carry out to determine the type and extent of the contamination caused by the released waste that is the subject of the remedial action, the remedial actions that will be taken, and the cleanup goals that the local officer determines are necessary to protect human health or safety or the environment, and that, if met, constitute a permanent remedy to the release of the waste.

(d) A local officer who enters into a remedial action agreement, as described in subdivision (c), may, after giving the responsible

party adequate notice, withdraw from the agreement at any time after making one of the following findings:

(1) The responsible party is not in compliance with the remedial action agreement.

(2) Appropriate staff resources, technical expertise, or technical capabilities are not available to adequately supervise the remedial action.

(3) The release of the waste that is the subject of the remedial action is of a sufficiently complex nature or may present such a significant potential hazard to human health or the environment that it should be referred to the Department of Toxic Substances Control or a California regional water quality control board.

(e) After determining that a responsible party has completed the actions required by the remedial action agreement and that a permanent remedy for the release of waste has been achieved, the local officer may provide the responsible party with a letter or other document that describes the release of waste that occurred and the remedial action taken, and certifies that the cleanup goals embodied in the remedial action agreement were accomplished.

101483. This article shall not apply to any of the following:

(a) A hazardous substance release site listed pursuant to Section 25356, a site subject to an order or enforceable agreement issued pursuant to Section 25355.5 or 25358.3, or a site where the Department of Toxic Substances Control has initiated action pursuant to Section 25355.

(b) A site subject to a corrective action order issued pursuant to Section 25187 or 25187.7.

(c) A site subject to a cleanup and abatement order issued pursuant to Section 13304 of the Water Code.

(d) A facility that is subject to the requirements of Section 25200.10 or 25200.14.

101485. Nothing in this article shall be construed as prohibiting the Department of Toxic Substances Control from assuming jurisdiction over a release pursuant to Chapter 6.8 (commencing with Section 25300) of Division 20, or a California regional water quality control board, or the State Water Resources Control Board from taking enforcement action against a release pursuant to Division 7 (commencing with Section 13000) of the Water Code.

101487. A local officer shall provide written notification to the Department of Toxic Substances Control and the appropriate California regional water quality control board at least 10 working days prior to entering into a remedial action agreement with a responsible party pursuant to subdivision (c) of Section 101480. The written notification shall include all of the following:

(a) The name and address of the responsible party.

(b) The name and address of the site owner.

(c) The address and location of the site to which the remedial action agreement will apply.

(d) A description of any known or planned local, state, or federal regulatory involvement at the site.

101490. A local officer may charge the responsible party a fee to recover the reasonable and necessary costs incurred in carrying out this article.

SEC. 303.4. Section 101500 of the Health and Safety Code is repealed.

SEC. 303.5. Section 101565 is added to the Health and Safety Code, to read:

101565. Notwithstanding any other provision of law, the board of directors of the authority, members of its community advisory board, members of its professional advisory board, and members of committees of those boards, shall be deemed members of a peer review committee within the meaning of Section 43.7 of the Civil Code.

SEC. 303.6. Section 101625 of the Health and Safety Code is amended to read:

101625. The authority is hereby declared to be a body corporate and politic and shall have power:

(a) To have perpetual succession.

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

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

(d) To take by grant, purchase, gift, devise, or lease, to hold, use and enjoy, and to lease, convey or dispose of, real and personal property of every kind, within or without the boundaries of the authority, necessary or convenient to the full exercise of its powers. The board may lease, mortgage, sell, or otherwise dispose of any real or personal property within or without the boundaries of the authority necessary to the full or convenient exercise of its powers.

(e) To make and enter into contracts with any public agency or person for the purposes of this chapter.

(f) To appoint and employ an executive director and other employees as may be necessary, including legal counsel, establish their compensation and define their powers and duties. The board shall prescribe the amounts and forms of fidelity bond of its officers and employees. The cost of these bonds shall be borne by the authority. The employees and each of them shall serve at the pleasure of the board. The authority may also contract for the services of an independent contractor.

(g) To incur indebtedness.

(h) To purchase supplies, equipment, materials, property, or services.

(i) To establish policies relating to its purposes.

(j) To acquire or contract to acquire, rights-of-way, easements, privileges, or property of every kind within or without the boundaries of the authority, and construct, equip, maintain, and operate any and all works or improvements within or without the

boundaries of the authority necessary, convenient, or proper to carry out any of the provisions, objects or purposes of this chapter, and to complete, extend, add to, repair, or otherwise improve any works or improvements acquired by it.

(k) To make contracts and enter into stipulations of any nature upon the terms and conditions that the board finds are for the best interest of the authority for the full exercise of the powers granted in this chapter.

(*l*) To accept gifts, contributions, grants, or loans from any public agency or person for the purposes this chapter.

The authority may do any and all things necessary in order to avail itself of gifts, contributions, grants or loans, and cooperate under any federal or state legislation in effect on January 25, 1982, or enacted after that date.

(m) To invest any surplus money in its treasury in the same manner as the County of Monterey and according to the same laws.

(n) To negotiate with service providers rates, charges, fees, and rents, and to establish classifications of health care systems operated by the authority.

(o) To develop and implement health care delivery systems to promote quality care and cost efficiency.

(p) To provide health care delivery systems for any or all of the following:

(1) For all persons who are eligible to receive medical benefits under the Medi-Cal Act (Chapter 7 (commencing with Sec. 14000), Part 3, Division 9, Welfare and Institutions Code) in Monterey County through waiver, pilot project, or otherwise.

(2) For all persons in Monterey County who are eligible to receive medical benefits under both Titles XVIII and XIX of the Social Security Act.

(3) For all persons from Monterey County or any city in that county who are eligible to receive health care under Parts 4.5 (commencing with Section 16700) and 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code.

(q) To insure against any accident or destruction of its health care system or any part thereof. It may insure against loss of revenues from any cause. The district may also provide insurance as provided in Part 6 (commencing with Section 989) of Division 3.6 of Title 1 of the Government Code.

(r) To exercise powers that are expressly granted and powers that are reasonably implied from those express powers and necessary to carry out the purposes of this chapter.

(s) To do any and all things necessary to carry out the purposes of former Division 1 (commencing with Section 1).

SEC. 303.7. A Part 5 heading is added to Division 101 of, immediately preceding Section 101800, the Health and Safety Code, to read:

PART 5. OTHER

SEC. 303.8. The heading of Chapter 4 (commencing with Section 101800) of Part 4 of Division 101 of the Health and Safety Code is amended and renumbered to read:

CHAPTER 1. VOLUNTARY HEALTH FACILITY PHILANTHROPIC SUPPORT ACT

SEC. 303.9. Section 101800 of the Health and Safety Code is amended to read:

101800. This chapter shall be known and may be cited as the Voluntary Health Facility and Clinic Philanthropic Support Act.

SEC. 304. Section 101805 of the Health and Safety Code is amended to read:

101805. The Legislature finds and declares that, while there continues to be a need to focus on the deficiencies in the health care system and on corrective reform measures that might be taken, there is also need for focus on the enhancement of its strengths. Existing philanthropic support for health facilities and clinics is a strength that must be preserved and enhanced under any reform measure for all of the following reasons:

(a) Philanthropy imbues members of the community with a sense of pride in their voluntary nonprofit health facilities and clinics and creates a setting in which members of the community are willing to devote time and effort to improve health care available in the community in a way that government regulation could never replace.

(b) Philanthropy allows voluntary nonprofit institutions to conduct research and to engage in other innovative efforts to improve health care in California.

(c) Philanthropy provides required discretionary dollars for voluntary nonprofit institutions, that, in part, substitute for the absence of profits.

(d) Philanthropy allows hospitals to replace wornout and obsolete facilities when, in a period of high inflation, historical costs accumulated through depreciation are totally insufficient to provide for the replacement.

(e) Philanthropy pays for necessary expenditures that otherwise would have to be paid by patients or by government.

(f) Philanthropy may be discouraged by certain shortsighted actions of administrative agencies that, while purporting to serve a short-term purpose, seriously deter the vast benefits to the health care field inuring directly from philanthropy and voluntarism.

(g) Recent amendments to the federal tax laws to broaden the use of the standard deduction also have the effect of eliminating important incentives for philanthropy.

SEC. 304.1. Section 101815 of the Health and Safety Code is amended to read:

101815. For purposes of any state law, whether enacted before or on or after January 1, 1980, that in any manner provides for regulation, review, or reporting of the budget, rates, or revenues of health facilities, as defined in Section 1250, or clinics, as defined in Section 1204, including the provisions of Part 1.7 (commencing with Section 440), none of the following shall be treated directly, or indirectly, as revenues allocable to the cost of care provided by the health facility or clinic:

(a) A donor-designated or restricted grant, gift, endowment, or income therefrom, as defined in Section 405.423(b) of Title 42 of the Code of Federal Regulations, insofar as permitted by federal law.

(b) A grant or gift, or income from a grant or gift, that is not available for use as operating funds because of its designation by the governing board or entity of the health facility or clinic.

(c) A grant or similar payment that is made by a governmental entity and that is not available, under the terms of the grant or payment, for use as operating funds.

(d) Amounts attributable to the sale or mortgage of any real estate or other capital assets of the health facility or clinic that it acquired through a gift or grant, and that are not available for use as operating funds under the terms of the gift or grant or because of designation as provided in subdivision (b).

(e) A depreciation fund that is created by the health facility or clinic in order to meet a condition imposed by a third party for the third party's financing of a capital improvement of the health facility or clinic, provided the fund is used exclusively to make payments to the third party for the financing of the capital improvement.

(f) Funds used to defray the expense of fundraising.

SEC. 304.2. Section 101820 of the Health and Safety Code is amended to read:

101820. No state law shall be construed to discourage philanthropic support of health facilities and clinics, or to otherwise hinder the use of this support for purposes determined by the recipients to be in the best interests of the physicians and patients it serves.

However, in enacting this chapter and Section 14106.2 of the Welfare and Institutions Code, the Legislature does not intend to place any restrictions on cost containment measures relating to health facilities that may be enacted in the future.

SEC. 304.3. Section 102310 of the Health and Safety Code is amended to read:

102310. The local registrar of marriages shall carefully examine each certificate before acceptance for registration and, if it is incomplete or unsatisfactory, he or she shall require any further information to be furnished as may be necessary to make the record satisfactory before acceptance for registration.

SEC. 304.4. Section 102585 of the Health and Safety Code is amended to read:

102585. For births that are being registered under this chapter there shall be required documentary evidence and affidavits pursuant to one of the following:

(a) Two pieces of documentary evidence, at least one of which shall support the parentage.

(b) One piece of documentary evidence and one affidavit executed by the physician or other principal attendant.

(c) One piece of documentary evidence and two affidavits executed by either the mother, father, or other persons having knowledge of the facts of birth.

SEC. 304.45. Section 102960 of the Health and Safety Code is amended to read:

102960. A funeral director, or if there is no funeral director, the person acting in lieu thereof, shall obtain the required information other than medical and health section data from the person or source best qualified to supply this information.

SEC. 304.5. Section 103175 of the Health and Safety Code is amended to read:

103175. The certificate of registry of marriage shall contain as nearly as can be ascertained all of the following and other items as the State Registrar may designate: The first section shall include the personal data of parties married, including the date of birth, full name, birthplace, residence, names and birthplaces of the parents, maiden name of the mothers, the number of previous marriages, marital status, and the maiden name of the female if previously married; the second section shall include the signatures of parties married, license to marry, county and date of issue of license, and the marriage license number; and the third section shall include the certification of the person performing the ceremony, that shall show his or her official position including the denomination if he or she is a priest, minister or clergyperson, and the signature and address of one or more witnesses to the marriage ceremony. The person performing the marriage ceremony shall also type or print his or her name and address on the certificate. The certificate shall not contain any reference to the race or color of parties married.

SEC. 304.6. Section 104420 of the Health and Safety Code, as amended by Chapter 199 of the Statutes of 1996, is amended to read:

104420. The State Department of Education shall provide the leadership for the successful implementation of this article in programs administered by local public and private schools, school districts, and county offices of education. The State Department of Education shall do all of the following:

(a) Provide a planning and technical assistance program to carry out its responsibilities under this article.

(b) Provide guidelines for schools, school districts, and school district consortia to follow in the preparation of plans for

implementation of antitobacco use programs for schoolage populations. The guidelines shall:

(1) Require the applicant agency to select one or more model program designs and shall permit the applicant to modify the model program designs to take special local needs and conditions into account.

(2) Require the applicant agency to prepare for each target population to be served a description of the service to be provided, an estimate of the number to be served, an estimate of the success rate and a method to determine to what extent goals have been achieved.

(3) Require plan submissions to include a staffing configuration and a budget setting forth use and distribution of funds in a clear and detailed manner.

(c) Prepare model program designs and information for local schools, local school districts, consortia, and county offices of education to follow in establishing direct service programs to targeted populations. Model program designs shall, to the extent feasible, be based on studies and evaluations that determine which service delivery systems are effective in reducing tobacco use and are cost-effective. The State Department of Education shall consult with the department, and school districts with existing antitobacco programs in the preparation of model program designs and information.

(d) Provide technical assistance for local schools, local school districts, and county offices of education regarding the prevention and cessation of tobacco use. In fulfilling its technical assistance responsibilities, the State Department of Education may establish a center for tobacco use prevention that shall identify, maintain, and develop instructional materials and curricula encouraging the prevention or cessation of tobacco use. The State Department of Education shall consult with the department and others with expertise in antitobacco materials or curricula in the preparation of these materials and curricula.

(e) Monitor the implementation of programs that it has approved under this article to ensure successful implementation.

(f) Prepare guidelines within 180 days of the effective date of this article for a school-based program of outreach, education, intervention, counseling, peer counseling, and other activities to reduce and prevent smoking among schoolage youth.

(g) Assist county offices of education to employ a tobacco use prevention coordinator to assist local schools and local public and community agencies in preventing tobacco use by pupils.

(h) Train the tobacco use prevention coordinators of county offices of education so that they are:

(1) Familiar with relevant research regarding the effectiveness of various kinds of antitobacco use programs.

(2) Familiar with department guidelines and requirements for submission, review, and approval of school-based plans.

(3) Able to provide effective technical assistance to schools and school districts.

(i) Establish a tobacco use prevention innovation program effort directed at specific pupil populations.

(j) Establish a competitive grants program to develop innovative programs promoting the avoidance, abatement, and cessation of tobacco use among pupils.

(k) Establish a tobacco-free school recognition awards program.

(*l*) As a condition of receiving funds pursuant to this article, the State Department of Education, county offices of education, and local school districts shall ensure that they coordinate their efforts toward smoking prevention and cessation with the lead local agency in the community where the local school district is located.

(m) (1) Develop, in coordination with the county offices of education, a formula that allocates funds for school-based, antitobacco education programs to school districts and county offices of education for all students in grades 4 to 8, inclusive, on the basis of the average daily attendance (ADA) of pupils. School districts shall provide tobacco-use prevention instruction for students, grades 4 to 8, inclusive, that address the following essential topics:

(A) Immediate and long-term undesirable physiologic, cosmetic, and social consequences of tobacco use.

(B) Reasons that adolescents say they smoke or use tobacco.

(C) Peer norms and social influences that promote tobacco use.

(D) Refusal skills for resisting social influences that promote tobacco use.

(2) Develop a competitive grants program administered by the State Department of Education directed at students in grades 9 to 12, inclusive. The purpose of the grant program shall be to conduct tobacco-use prevention and cessation activities targeted to high-risk students and groups in order to reduce the number of persons beginning to use tobacco, or continuing to use tobacco. The State Department of Education shall consult with local lead agencies, the Tobacco Education and Research Oversight Committee, and representatives from nonprofit groups dedicated to the reduction of tobacco-associated disease in making grant award determinations. Grant award amounts shall be determined by available funds. The State Department of Education shall give priority to programs, including, but not limited to, the following:

(A) Target current smokers and students most at risk for beginning to use tobacco.

(B) Offer or refer students to cessation classes for current smokers.

(C) Utilize existing antismoking resources, including local antismoking efforts by local lead agencies and competitive grant recipients.

(n) (1) Allocate funds for administration to county offices of education for implementation of Tobacco Use Prevention Programs. The funds shall be allocated according to the following schedule based on average daily attendance in the prior year credited to all elementary, high, and unified school districts, and to all county superintendents of schools within the county as certified by the Superintendent of Public Instruction:

(A) For counties with over 400,000 average daily attendance, thirty cents ($0.30) per average daily attendance.

(B) For counties with more than 100,000 and less than 400,000 average daily attendance, sixty-five cents ($0.65) per average daily attendance.

(C) For counties with more than 50,000 and less than 100,000 average daily attendance, ninety cents ($0.90) per average daily attendance.

(D) For counties with more than 25,000 and less than 50,000 average daily attendance, one dollar ($1) per average daily attendance.

(E) For counties with less than 25,000 average daily attendance, twenty-five thousand dollars ($25,000).

(2) In the event that funds appropriated for this purpose are insufficient, the Superintendent of Public Instruction shall prorate available funds among participating county offices of education.

(o) Allocate funds appropriated by the act adding this subdivision for local assistance to school districts and county offices of education based on average daily attendance reported in the second principal apportionment in the prior fiscal year. Those school districts and county offices of education that receive one hundred thousand dollars ($100,000) or more of local assistance pursuant to this part shall target 30 percent of those funds for allocation to schools that enroll a disproportionate share of students at risk for tobacco use.

(p) (1) Provide that all school districts and county offices of education that receive funding under subdivision (o) make reasonable progress toward providing a tobacco-free environment in school facilities for students and employees.

(2) All school districts and county offices of education that receive funding pursuant to paragraph (1) shall adopt and enforce a tobacco-free campus policy no later than July 1, 1995. The policy shall prohibit the use of tobacco products, any time, in district-owned or leased buildings, on district property and in district vehicles. Information about the policy and enforcement procedures shall be communicated clearly to school personnel, parents, students, and the larger community. Signs stating "Tobacco use is prohibited" shall be prominently displayed at all entrances to school property. Information about smoking cessation support programs shall be made available and encouraged for students and staff. Any school district or county office of education that does not have a tobacco-free district policy implemented by July 1, 1996, shall not be eligible to

apply for funds from the Cigarette and Tobacco Products Surtax Fund in the 1996–97 fiscal year and until the tobacco-free policy is implemented. Funds that are withheld from school districts that fail to comply with the tobacco-free policy shall be available for allocation to school districts implementing a tobacco-use prevention education program, pursuant to subdivision (m).

SEC. 304.7. Section 104580 of the Health and Safety Code is amended to read:

104580. The Legislature declares that the purposes of this article are to determine the availability and types of nutrition monitoring information that are currently available in specified federal, state and local government programs and in selected private sector programs; to determine what additional information is needed to help legislators, state and local agencies and nongovernment users, to operate cost-effective services and to target funds where most needed; and to assess the feasibility of establishing a prototype state-local data system that will provide regular reports on the: nutritional status and nutrition related health problems of California's population, dietary intake and food consumption patterns, nutrition education information, including knowledge and attitude regarding nutrition, quality and healthfulness of the food supply, nutrition programs and service availability, including population served, service statistics, frequency and periodicity of data collection and types of reports, related socioeconomic factors, and on the state's ability to provide for food and nutrition services where needed.

SEC. 305. Section 105250 of the Health and Safety Code, as added by Chapter 415 of the Statutes of 1995, is amended to read:

105250. (a) A program is hereby established within the department to meet the requirements of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. Sec. 4851 and following) and Title X of the Housing and Community Development Act of 1992 (P.L. 102-550).

(b) The department shall implement and administer the program. The department shall have powers and authority consistent with the intent of, and shall adopt regulations to establish the program as an authorized state program pursuant to, Title IV, Sections 402 to 404, inclusive, of the Toxic Substances Control Act (15 U.S.C. Sec. 2601 and following).

(c) Regulations regarding accreditation of training providers that are adopted pursuant to subdivision (b) shall include, but not be limited to, provisions governing accreditation of providers of health and safety training to employees who engage in or supervise lead-related construction work as defined in Section 6716 of the Labor Code, and certification of employees who have successfully completed that training. Regulations regarding accreditation of training providers shall, as a condition of accreditation, require providers to offer training that meets the requirements of Section

6717 of the Labor Code. The department shall, not later than August 1, 1994, adopt regulations establishing fees for the accreditation of training providers, the certification of individuals, and the licensing of entities engaged in lead-related occupations. The fees imposed under this subdivision shall be established at levels not exceeding an amount sufficient to cover the costs of administering and enforcing the standards and regulations adopted under this section. The fees established pursuant to this subdivision shall not be imposed on any state or local government or nonprofit training program.

(d) All regulations affecting the training of employees shall be adopted in consultation with the Division of Occupational Safety and Health. The regulations shall include provisions for allocating to the division an appropriate portion of funds to be expended for the program for the division's cost of enforcing compliance with training and certification requirements. The department shall adopt regulations to establish the program on or before August 1, 1994.

(e) The department shall review and amend its training, certification, and accreditation regulations adopted under this section as is necessary to ensure continued eligibility for federal and state funding of lead-hazard reduction activities in the state.

SEC. 305.5. Section 106690 of the Health and Safety Code is amended to read:

106690. (a) The committee shall keep a record of its proceedings.

(b) The department shall maintain a register of all applications for registration and retain examination papers and records pertaining thereto for a length of time to be determined by the department.

(c) The department shall maintain a current registry of all registered environmental health specialists and all environmental health specialist trainees in the state.

(d) Individuals registered under this article are responsible for assuring that the department has a current mailing address for them.

SEC. 306. Section 106865 is added to the Health and Safety Code, to read:

106865. It is unlawful for an individual to function as a radon measurement laboratory, radon testing and consulting specialist, or a radon mitigation contractor in violation of this article. A violation of this article is a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000).

SEC. 306.5. The heading of Chapter 8 (commencing with Section 108800) of Part 3 of Division 104 of the Health and Safety Code is amended to read:

CHAPTER 8. LABEL REQUIREMENTS

SEC. 307. Section 109277 is added to the Health and Safety Code, to read:

109277. (a) Every person or entity who owns or operates a health facility or a clinic, or who is licensed as a physician and surgeon and rents or owns the premises where his or her practice is located, shall cause a sign or notice to be posted where a physician and surgeon performs breast cancer screening or biopsy as an outpatient service, or in a reasonably proximate area to where breast cancer screening or biopsy is performed. A sign or notice posted at the patient registration area of the health facility, clinic, or physician and surgeon's office shall constitute compliance with this section.

(b) The sign or notice shall read as follows:

"BE INFORMED"

"If you are a patient being treated for any form of breast cancer, or prior to performance of a biopsy for breast cancer, your physician and surgeon is required to provide you a written summary of alternative efficacious methods of treatment, pursuant to Section 109275 of the California Health and Safety Code."

"The information about methods of treatment was developed by the State Department of Health Services to inform patients of the advantages, disadvantages, risks, and descriptions of procedures."

(c) The sign shall be not less than eight and one-half inches by 11 inches and shall be conspicuously displayed so as to be readable. The words "BE INFORMED" shall not be less than one-half inch in height and shall be centered on a single line with no other text. The message on the sign shall appear in English, Spanish, and Chinese.

SEC. 308. Section 109282 is added to the Health and Safety Code, to read:

109282. (a) Every person or entity who owns or operates a health facility or a clinic, or who is licensed as a physician and surgeon and rents or owns the premises where his or her practice is located, shall cause a sign or notice to be posted where prostate cancer screening or treatment is performed by any physician and surgeon, or in a reasonably proximate area to where prostate cancer screening or treatment is performed. A sign or notice posted at the patient registration area of the health facility, clinic, or physician and surgeon's office shall constitute compliance with this section.

(b) The sign or notice shall read as follows:

"BE INFORMED"

"If you are a patient being treated for any form of prostate cancer, or prior to performance of a biopsy for prostate cancer, your

physician and surgeon is urged to provide you a written summary of alternative efficacious methods of treatment, pursuant to Section 109280 of the California Health and Safety Code."

"The information about methods of treatment was developed by the State Department of Health Services to inform patients of the advantages, disadvantages, risks, and descriptions of procedures."

(c) The sign shall be not less than eight and one-half inches by 11 inches and shall be conspicuously displayed so as to be readable. The words "BE INFORMED" shall not be less than one-half inch in height and shall be centered on a single line with no other text. The message on the sign shall appear in English, Spanish, and Chinese.

SEC. 308.3. Section 110185 of the Health and Safety Code is repealed.

SEC. 308.5. Section 110195 of the Health and Safety Code is repealed.

SEC. 309. Section 110597 is added to the Health and Safety Code, to read:

110597. Any food is adulterated if it is wine and any one of the following conditions exists:

(a) It contains lead in concentrations exceeding 150 parts per billion, or in excess of a more stringent tolerance as may be established by federal law or regulation, unless it can be shown by the producer, or if not produced in California, by the licensed importer, that the wine was bottled before January 1, 1994.

(b) A metal foil capsule containing lead in excess of 0.3 percent by dry weight is affixed or attached to its container, unless it can be shown by the producer, or if not produced in California, by the licensed importer, that the wine was bottled before January 1, 1994.

(c) Notwithstanding any other rule or principle of law that may afford a private right of action to bring claims based on alleged violations of laws or standards, the right to commence and pursue civil or administrative actions to impose or collect fines, penalties, damages, or other remedies based on an alleged violation of the Wine Safety Act established pursuant to Senate Bill 1022 of the 1993–94 Regular Session shall be vested exclusively in the state, through the Food and Drug Branch of the State Department of Health Services and the Office of the Attorney General, and with local health officers or city attorneys or district attorneys otherwise empowered to prosecute violations of this division. Retailers of wine, including, but not limited to, "retailers" as defined in Section 23023 of the Business and Professions Code, or food facilities as defined in Section 113785, shall be entitled to all of the same protections for any violations of the Wine Safety Act established pursuant to Senate Bill 1022 of the 1993–94 Regular Session, as are afforded to food dealers pursuant to Chapter 3 (commencing with Section 110245). This subdivision does

not apply to, limit, alter, or restrict any action for personal injury or wrongful death, or any action based upon a failure to warn.

SEC. 310. Section 110956 is added to the Health and Safety Code, to read:

110956. (a) All organic food regulations and any amendments to those regulations adopted pursuant to the Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.), that are in effect on the date this bill is enacted or that are adopted after that date shall be the organic food regulations of this state.

(b) The department may, by regulation, prescribe conditions under which organic foods may be sold in this state whether or not these conditions are in accordance with regulations adopted pursuant to the Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.) if the director submits these regulations for approval to the federal Secretary of Agriculture as required by Section 6507 of Title 7 of the United States Code and the Secretary approves the regulations pursuant to the federal Organic Foods Production Act.

SEC. 311. Section 110957 is added to the Health and Safety Code, to read:

110957. It shall be unlawful for a person to represent in advertising or labeling that the person or the foods of the person are registered pursuant to this article.

SEC. 312. Section 110958 is added to the Health and Safety Code, to read:

110958. On or before March 1, 1995, the director shall compile and publish a summary of information collected under Section 110875, including the following:

(a) The total number of registrations received under this section.

(b) The total number and quantity of each type of product sold as organic by all registrants combined.

(c) The total annual organic gross sales volume of all registrants combined, and the median gross annual organic sales of all registrants.

(d) The names of all registrants.

(e) The number of registrants in each of the following ranges of annual gross sales volume:

(1) $0–$5,000
(2) $5,001–$10,000
(3) $10,001–$25,000
(4) $25,001–$50,000
(5) $50,001–$75,000
(6) $75,001–$100,000
(7) $100,001–$125,000
(8) $125,001–$150,000
(9) $150,001–$175,000
(10) $175,001–$200,000
(11) $200,001–$250,000
(12) $250,001–$300,000

(13) $300,001–$400,000
(14) $400,001–$500,000
(15) $500,001–$750,000
(16) $750,001–$1,000,000
(17) $1,000,001–$1,500,000
(18) $1,500,001–$2,000,000
(19) $2,000,001–$2,500,000
(20) $2,500,001–$5,000,000
(21) $5,000,001–$7,500,000
(22) $7,500,001–$10,000,000
(23) $10,000,001–$15,000,000
(24) $15,000,001–$20,000,000
(25) $20,000,001 and above.

(f) The report published pursuant to this section shall present the required information in an aggregate form that preserves the confidentiality of the proprietary information of individual registrants.

SEC. 313. An Article 10 heading is added to Chapter 5 of Part 5 of Division 104 of, immediately preceding Section 110970, the Health and Safety Code, to read:

Article 10. Ice

SEC. 314. Section 110970 is added to the Health and Safety Code, to read:

110970. This article applies only to ice that is intended for human consumption and is sold in packaged form. This article shall not apply to persons, hotels, restaurants, caterers, food service contractors, and theaters that manufacture, sell, or furnish ice solely to, or for, their customers in a manner that is incidental to the manufacturing, furnishing, or sale of other goods or services. This article shall not apply to ice dispensing or vending machines, except those that dispense or vend packaged ice, or to the icing of vehicles used to transport food.

SEC. 314.5. Section 111600 of the Health and Safety Code is repealed.

SEC. 315. Section 111912 is added to the Health and Safety Code, to read:

111912. Notwithstanding any provision of this part, or any other provision of law, the department shall have no affirmative obligation to administer, regulate, or enforce state law relating to organic foods except Section 110850, relating to the registration of persons who certify processors of organic foods, and Section 110875, relating to the registration of processors of organic foods.

SEC. 316. Section 113200 of the Health and Safety Code, as added by Chapter 415 of the Statutes of 1995, is amended to read:

113200. As used in this article, unless the context requires otherwise:

(a) "Beverage" means beer or other malt beverages and mineral waters, soda water and similar carbonated soft drinks in liquid form and intended for human consumption.

(b) "Beverage container" means the individual, separate, sealed glass, metal or plastic bottle, can, jar or carton containing a beverage.

(c) "Flip-top container" means a metal beverage container so designed and constructed that a part of the container is severable in opening the containers.

(d) "In this state" means within the exterior limits of the State of California and includes all territory within these limits owned by or ceded to the United States of America.

(e) "Non-flip-top container" means a metal beverage container so designed and constructed that no part of the container is severable in opening the container.

SEC. 317. Section 113270 of the Health and Safety Code, as added by Chapter 415 of the Statutes of 1995, is amended to read:

113270. The department shall enforce this article.

SEC. 318. Section 113275 of the Health and Safety Code, as added by Chapter 415 of the Statutes of 1995, is amended to read:

113275. The department may make regulations to secure the proper enforcement of this article, including regulations with respect to the sanitary preparation of articles of food for freezing, the use of containers, marks, tags, or labels, and the display of signs.

SEC. 319. Section 113280 of the Health and Safety Code, as added by Chapter 415 of the Statutes of 1995, is amended to read:

113280. Any person, firm, corporation, or agent violating any of the provisions of this article with the exception of Article 4 (commencing with Section 113310), or any rule or regulation issued pursuant to this article, shall upon conviction be punished for the first offense by a fine not more than one thousand dollars ($1,000), or by imprisonment in the county jail for not more than six months, or by both.

SEC. 320. Section 113300 of the Health and Safety Code is repealed.

SEC. 321. Section 113305 of the Health and Safety Code is repealed.

SEC. 321.5. Section 113732 is added to the Health and Safety Code, to read:

113732. All animal byproducts and inedible kitchen grease disposed of by any food facility, except restaurants, shall be transported by a renderer licensed under Section 19300 of the Food and Agricultural Code, or a registered transporter of inedible kitchen grease, licensed under Section 19310 of the Food and Agricultural Code. Nothing in this section prevents a food facility from transporting its own animal byproducts in its own vehicles to a central collection point. For the purposes of this section, inedible kitchen grease does not include grease recovered from an interceptor.

"Restaurant," as used in this section, means any coffeeshop, cafeteria, short-order cafe, luncheonette, tavern, cocktail lounge, sandwich stand, soda fountain, private and public school cafeteria or eating establishment, in-plant or employee eating establishment, studio facility, dinnerhouse, delicatessen, commissary, hotel or motel food service operation, and any other eating establishment, organization, club, including veterans' club, boardinghouse, guesthouse, or political subdivision, which gives, sells, or offers for sale, food to the public, guests, patrons, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering functions.

SEC. 321.7. Section 113923 is added to the Health and Safety Code, to read:

113923. Any person operating a food facility or conducting any itinerant food vending shall obtain all necessary permits to conduct business, including, but not limited to, a public health permit. In addition to the penalties prescribed under Article 4 (commencing with Section 113925), violators shall be subject to closure of the facility and a penalty not to exceed three times the cost of the public health permit.

SEC. 322. Section 114360 of the Health and Safety Code is amended and renumbered to read:

114355. (a) Swap meet prepackaged food stands operated by a swap meet operator offering prepackaged food for sale at a swap meet shall meet the requirements of Article 6 (commencing with Section 113975), Article 7 (commencing with Section 113990), and Article 8 (commencing with Section 114075).

(b) Notwithstanding subdivision (a), swap meet prepackaged food stands shall also meet the following requirements:

(1) Food preparation is prohibited.

(2) Foods, other than prepackaged foods, shall not be kept at these food facilities.

(3) Foods that are potentially hazardous as defined in Section 113845 may not be sold.

SEC. 323. Section 114360 is added to the Health and Safety Code, immediately preceeding Section 114361 as added by Section 111, to read:

114360. Under the controls and conditions specified in this article, a satellite food distribution facility as defined in subdivision (b) of Section 113880 may do any of the following:

(a) Hold, portion, and dispense any foods that are prepared or prepackaged by the on-site food establishment or prepackaged by another approved source.

(b) Prepare foods other than potentially hazardous foods, remove the packaging of foods described in subdivision (a), prepare hot dogs, and coat ice cream bars with chocolate and nuts, if all food preparation and handling is within a compartment complying with subdivision (a) of Section 114275.

(c) Add condiments, sauces, garnishes, and similar accompaniments to foods at the time of sale, regardless of whether the accompaniments are potentially hazardous foods.

(d) Bake potatoes in enclosed ovens.

SEC. 324. Section 114361 is added to the Health and Safety Code, immediately preceding 114362 as amended and renumbered by Section 100, to read:

114361. During periods of inoperation, a satellite food distribution facility as defined in subdivision (b) of Section 113880 may store foods, other than potentially hazardous foods, except prepackaged frozen potentially hazardous foods, in lockable food storage compartments or containers if all of the following conditions are met:

(a) The food is adequately protected at all times from contamination, exposure to the elements, ingress of rodents and other pests, and temperature abuse.

(b) The compartments or container have been approved by the enforcement officer.

SEC. 325. Section 114363 of the Health and Safety Code is amended and renumbered, immediately preceding Section 114360 as added by Section 110, to read:

114358. This article governs general sanitation requirements for satellite food distribution facilities as defined in this chapter.

SEC. 326. Section 114364 is added, immediately following Section 114363 as amended and renumbered by Section 101, to the Health and Safety Code, to read:

114364. A satellite food distribution facility as defined in subdivision (b) of Section 113880 is exempt from Section 114030 if it is designed and operated with overhead protection, sneeze-guards and food container covers to assure that unpackaged food complies with Section 113980. The satellite food distribution facility shall be designed and operated so as to prevent contamination of food under normal operating conditions with regard to employee sanitation, and minimize exposure to airborne contaminants, birds, pests, leaves, rain, condensation, and customer contact. The operator shall immediately cease food preparation, holding, portioning, and dispensing at a satellite food distribution facility if unsanitary conditions exist whereby the food may become contaminated with filth or otherwise be rendered unwholesome.

SEC. 327. Section 114365 of the Health and Safety Code is amended and renumbered, immediately following Section 114358 as amended and renumbered by Section 112, to read:

114359. All satellite food distribution facilities shall be subject to the applicable provisions of Article 6 (commencing with Section 113975) and Article 7 (commencing with Section 113990) and, in addition, shall meet all of the following requirements:

(a) All utensils and equipment shall be scrapped, cleaned, or sanitized as circumstances require.

(b) Utensils and equipment shall be handled and stored so as to be protected from contamination. Single-service utensils shall be contained only in sanitary containers or approved sanitary dispensers, stored in a clean, dry place until used, handled in a sanitary manner, and used once only.

SEC. 328. Section 114365 is added to the Health and Safety Code, immediately following Section 114364 as added by Section 113, to read:

114365. A satellite food distribution facility as defined in subdivision (b) of Section 113880 may be moved, operated, or stored at any location within the perimeter. If the facility is to be stored, all food shall be removed and the facility shall be appropriately cleaned prior to storage. While stored, the facility shall be protected from contamination, tampering, and weather. Prior to reuse, it shall be recleaned and sanitized.

SEC. 329. Section 114366 is added to the Health and Safety Code, to read:

114366. A satellite food distribution facility as defined in subdivision (b) of Section 113880 shall do all of the following:

(a) If unpackaged potentially hazardous food is held, portioned, or dispensed, have a two-compartment sink with integral drainboards with hot and cold water for cleaning and sanitizing multiuse utensils, when multiuse utensils are used.

(b) If there is a likelihood that employees may contact unpackaged food or food contact surfaces, have a handwashing sink and supplies as specified for vehicles in subdivision (b) of Section 114275.

(c) If water is required for hand and utensil washing, the facility shall be connected to an approved potable water supply and sewer pursuant to Section 114100.

(d) If electricity is required for mechanical refrigeration or the operation of lights and equipment, the facility shall be connected to an approved power supply.

(e) Provide adequate lighting pursuant to Section 114170.

(f) If applicable, have equipment pursuant to Section 114065.

SEC. 330. Article 20 (commencing with Section 114460) is added to Chapter 4 of Part 7 of Division 104 of the Health and Safety Code, to read:

Article 20. Child Day Care Facilities, Community Care Facilities, and Residential Care Facilities for the Elderly

114460. (a) The Legislature finds and declares that under a recent decision by the State Department of Health Services, child day care facilities, community care facilities, and residential care facilities for the elderly, have been deemed to come within the definition of a food establishment as defined in Section 113780. The Legislature further finds and declares that if this decision is fully

implemented, many of the child day care facilities, community care facilities, and residential care facilities for the elderly, would be adversely affected due to the stringent requirements of this chapter.

(b) It is the intent of the Legislature to temporarily exempt child day care facilities, community care facilities, and residential care facilities for the elderly from the requirements of this chapter, pending the enactment of separate statutory provisions for these facilities that would contain health and safety standards appropriate to these facilities.

114465. For purposes of this article, the following definitions shall apply:

(a) "Child day care facilities" shall have the same meaning as defined in Section 1596.750.

(b) "Community care facilities" shall have the same meaning as defined in Section 1502.

(c) "Residential care facilities for the elderly" shall have the same meaning as defined in Section 1569.2.

114470. Child day care facilities, community care facilities, and residential care facilities for the elderly shall not be deemed to be either food establishments, as defined in Section 113780, or food facilities, as defined in Section 113785, and, therefore, shall be exempt from this chapter.

114475. (a) The State Department of Social Services, in cooperation with the State Department of Health Services, shall develop proposed food preparation provisions for child day care facilities, community care facilities, and residential care facilities for the elderly that would carry out the intent of this chapter to ensure the health and safety of individuals and also that would not adversely affect those facilities that are safely operated. In developing proposed food preparation provisions for child day care facilities, the State Department of Social Services shall consult with the State Department of Education.

(b) The State Department of Social Services shall submit a recommendation of the proposed food preparation provisions to the Legislature no later than January 1, 1991.

(c) It is the intent of the Legislature to consider the recommended proposed food preparation provisions in the adoption of food preparation statutory requirements for child day care facilities, community care facilities, and residential care facilities for the elderly.

SEC. 331. The heading of Chapter 4 (commencing with Section 114650) of Part 9 of Division 104 of the Health and Safety Code is amended to read:

CHAPTER 4. RADIATION PROTECTION ACT OF 1993

SEC. 332. Article 4 (commencing with Section 114675) of Chapter 4 of Part 9 of Division 104 of the Health and Safety Code is repealed.

SEC. 333. Article 4 (commencing with Section 114675) is added to Chapter 4 of Part 9 of Division 104 of the Health and Safety Code, to read:

Article 4. Local Jurisdictions

114675. The Legislature finds and declares that Article 10 (commencing with Section 8610) of Chapter 8 of Title 2 of Division 1 of the Government Code authorizes local governments to create disaster councils for emergency planning and response. The local governmental entities control their own emergency response organizations and resources. Local jurisdictions implement protective measures associated with the plume phase of nuclear radiation accidents.

114677. Local governments shall perform the following duties and functions:

(a) Local governments and nuclear facility operators shall develop and maintain radiological emergency response and preparedness plans to safeguard safety around a nuclear powerplant.

(b) Responsibilities of local jurisdictions within an emergency planning zone include, but are not limited to, the following:

(1) Preemergency preparedness includes developing, maintaining, and enhancing radiological emergency response plans and procedures; maintaining emergency management organizations and operations and field response organizations; in conjunction with utilities, providing public information and education; maintaining essential communications systems; other preemergency preparedness measures, as required in accordance with plans and procedures.

(2) Plume phase emergency includes overall management of offsite plume phase emergency actions; providing available resources for emergency response; a notifying of emergency workers and the public; providing emergency public information; making protective action decisions and taking protective action response, providing public health support in conjunction with the utility and state, providing radiologic exposure control; procuring additional resources and taking other actions needed for emergency response.

(3) Ingestion pathway and recovery phase includes providing support to the pathway and recovery and reentry actions; providing local input into ingestion pathway and recovery decisions, continuing emergency public information in conjunction with state and federal organizations; providing support for security of evacuated areas.

(4) The Interjurisdictional Planning Committee shall identify a discussion leader to facilitate protective action decisions during a nuclear powerplant emergency at the San Onofre Nuclear Generation Station.

(5) A jurisdiction within an emergency planning zone may request services from a jurisdiction outside the emergency planning zone that are necessary to support an evacuated emergency planning zone population. Services requested by a jurisdiction within the emergency planning zone may include, but are not limited to, public information, congregate care, traffic management, radiological monitoring or decontamination of evacuees, and interjurisdictional coordination.

SEC. 334. Article 5 (commencing with Section 114680) is added to Chapter 4 of Part 9 of Division 104 of the Health and Safety Code, to read:

Article 5. Responsibilities of Entities Providing Utilities

114680. Entities providing utilities shall perform the following duties and functions:

(a) Any public or private utility that operates a nuclear generating facility shall have a response organization that can be integrated with federal, state, and local jurisdiction emergency response resources during a radiological accident.

(b) Nuclear utilities shall have the primary responsibility for planning and implementing emergency measures within their facility boundaries and for accident assessment, including evaluation of any potential risk to the public health and safety, and preparation of appropriate protective action recommendations for the consideration of the responsible offsite decisionmakers.

(c) The utilities shall also provide information to the appropriate state and local agencies in support of their independent assessment of offsite radiological conditions relevant to protective action decisions.

(d) Utilities are bound by federal regulation to share responsibility for nuclear powerplant emergency response planning, training, drills and exercises, and public education information with appropriate state and local jurisdictions.

SEC. 335. Article 6 (commencing with Section 114690) of Chapter 4 of Part 9 of Division 104 of the Health and Safety Code is repealed.

SEC. 336. Article 6 (commencing with Section 114685) is added to Chapter 4 of Part 9 of Division 104 of the Health and Safety Code, to read:

Article 6. Responsibilities of Other Agencies

114685. (a) The Department of Transportation shall include within its criteria for funding, repair, and construction projects, the need for adequate emergency evacuation routes.

(b) State and local law enforcement agencies shall ensure that traffic flow plans for areas outside the emergency planning zones adequately reflect the possible evacuation of residents outside the emergency planning zones.

(c) State and local law enforcement agencies shall ensure that traffic flow plans take into consideration that some evacuation routes may be impassible under certain weather conditions and should have plans for designating alternative routes.

(d) State law enforcement agencies shall ensure that officers who may be needed to respond during a nuclear powerplant emergency receive the necessary training, including refresher courses at least once per year.

SEC. 336.5. Section 114770 of the Health and Safety Code is repealed.

SEC. 337. Section 115091 is added to the Health and Safety Code, to read:

115091. The department shall require a licensee or an applicant for a license pursuant to Section 115060 to receive, possess, or transfer radioactive materials, or devices or equipment utilizing radioactive materials, to provide a financial surety to ensure performance of its obligations under this chapter. The department shall establish, by regulation, the amount and type of financial surety that is required to be provided in order to provide for maximum protection of the public health and safety and the environment. The financial surety shall be in the form of surety bonds, deposits of government securities, escrow accounts, lines of credit, trust funds, credit insurance, or any other equivalent financial surety arrangement acceptable to the department. The department shall adopt the regulations in accordance with, but not limited to, the following criteria:

(a) Consideration of the need for, and scope of, any decontamination, decommissioning, reclamation, or disposal activities required to protect the public health and safety and the environment.

(b) Estimates of the costs of the required decontamination, decommissioning, reclamation, or disposal.

(c) The costs of long-term maintenance and surveillance, if required.

(d) Consideration of the appropriateness of specific requirements imposed in the financial assurance regulations adopted by the Nuclear Regulatory Commission, including, but not limited to, the minimum levels of financial assurance required to be provided by

different categories of facilities, and the categories of facilities which are exempted from the requirement to provide a financial surety.

SEC. 338. Section 115092 is added to the Health and Safety Code, to read:

115092. (a) The department shall deposit all money received from a financial surety provided pursuant to Section 115091 in the Financial Surety Account, which is hereby created in the Radiation Control Fund.

(b) Notwithstanding Section 13340 of the Government Code, the money in the Financial Surety Account is hereby continuously appropriated to the department for expenditure only for the decontamination, decommissioning, reclamation, and disposal of radioactive materials, and for long-term maintenance and surveillance for the protection of the public health and safety and the environment, in accordance with subdivision (e), with regard to the facility or operations of the licensee who provided the financial surety.

(c) The department may not expend the money in the Financial Surety Account for normal operating expenses of the department.

(d) The department shall, by regulation, establish a procedure whereby a licensee may be refunded the amount of the financial surety provided by the licensee in excess of any amounts expended by the department and any amounts that are required to be retained to cover the costs of long-term maintenance and surveillance pursuant to subdivision (b), with regard to that licensee's facility or operations. The regulations shall specify that the refund may be received only after the department has determined that the licensee has fully satisfied all of its obligations under its license, and all other obligations which the regulations require to be satisfied before the licensee may receive a refund.

(e) If the department finds that a radioactive materials licensee is unable to, or is unwilling to, conduct any decontamination, decommissioning, reclamation, disposal, or long-term maintenance and surveillance that may be necessary, the department shall issue an order directing any action and corrective measures it finds necessary to protect the public health and safety and the environment. The department may undertake, or contract for the undertaking of, any actions or corrective measures which the licensee fails to satisfactorily complete, and may expend the amount of the financial surety provided by the licensee to pay the costs of those actions and corrective measures.

SEC. 339. Section 115093 is added to the Health and Safety Code, to read:

115093. (a) The department shall require, as a condition of issuing a license to receive, possess, or transfer radioactive materials, or devices or equipment utilizing radioactive materials, that the licensee take corrective action with regard to all contamination that results from the handling, use, storage, or transportation of

radioactive materials at the licensee's facility regardless of when the contamination commenced at the facility.

(b) Any corrective action required pursuant to this section shall require that corrective action be taken beyond the facility boundary if necessary to protect human health and safety or the environment, unless the licensee demonstrates to the satisfaction of the department that, despite the licensee's best efforts, the licensee is unable to obtain the necessary permission to undertake the corrective action.

(c) When corrective action cannot be completed prior to issuance of the license, the license shall contain schedules of compliance for corrective action and assurances of financial responsibility for completing the corrective action.

SEC. 340. Part 9.5 (commencing with Section 115700) is added to Division 104, immediately following Section 115295, of the Health and Safety Code, to read:

PART 9.5. ABANDONED EXCAVATIONS

115700. (a) Every person owning land in fee simple or in possession thereof under lease or contract of sale who knowingly permits the existence on the premises of any abandoned mining shaft, pit, well, septic tank, cesspool, or other abandoned excavation dangerous to persons legally on the premises, or to minors under the age of 12 years, who fails to cover, fill, or fence securely that dangerous abandoned excavation and keep it so protected, is guilty of a misdemeanor.

(b) Every person owning land in fee simple or in possession thereof under lease or contract of sale who knowingly permits the existence on the premises of any permanently inactive well, cathodic protection well, or monitoring well that constitutes a known or probable preferential pathway for the movement of pollutants, contaminants, or poor quality water, from above ground to below ground, or vertical movement of pollutants, contaminants, or poor quality water below ground, and that movement poses a threat to the quality of the waters of the state, shall be guilty of a misdemeanor.

(c) For purposes of this section, "well" includes any of the following:

(1) A "monitoring well" as defined by Section 13712 of the Water Code.

(2) A "cathodic well" as defined by Section 13711 of the Water Code.

(3) A "water well" as defined by Section 13710 of the Water Code.

(d) A "permanently inactive well" is a well that has not been used for a period of one year, unless the person owning land in fee simple or in possession thereof under lease or contract of sale demonstrates an intent for future use for water supply, groundwater recharge, drainage, or groundwater level control, heating or cooling, cathodic protection, groundwater monitoring, or related uses. A well owner

shall provide evidence to the local health officer of an intent for future use of an inactive well by maintaining the well in a way that the following requirements are met:

(1) The well shall not allow impairment of the quality of water within the well and groundwater encountered by the well.

(2) The top of the well or well casing shall be provided with a cover, that is secured by a lock or by other means to prevent its removal without the use of equipment or tools, to prevent unauthorized access, to prevent a safety hazard to humans and animals, and to prevent illegal disposal of wastes in the well. The cover shall be watertight where the top of the well casing or other surface openings to the well are below ground level, as in a vault or below known levels of flooding. The cover shall be watertight if the well is inactive for more than five consecutive years. A pump motor, angle drive, or other surface feature of a well, when in compliance with the above provisions, shall suffice as a cover.

(3) The well shall be marked so as to be easily visible and located, and labeled so as to be easily identified as a well.

(4) The area surrounding the well shall be kept clear of brush, debris, and waste materials.

(e) At a minimum, permanently inactive wells shall be destroyed in accordance with standards developed by the Department of Water Resources pursuant to Section 13800 of the Water Code and adopted by the State Water Resources Control Board or local agencies in accordance with Section 13801 of the Water Code. Minimum standards recommended by the department and adopted by the state board or local agencies for the abandonment or destruction of groundwater monitoring wells or class 1 hazardous injection wells shall not be construed to limit, abridge, or supersede the powers or duties of the department, in accordance with Section 13801 of the Water Code.

(f) Nothing in this section is a limitation on the power of a city, county, or city and county to adopt and enforce additional penal provisions regarding the types of wells and other excavations described in subdivisions (a) and (b).

115705. The board of supervisors may order securely covered, filled, or fenced abandoned mining excavations on unoccupied public lands in the county.

115710. The board of supervisors shall order securely fenced, filled, or covered any abandoned mining shaft, pit, or other excavation on unoccupied land in the county whenever it appears to them, by proof submitted, that the excavation is dangerous or unsafe to man or beast. The cost of covering, filling, or fencing is a county charge.

115715. Every person who maliciously removes or destroys any covering or fencing placed around, or removes any fill placed in, any shaft, pit, or other excavation, as provided in this part, is guilty of a misdemeanor.

115720. This part is not applicable to any abandoned mining shaft, pit, well, septic tank, cesspool, or other abandoned excavation that contains a surface area of more than one-half acre.

SEC. 341. Article 1 (commencing with Section 115700) of Chapter 4 of Part 10 of Division 104 is repealed.

SEC. 342. The heading of Chapter 4 of Part 10 of Division 104 of the Health and Safety Code is amended to read:

CHAPTER 4. SAFE RECREATIONAL LAND USE

SEC. 343. The heading of Article 2 (commencing with Section 115725) of Chapter 4 of Part 10 of Division 104 of the Health and Safety Code is amended to read:

Article 1. Playgrounds

SEC. 344. The heading of Article 3 (commencing with Section 115775) of Chapter 4 of Part 10 of Division 104 of the Health and Safety Code is amended to read:

Article 2. Wooden Playground Equipment

SEC. 345. Section 116335 of the Health and Safety Code is repealed.

SEC. 346. Section 116379 is added to the Health and Safety Code, to read:

116379. Notwithstanding Sections 116360, 116375, and 116450, public water systems are not required to observe the standards of subdivision (f) of Section 64435 of Title 22 of the California Code of Regulations.

SEC. 347. Section 117657 is added to the Health and Safety Code, to read:

117657. "Fund" means the Medical Waste Management Fund created pursuant to Section 117885.

SEC. 348. Section 117924 is added to the Health and Safety Code, to read:

117924. On and after January 1, 1994, when the department is the enforcement agency, except for those small quantity generators required to be registered pursuant to Section 117925, the department shall impose and collect an annual medical waste generator fee in the amount of twenty-five dollars ($25) on small quantity generators of medical waste.

SEC. 349. Section 118027 is added to the Health and Safety Code, to read:

118027. Any person who is authorized to collect solid waste, as defined in Section 40191 of the Public Resources Code, who unknowingly transports medical waste to a solid waste facility, as defined in Section 40194 of the Public Resources Code, incidental to

the collection of solid waste is exempt from this chapter with regard to that waste.

SEC. 350. Section 118029 is added to the Health and Safety Code, to read:

118029. (a) On or before September 1, 1993, and each year thereafter on or before July 1, a registered hazardous waste transporter which transports medical waste shall so notify the department, and provide the following information:

(1) Business name, address, and telephone number.

(2) Name of owner, operator, and contact person.

(3) Hazardous waste transporter registration number.

(4) Vehicle manufacturer name, vehicle model year, vehicle identification number, and the license plate number of each vehicle transporting medical waste.

(b) For transporters that begin transporting medical waste after September 1, 1993, notification to the department, and provision of the information required by subdivision (a) shall be provided to the department prior to transporting medical waste.

(c) On or before September 1, 1993, each registered hazardous waste transporter, and each provider of medical waste mail back systems, as defined in subdivision (b) of Section 118245, shall provide to the department a list of all medical waste generators serviced by that person during the previous 12 months. That list shall include the business name, business address, mailing address, telephone number, and other information as required by the department to collect annual fees pursuant to Section 117924. When the transportation of registered hazardous waste by a medical waste transporter or the provision of a medical waste mail back system begins after September 1, 1993, the initial list shall be provided to the department within 10 days of the close of the earliest calendar quarter ending September 30, December 31, March 31, or June 30, or as otherwise required by the department.

(d) Subsequent to providing the initial list pursuant to subdivision(c), registered hazardous waste transporters and providers of medical waste mail back systems shall submit to the department any changes made to the most recent list every three months, within 10 days of the close of the calendar quarters ending September 30, December 31, March 31, and June 30, or as otherwise required by the department.

SEC. 350.5. Section 120250 of the Health and Safety Code is amended to read:

120250. All physicians, nurses, clergymen, attendants, owners, proprietors, managers, employees, and persons living with, or visiting any sick person, in any hotel, lodginghouse, house, building, office, structure, or other place where any person is ill of any infectious, contagious, or communicable disease, shall promptly report that fact to the health officer, together with the name of the

person, if known, the place where he or she is confined, and the nature of the disease, if known.

SEC. 350.6. Section 120295 of the Health and Safety Code is amended to read:

120295. Any person who violates Section 120130 or any section in Chapter 3 (commencing with Section 120175, but excluding Section 120195), is guilty of a misdemeanor, punishable by a fine of not less than fifty dollars ($50) nor more than one thousand dollars ($1,000), or by imprisonment for a term of not more than 90 days, or by both. He or she is guilty of a separate offense for each day that the violation continued.

SEC. 350.7. The heading of Chapter 3 (commencing with Section 120750) of Part 3 of Division 105 of the Health and Safety Code is amended to read:

CHAPTER 3. INFORMATION ON VENEREAL DISEASE MATERIALS

SEC. 351.5. Section 121575 of the Health and Safety Code is amended to read:

121575. "Rabies," as used in this chapter, includes rabies, and any other animal disease dangerous to human beings that may be declared by the department as coming under this chapter.

SEC. 351.7. Section 123227 of the Health and Safety Code, as amended by Chapter 197 of the Statutes of 1996, is amended and renumbered, immediately following the Chapter 6 heading, to read:

124250. (a) The following definitions shall apply for purposes of this section:

(1) "Domestic violence" means the infliction or threat of physical harm against past or present adult or adolescent female intimate partners, and shall include physical, sexual, and psychological abuse against the woman, and is a part of a pattern of assaultive, coercive, and controlling behaviors directed at achieving compliance from or control over, that woman.

(2) "Shelter-based" means an established system of services where battered women and their children may be provided safe or confidential emergency housing on a 24-hour basis, including, but not limited to, hotel or motel arrangements, haven, and safe houses.

(3) "Emergency shelter" means a confidential or safe location that provides emergency housing on a 24-hour basis for battered women and their children.

(b) The Maternal and Child Health Branch of the State Department of Health Services shall administer a comprehensive shelter-based services grant program to battered women's shelters pursuant to this section.

(c) The Maternal and Child Health Branch shall administer grants, awarded as the result of a request for application process, to battered women's shelters that propose to maintain shelters or services previously granted funding pursuant to this section, to

expand existing services or create new services, and to establish new battered women's shelters to provide services, in any of the following four areas:

(1) Emergency shelter to women and their children escaping violent family situations.

(2) Transitional housing programs to help women and their children find housing and jobs so that they are not forced to choose between returning to a violent relationship or becoming homeless. The programs may offer up to 18 months of housing, case management, job training and placement, counseling, support groups, and classes in parenting and family budgeting.

(3) Legal and other types of advocacy and representation to help women and their children pursue the appropriate legal options.

(4) Other support services for battered women and their children.

(d) In implementing the grant program pursuant to this section, the State Department of Health Services shall consult with an advisory council, to remain in existence until January 1, 1998. The council shall be composed of not to exceed 13 voting members and two nonvoting members appointed as follows:

(1) Seven members appointed by the Governor.

(2) Three members appointed by the Speaker of the Assembly.

(3) Three members appointed by the Senate Committee on Rules.

(4) Two nonvoting ex officio members who shall be Members of the Legislature, one appointed by the Speaker of the Assembly and one appointed by the Senate Committee on Rules. Any Member of the Legislature appointed to the council shall meet with, and participate in the activities of, the council to the extent that participation is not incompatible with his or her position as a Member of the Legislature.

The membership of the council shall consist of domestic violence advocates, battered women service providers, and representatives of women's organizations, law enforcement, and other groups involved with domestic violence. At least one-half of the council membership shall consist of domestic violence advocates or battered women service providers from organizations such as the California Alliance Against Domestic Violence.

It is the intent of the Legislature that the council membership reflect the ethnic, racial, cultural, and geographic diversity of the state.

(e) The department shall collaborate closely with the council in the development of funding priorities, the framing of the Request for Proposals, and the solicitation of proposals.

(f) (1) The Maternal and Child Health Branch of the State Department of Health Services shall administer grants, awarded as the result of a request for application process, to agencies to conduct demonstration projects to serve battered women, including, but not limited to, creative and innovative service approaches, such as community response teams and pilot projects to develop new

interventions emphasizing prevention and education, and other support projects identified by the advisory council.

(2) For purposes of this subdivision, "agency" means a state agency, a local government, a community-based organization, or a nonprofit organization.

(g) It is the intent of the Legislature that services funded by this program include services in underserved and ethnic and racial communities. Therefore, the Maternal and Child Health Branch of the State Department of Health Services shall do all of the following:

(1) Fund shelters pursuant to this section that reflect the ethnic, racial, economic, cultural, and geographic diversity of the state.

(2) Target geographic areas and ethnic and racial communities of the state whereby, based on a needs assessment, it is determined that no shelter-based services exist or that additional resources are necessary.

(h) The director may award additional grants to shelter-based agencies when it is determined that there exists a critical need for shelter or shelter-based services.

(i) As a condition of receiving funding pursuant to this section, battered women's shelters shall do all of the following:

(1) Provide matching funds or in-kind contributions equivalent to not less than 20 percent of the grant they would receive. The matching funds or in-kind contributions may come from other governmental or private sources.

(2) Ensure that appropriate staff and volunteers having client contact meet the definition of "domestic violence counselor" as specified in subdivision (a) of Section 1037.1 of the Evidence Code. The minimum training specified in paragraph (2) of subdivision (a) of Section 1037.1 of the Evidence Code shall be provided to those staff and volunteers who do not meet the requirements of paragraph (1) of subdivision (a) of Section 1037.1 of the Evidence Code.

SEC. 352. Section 123400 of the Health and Safety Code, as added by Chapter 415 of the Statutes of 1995, is amended to read:

123400. This article shall be known and may be cited as the Therapeutic Abortion Act.

SEC. 352.1. A Chapter 6 heading is added to Part 2 of Division 106 of the Health and Safety Code, immediately following the Chapter 5 heading, to read:

CHAPTER 6. DOMESTIC VIOLENCE

SEC. 352.3. Section 127015 of the Health and Safety Code is amended to read:

127015. The office succeeds to and is vested with all the duties, powers, purposes, responsibilities, and jurisdiction of the State Department of Health relating to health planning and research development. The office shall assume the functions and responsibilities of the Facilities Construction Unit of the former State

Department of Health, including, but not limited to, those functions and responsibilities performed pursuant to the following provisions of law:

Chapter 1 (commencing with Section 127125) of Part 2, Article 1 (commencing with Section 127750) of Chapter 1, Article 3 (commencing with Section 127975) of Chapter 2, and Article 1 (commencing with Section 128125) of Chapter 3 of Part 3, Part 6 (commencing with Section 129000) and Part 7 (commencing with Section 129675) of this division, Section 127050; Chapter 10 (commencing with Section 1770) of Division 2; and Section 13113.

SEC. 352.4. Section 127020 of the Health and Safety Code is amended to read:

127020. All regulations heretofore adopted by the State Department of Health that relate to functions vested in the office and that are in effect immediately preceding July 1, 1978, shall remain in effect and shall be fully enforceable unless and until readopted, amended, or repealed by the office.

SEC. 352.5. Section 127040 of the Health and Safety Code is amended to read:

127040. All officers or employees of the office employed after July 1, 1978, shall be appointed by the director of the office.

SEC. 352.6. Section 127045 of the Health and Safety Code is amended to read:

127045. The office may enter into agreements and contracts with any person, department, agency, corporation, or legal entity that are necessary to carry out the functions vested in the office by this chapter, Article 1 (commencing with Section 127875), Article 2 (commencing with Section 127900), Article 5 (commencing with Section 128050) of Chapter 2, Article 2 (commencing with Section 128375), and Article 3 (commencing with Section 128425) of Chapter 5 of Part 3.

SEC. 353. Article 2 (commencing with Section 127340) is added to Chapter 2 of Part 2 of Division 107 of the Health and Safety Code, to read:

Article 2. Hospitals: Community Benefits

127340. The Legislature finds and declares all of the following:

(a) Private not-for-profit hospitals meet certain needs of their communities through the provision of essential health care and other services. Public recognition of their unique status has led to favorable tax treatment by the government. In exchange, nonprofit hospitals assume a social obligation to provide community benefits in the public interest.

(b) Hospitals and the environment in which they operate have undergone dramatic changes. The pace of change will accelerate in response to health care reform. In light of this, significant public benefit would be derived if private not-for-profit hospitals reviewed

and reaffirmed periodically their commitment to assist in meeting their communities' health care needs by identifying and documenting benefits provided to the communities which they serve.

(c) California's private not-for-profit hospitals provide a wide range of benefits to their communities in addition to those reflected in the financial data reported to the state.

(d) Unreported community benefits that are often provided but not otherwise reported include, but are not limited to, all of the following:

(1) Community-oriented wellness and health promotion.

(2) Prevention services, including, but not limited to, health screening, immunizations, school examinations, and disease counseling and education.

(3) Adult day care.

(4) Child care.

(5) Medical research.

(6) Medical education.

(7) Nursing and other professional training.

(8) Home-delivered meals to the homebound.

(9) Sponsorship of free food, shelter, and clothing to the homeless.

(10) Outreach clinics in socioeconomically depressed areas.

(e) Direct provision of goods and services, as well as preventive programs, should be emphasized by hospitals in the development of community benefit plans.

127345. As used in this article, the following terms have the following meanings:

(a) "Community benefits plan" means the written document prepared for annual submission to the Office of Statewide Health Planning and Development that shall include, but shall not be limited to, a description of the activities that the hospital has undertaken in order to address identified community needs within its mission and financial capacity, and the process by which the hospital developed the plan in consultation with the community.

(b) "Community" means the service areas or patient populations for which the hospital provides health care services.

(c) Solely for the planning and reporting purposes of this article, "community benefit" means a hospital's activities that are intended to address community needs and priorities primarily through disease prevention and improvement of health status, including, but not limited to, any of the following:

(1) Health care services, rendered to vulnerable populations, including, but not limited to, charity care and the unreimbursed cost of providing services to the uninsured, underinsured, and those eligible for Medi-Cal, Medicare, California Childrens Services Program, or county indigent programs.

(2) The unreimbursed cost of services included in subdivision (d) of Section 127340.

(3) Financial or in-kind support of public health programs.

(4) Donation of funds, property, or other resources that contribute to a community priority.

(5) Health care cost containment.

(6) Enhancement of access to health care or related services that contribute to a healthier community.

(7) Services offered without regard to financial return because they meet a community need in the service area of the hospital, and other services including health promotion, health education, prevention, and social services.

(8) Food, shelter, clothing, education, transportation, and other goods or services that help maintain a person's health.

(d) "Community needs assessment" means the process by which the hospital identifies, for its primary service area as determined by the hospital, unmet community needs.

(e) "Community needs" means those requisites for improvement or maintenance of health status in the community.

(f) "Hospital" means a private not-for-profit acute hospital licensed under subdivision (a), (b), or (f) of Section 1250 and is owned by a corporation that has been determined to be exempt from taxation under the United States Internal Revenue Code. "Hospital" does not mean any of the following:

(1) Hospitals that are dedicated to serving children and that do not receive direct payment for services to any patient.

(2) Small and rural hospitals as defined in Section 124840.

(g) "Mission statement" means a hospital's primary objectives for operation as adopted by its governing body.

(h) "Vulnerable populations" means any population that is exposed to medical or financial risk by virtue of being uninsured, underinsured, or eligible for Medi-Cal, Medicare, California Childrens Services Program, or county indigent programs.

127350. Each hospital shall do all of the following:

(a) By July 1, 1995, reaffirm its mission statement that requires its policies integrate and reflect the public interest in meeting its responsibilities as a not-for-profit organization.

(b) By January 1, 1996, complete, either alone, in conjunction with other health care providers, or through other organizational arrangements, a community needs assessment evaluating the health needs of the community serviced by the hospital, that includes, but is not limited to, a process for consulting with community groups and local government officials in the identification and prioritization of community needs that the hospital can address directly, in collaboration with others, or through other organizational arrangement. The community needs assessment shall be updated at least once every three years.

(c) By April 1, 1996, and annually thereafter adopt and update a community benefits plan for providing community benefits either

alone, in conjunction with other health care providers, or through other organizational arrangements.

(d) Annually submit its community benefits plan, including, but not limited to, the activities that the hospital has undertaken in order to address community needs within its mission and financial capacity to the Office of Statewide Health Planning and Development. The hospital shall, to the extent practicable, assign and report the economic value of community benefits provided in furtherance of its plan. Effective with hospital fiscal years, beginning on or after January 1, 1996, each hospital shall file a copy of the plan with the office not later than 150 days after the hospital's fiscal year ends. The reports filed by the hospitals shall be made available to the public by the office. Hospitals under the common control of a single corporation or another entity may file a consolidated report.

127355. The hospital shall include all of the following elements in its community benefits plan:

(a) Mechanisms to evaluate the plan's effectiveness including, but not limited to, a method for soliciting the views of the community served by the hospital and identification of community groups and local government officials consulted during the development of the plan.

(b) Measurable objectives to be achieved within specified timeframes.

(c) Community benefits categorized into the following framework:

(1) Medical care services.

(2) Other benefits for vulnerable populations.

(3) Other benefits for the broader community.

(4) Health research, education, and training programs.

(5) Nonquantifiable benefits.

127360. Nothing in this article shall be construed to authorize or require specific formats for hospital needs assessments, community benefit plans, or reports until recommendations pursuant to Section 127365 are considered and enacted by the Legislature.

Nothing in this article shall be used to justify the tax-exempt status of a hospital under state law. Nothing in this article shall preclude the office from requiring hospitals to directly report their charity activities.

127365. The Office of Statewide Health Planning and Development shall prepare and submit a report to the Legislature by October 1, 1997, including all of the following:

(a) The identification of all hospitals that did not file plans on a timely basis.

(b) A statement regarding the most prevalent characteristics of plans in terms of identifying and emphasizing community needs.

(c) Recommendations for standardization of plan formats, and recommendations regarding community benefits and community priorities that should be emphasized. These recommendations shall

be developed after consultation with representatives of the hospitals, local governments, and communities.

SEC. 354. Section 127580 of the Health and Safety Code, as added by Chapter 415 of the Statutes of 1995, is amended to read:

127580. The office, after consultation with the Insurance Commissioner, the Commissioner of Corporations, the State Director of Health Services, and the Director of Industrial Relations, shall adopt a California uniform billing form format for professional health care services and a California uniform billing form format for institutional provider services. The format for professional health care services shall be the format developed by the National Uniform Claim Form Task Force. The format for institutional provider services shall be the format developed by the National Uniform Billing Committee. The formats shall be acceptable for billing in federal Medicare and medicaid programs. The office shall specify a single uniform system for coding diagnoses, treatments, and procedures to be used as part of the uniform billing form formats. The system shall be acceptable for billing in federal Medicare and medicaid programs.

SEC. 355. A Chapter 4 heading is added to Part 2 of Division 107 of the Health and Safety Code, immediately following Section 127600, to read:

CHAPTER 4. RURAL HEALTH

SEC. 356. Article 1 of Chapter 5 of Part 3 of Division 107 of the Health and Safety Code is repealed.

SEC. 357. Section 127760 of the Health and Safety Code, as added by Chapter 415 of the Statutes of 1995, is amended to read:

127760. The Legislature finds and declares that:

(a) Planning for appropriate supplies and distribution of health care personnel is essential to assure the continued health and well-being of the people of the state and also to contain excess costs that may result from unnecessary training and under utilization of health care personnel.

(b) The information on physicians and surgeons collected by the Medical Board of California, in cooperation with the office, and under the authority of Sections 921 and 923 of the Business and Professions Code, has proven to be valuable for health manpower planning purposes. It is the intent of the Legislature, through this article, to provide for the efficient collection and analysis of similar information on other major categories of healing arts licentiates, in order to facilitate the development of the biennial health manpower plan and other reports and program activities of the office.

(c) It is the intent of the Legislature that the data transmitted to the office by the various boards be processed by the boards so that licentiates are not identified by name or license number.

SEC. 358. Section 127780 of the Health and Safety Code, as added by Chapter 415 of the Statutes of 1995, is amended to read:

127780. The office shall maintain the confidentiality of the information it receives respecting individual licentiates under this article and shall only release information in a form that cannot be used to identify individuals.

SEC. 359. Section 128030 of the Health and Safety Code, as added by Chapter 415 of the Statutes of 1995, is amended to read:

128030. The office, in cooperation with the California Postsecondary Education Commission, shall administer the program established pursuant to this article and shall for this purpose, adopt regulations as it determines are reasonably necessary to carry out this article.

SEC. 360. Chapter 4 (commencing with Section 128200) is added to Part 3 of Division 107 of the Health and Safety Code, to read:

CHAPTER 4. FAMILY PHYSICIAN TRAINING PROGRAMS

Article 1. Song-Brown Family Physician Training Act

128200. (a) This article shall be known and may be cited as the Song-Brown Family Physician Training Act.

(b) The Legislature hereby finds and declares that physicians engaged in family practice are in very short supply in California. The current emphasis placed on specialization in medical education has resulted in a shortage of physicians trained to provide comprehensive primary health care to families. The Legislature hereby declares that it regards the furtherance of a greater supply of competent family physicians to be a public purpose of great importance and further declares the establishment of the program pursuant to this article to be a desirable, necessary and economical method of increasing the number of family physicians to provide needed medical services to the people of California. The Legislature further declares that it is to the benefit of the state to assist in increasing the number of competent family physicians graduated by colleges and universities of this state to provide primary health care services to families within the state.

The Legislature finds that the shortage of family physicians can be improved by the placing of a higher priority by public and private medical schools, hospitals, and other health care delivery systems in this state, on the recruitment and improved training of medical students and residents to meet the need for family physicians. To help accomplish this goal, each medical school in California is encouraged to organize a strong family practice program or department. It is the intent of the Legislature that the programs or departments be headed by a physician who possesses specialty certification in the field of family practice, and has broad clinical experience in the field of family practice.

The Legislature further finds that encouraging the training of primary care physician's assistants and primary care nurse practitioners will assist in making primary health care services more accessible to the citizenry, and will, in conjunction with the training of family physicians, lead to an improved health care delivery system in California.

Community hospitals in general and rural community hospitals in particular, as well as other health care delivery systems, are encouraged to develop family practice residencies in affiliation or association with accredited medical schools, to help meet the need for family physicians in geographical areas of the state with recognized family primary health care needs. Utilization of expanded resources beyond university-based teaching hospitals should be emphasized, including facilities in rural areas wherever possible.

It is the intent of the Legislature to provide for a program designed primarily to increase the number of students and residents receiving quality education and training in the specialty of family practice and as primary care physician's assistants and primary care nurse practitioners and to maximize the delivery of primary care family physician services to specific areas of California where there is a recognized unmet priority need. This program is intended to be implemented through contracts with accredited medical schools, programs that train primary care physician's assistants and programs that train primary care nurse practitioners, hospitals, and other health care delivery systems based on per-student or per-resident capitation formulas. It is further intended by the Legislature that the programs will be professionally and administratively accountable so that the maximum cost-effectiveness will be achieved in meeting the professional training standards and criteria set forth in this article and Article 2 (commencing with Section 128250).

128205. As used in this article, and Article 2 (commencing with Section 128250), the following terms mean:

(a) "Family physician" means a primary care physician who is prepared to and renders continued comprehensive and preventative health care services to families and who has received specialized training in an approved family practice residency for three years after graduation from an accredited medical school.

(b) "Associated" and "affiliated" mean that relationship that exists by virtue of a formal written agreement between a hospital or other health care delivery system and an approved medical school which pertains to the family practice training program for which state contract funds are sought. This definition shall include agreements that may be entered into subsequent to October 2, 1973, as well as those relevant agreements that are in existence prior to October 2, 1973.

(c) "Commission" means the Health Manpower Policy Commission.

(d) "Programs that train primary care physician's assistants" means a program that has been approved for the training of primary care physician assistants pursuant to Section 3513 of the Business and Professions Code.

(e) "Programs that train primary care nurse practitioners" means a program that is operated by a California school of medicine or nursing, or that is authorized by the Regents of the University of California or by the Trustees of the California State University, or that is approved by the Board of Registered Nursing.

128210. There is hereby created a state medical contract program with accredited medical schools, programs that train primary care physician's assistants, programs that train primary care nurse practitioners, hospitals, and other health care delivery systems to increase the number of students and residents receiving quality education and training in the specialty of family practice and to maximize the delivery of primary care family physician services to specific areas of California where there is a recognized unmet priority need for those services.

128215. There is hereby created a Health Manpower Policy Commission. The commission shall be composed of 10 members who shall serve at the pleasure of their appointing authorities:

(a) Eight members appointed by the Governor, as follows:

(1) One representative of the University of California medical schools, from a nominee or nominees submitted by the University of California.

(2) One representative of the private medical or osteopathic schools accredited in California from individuals nominated by each of these schools.

(3) One representative of practicing family physicians.

(4) One representative who is a practicing osteopathic physician or surgeon and who is board certified in either general or family practice.

(5) One representative of undergraduate medical students in a family practice program or residence in family practice training.

(6) One representative of trainees in a primary care physician's assistant program or a practicing physician's assistant.

(7) One representative of trainees in a primary care nurse practitioners program or a practicing nurse practitioner.

(8) One representative of the Office of Statewide Health Planning and Development, from nominees submitted by the office director.

(b) Two consumer representatives of the public who are not elected or appointed public officials, one appointed by the Speaker of the Assembly and one appointed by the Chairperson of the Senate Rules Committee.

(c) The Chief of the Health Professions Development Program in the Office of Statewide Health Planning and Development, or the chief's designee, shall serve as executive secretary for the commission.

128220. The members of the commission, other than state employees, shall receive compensation of twenty-five dollars ($25) for each day's attendance at a commission meeting, in addition to actual and necessary travel expenses incurred in the course of attendance at a commission meeting.

128225. The commission shall do all of the following:

(a) Identify specific areas of the state where unmet priority needs for primary care family physicians exist.

(b) Establish standards for family practice training programs and family practice residency programs, postgraduate osteopathic medical programs in family practice, and primary care physician assistants programs and programs that train primary care nurse practitioners, including appropriate provisions to encourage family physicians, osteopathic family physicians, primary care physician's assistants, and primary care nurse practitioners who receive training in accordance with this article and Article 2 (commencing with Section 128250) to provide needed services in areas of unmet need within the state. Standards for family practice residency programs shall provide that all the residency programs contracted for pursuant to this article and Article 2 (commencing with Section 128250) shall both meet the Residency Review Committee on Family Practice's "Essentials" for Residency Training in Family Practice and be approved by the Residency Review Committee on Family Practice. Standards for postgraduate osteopathic medical programs in family practice, as approved by the American Osteopathic Association Committee on Postdoctoral Training for interns and residents, shall be established to meet the requirements of this subdivision in order to ensure that those programs are comparable to the other programs specified in this subdivision. Every program shall include a component of training designed for medically underserved multicultural communities, lower socioeconomic neighborhoods, or rural communities, and shall be organized to prepare program graduates for service in those neighborhoods and communities. Medical schools receiving funds under this article and Article 2 (commencing with Section 128250) shall have programs or departments that recognize family practice as a major independent specialty. Existence of a written agreement of affiliation or association between a hospital and an accredited medical school shall be regarded by the commission as a favorable factor in considering recommendations to the director for allocation of funds appropriated to the state medical contract program established under this article and Article 2 (commencing with Section 128250).

For purposes of this subdivision, "family practice" includes the general practice of medicine by osteopathic physicians.

(c) Review and make recommendations to the Director of the Office of Statewide Health Planning and Development concerning the funding of family practice programs or departments and family practice residencies and programs for the training of primary care

physician assistants and primary care nurse practitioners that are submitted to the Health Professions Development Program for participation in the contract program established by this article and Article 2 (commencing with Section 128250). If the commission determines that a program proposal that has been approved for funding or that is the recipient of funds under this article and Article 2 (commencing with Section 128250) does not meet the standards established by the commission, it shall submit to the Director of the Office of Statewide Health Planning and Development and the Legislature a report detailing its objections. The commission may request the Office of Statewide Health Planning and Development to make advance allocations for program development costs from amounts appropriated for the purposes of this article and Article 2 (commencing with Section 128250).

(d) Establish contract criteria and single per-student and per-resident capitation formulas that shall determine the amounts to be transferred to institutions receiving contracts for the training of family practice students and residents and primary care physician's assistants and primary care nurse practitioners pursuant to this article and Article 2 (commencing with Section 128250), except as otherwise provided in subdivision (e). Institutions applying for or in receipt of contracts pursuant to this article and Article 2 (commencing with Section 128250) may appeal to the director for waiver of these single capitation formulas. The director may grant the waiver in exceptional cases upon a clear showing by the institution that a waiver is essential to the institution's ability to provide a program of a quality comparable to those provided by institutions that have not received waivers, taking into account the public interest in program cost-effectiveness. Recipients of funds appropriated by this article and Article 2 (commencing with Section 128250) shall, as a minimum, maintain the level of expenditure for family practice or primary care physician's assistant or family care nurse practitioner training that was provided by the recipients during the 1973–74 fiscal year. Funds appropriated under this article and Article 2 (commencing with Section 128250) shall be used to develop new programs or to expand existing programs, and shall not replace funds supporting current family practice training programs. Institutions applying for or in receipt of contracts pursuant to this article and Article 2 (commencing with Section 128250) may appeal to the director for waiver of this maintenance of effort provision. The director may grant the waiver if he or she determines that there is reasonable and proper cause to grant the waiver.

(e) Review and make recommendations to the Director of the Office of Statewide Health Planning and Development concerning the funding of special programs that may be funded on other than a capitation rate basis. These special programs may include the development and funding of the training of primary health care teams of family practice residents or family physicians and primary

care physician assistants or primary care nurse practitioners, undergraduate medical education programs in family practice, and programs that link training programs and medically underserved communities in California that appear likely to result in the location and retention of training program graduates in those communities. These special programs also may include the development phase of new family practice residency, primary care physician assistant programs, or primary care nurse practitioner programs.

The commission shall establish standards and contract criteria for special programs recommended under this subdivision.

(f) Review and evaluate these programs regarding compliance with this article and Article 2 (commencing with Section 128250). One standard for evaluation shall be the number of recipients who, after completing the program, actually go on to serve in areas of unmet priority for primary care family physicians in California.

(g) Review and make recommendations to the Director of the Office of Statewide Health Planning and Development on the awarding of funds for the purpose of making loan assumption payments for medical students who contractually agree to enter a primary care specialty and practice primary care medicine for a minimum of three consecutive years following completion of a primary care residency training program pursuant to Article 2 (commencing with Section 128250).

128230. When making recommendations to the Director of the Office of Statewide Health Planning and Development concerning the funding of family practice programs or departments, family practice residencies, and programs for the training of primary care physician assistants and primary care nurse practitioners, the commission shall give priority to programs that have demonstrated success in the following areas:

(a) Actual placement of individuals in medically underserved areas.

(b) Success in attracting and admitting members of minority groups to the program.

(c) Success in attracting and admitting individuals who were former residents of medically underserved areas.

(d) Location of the program in a medically underserved area.

(e) The degree to which the program has agreed to accept individuals with an obligation to repay loans awarded pursuant to the Minority Health Professions Education Fund.

128235. Pursuant to this article and Article 2 (commencing with Section 128250), the Director of the Office of Statewide Health Planning and Development shall do all of the following:

(a) Determine whether family practice, primary care physician assistant training programs proposals, and primary care nurse practitioner training program proposals submitted to the Health Manpower Policy Commission for participation in the state medical contract program established by this article and Article 2

(commencing with Section 128250) meet the standards established by the commission.

(b) Select and contract on behalf of the state with accredited medical schools, programs that train primary care physician assistants, programs that train primary care nurse practitioners, hospitals, and other health care delivery systems for the purpose of training undergraduate medical students and residents in the specialty of family practice. Contracts shall be awarded to those institutions that best demonstrate the ability to provide quality education and training and to retain students and residents in specific areas of California where there is a recognized unmet priority need for primary care family physicians. Contracts shall be based upon the recommendations of the commission and in conformity with the contract criteria and program standards established by the commission.

(c) Terminate, upon 30 days' written notice, the contract of any institution whose program does not meet the standards established by the commission or that otherwise does not maintain proper compliance with this part, except as otherwise provided in contracts entered into by the director pursuant to this article and Article 2 (commencing with Section 128250).

128240. The Director of the Office of Statewide Health Planning and Development shall adopt, amend, or repeal regulations as necessary to enforce this article and Article 2 (commencing with Section 128250), which shall include criteria that training programs must meet in order to qualify for waivers of single capitation formulas or maintenance of effort requirements authorized by Section 128250. Regulations for the administration of this chapter shall be adopted, amended, or repealed as provided in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

Article 2. Health Education and Academic Loan Act

128250. This article shall be known and may be cited as the Health Education and Academic Loan Act.

128255. The Legislature finds and declares all of the following:

(a) Lower levels of reimbursement in rural and inner-city areas for certain critical primary care practices combined with increasing student costs deter medical students from entering the primary care specialties.

(b) Physicians typically begin their practices heavily in debt from student loans acquired to finance their education.

(c) Because of the lower levels of reimbursement and the burden of educational debts, the number of primary care physicians who choose to practice in California is insufficient to adequately meet the health needs of the state's population.

(d) Repayment of student loans for medical students as a means to encourage increased provision of primary care medical services will benefit all citizens of California.

128260. As used in this article, unless the context otherwise requires, the following definitions shall apply:

(a) "Commission" means the Health Manpower Policy Commission.

(b) "Director" means the Director of Statewide Health Planning and Development.

(c) "Medically underserved designated shortage area" means any of the following:

(1) An area designated by the commission as a critical health manpower shortage area.

(2) A medically underserved area, as designated by the United States Department of Health and Human Services.

(3) A critical manpower shortage area, as defined by the United States Department of Health and Human Services.

(d) "Primary care physician" means a physician who has the responsibility for providing initial and primary care to patients, for maintaining the continuity of patient care, and for initiating referral for care by other specialists. A primary care physician shall be a board-certified or board-eligible general internist, general pediatrician, general obstetrician-gynecologist, or family physician.

128265. (a) The commission may provide assistance for the repayment of any student loan for medical education received by a medical student in an institution of higher education in California. The director, with the advice and upon the recommendation of the commission, shall make loan assumption payments using the criteria developed pursuant to this section and Sections 128270 and 128275 any other criteria developed by the commission that are consistent with this section and Sections 128270 and 128275. The commission may not provide loan assumption assistance for a loan that is in default at the time of the application.

(b) The Office of Statewide Health Planning and Development, in consultation with the commission, may adopt, by regulation, rules and procedures necessary to administer the loan assumption program established pursuant to this section and Sections 128270 and 128275.

128270. To be eligible for loan assumption assistance, an applicant shall meet both of the following requirements:

(a) Be enrolled as a full-time student in an accredited California medical school and be a resident of California at the time of the application.

(b) Enter a primary care residency training program in California and provide primary care medical services for a minimum of three years after completion of residency.

128275. (a) Each recipient of loan assumption assistance shall enter into a written contract with the commission, which shall be

considered a contract with the State of California. In executing contracts, the commission shall give priority to those applicants who agree to provide primary care services for a minimum of three years in a medically underserved designated shortage area.

(b) The contract shall include all of the following terms and conditions:

(1) An unlicensed applicant shall apply for a license to practice medicine in California at the earliest practicable opportunity.

(2) Within six months after licensure and the completion of all requirements for the primary care specialty, the applicant shall engage in the practice of primary care medicine.

(3) The recipient shall agree to provide three consecutive years of service as a primary care physician in a medically underserved designated shortage area, or five consecutive years of service in an area not designated by the commission or the United States Department of Health and Human Services as a medically underserved area in order to receive loan assumption assistance made on his or her behalf directly to the lending institution. Loan assumption assistance shall be provided only for the principal amount of the recipient's loan. If any recipient takes pregnancy or paternity leave or suffers temporary disability, the recipient shall perform an amount of service equal to the amount of service lost because of the pregnancy or paternity leave or temporary disability. Performance of that service by the recipient shall commence immediately upon his or her return to work following the leave or disability. Under a three-year term of service, 20 percent of the total grant shall be provided on behalf of the recipient upon completion of the first year of service; 30 percent shall be provided on behalf of the recipient upon completion of the second year of service; and 50 percent shall be provided to the recipient or to the lending institution on behalf of the recipient upon completion of three years of service as a primary care physician if the recipient received medical student loan deferment. If a recipient agrees to provide five years of service pursuant to this paragraph, 20 percent of the total grant shall be provided on behalf of the recipient upon completion of the first year of service; 10 percent shall be provided upon completion of the second year of service; 10 percent shall be provided upon completion of the third year of service; 10 percent shall be provided upon completion of the fourth year of service; and 50 percent shall be provided to the recipient or to the lending institution on behalf of the recipient upon completion of five years of service as a primary care physician if the recipient received medical student loan deferment.

(4) The physician shall treat patients in the area who are eligible for medicaid, Medicare, Medi-Cal, and county reimbursement for low-income and medically indigent adults in addition to fee-for-service patients and shall develop a sliding fee scale for low-income patients.

(5) Those applicants who agree to practice in underserved areas shall practice full time in the medically underserved designated shortage area.

(6) The physician shall permit the commission to monitor his or her practice to determine compliance with the terms of the contract.

(7) The commission shall certify compliance with the terms of the contract for purposes of receipt by the physician of the loan assumption assistance for years subsequent to the initial year of loan assumption assistance.

(8) If the recipient dies or becomes totally or permanently disabled, the commission shall nullify the service obligation of the recipient and the commission shall repay the student loan in full.

(9) If the recipient is convicted of a felony or misdemeanor involving moral turpitude, commits an act of gross negligence in the performance of service obligations, or his or her license to practice is revoked or suspended by the appropriate licensing board, the commission may demand repayment of any funds expended as loan assumption assistance on behalf of the physician.

(10) Any recipient of loan assumption assistance who fails to fulfill the obligations for which he or she contracted shall pay to the commission the full amount received plus interest from the date of the original contract at the rate of 2 percent above the prime rate at the time of the breach. The director may recover all costs and attorney fees incurred as a result of collecting payments resulting from the breach.

(11) The loan assumption program provided by this section shall apply only to government loans, or those loans insured or made available by federal or state government.

(12) Not more than 10 percent of the funds obtained from alternative sources, as specified in Section 128290, may be used to cover the administrative costs incurred by the Office of Statewide Health Planning and Development to implement the loan assumption program.

128280. Each publicly funded medical school in California shall inform incoming medical students of all student loan, loan repayment, and medical student scholarship programs available to them. This information shall include, but need not be limited to, information concerning the National Health Service Corps program, the Minority Health Professions Education Foundation program, and the Loan Assumption Program created pursuant to this article.

128285. No requirement contained in this article shall apply to the University of California unless the Regents of the University of California, by resolution, make that requirement applicable.

128290. (a) This article shall only be implemented if private funds are made available from private sources for all program and administrative costs related to the implementation of this article.

(b) No state funds shall be used to implement this article.

(c) This article shall become operative only upon certification by the Director of the Office of Statewide Health Planning and Development that sufficient private funds have been made available from private sources to implement this article.

SEC. 361. The heading of Article 2 of Chapter 4 of Part 3 of Division 107 of the Health and Safety Code is amended and renumbered to read:

Article 3. Additional Duties of the Health Manpower Policy Commission (HMPC) (Reserved)

SEC. 362. Article 1 (commencing with Section 128330) is added to Chapter 5 of Part 3 of Division 107 of the Health and Safety Code, to read:

Article 1. Minority Health Professions Education Foundation

128330. As used in this article:

(a) "Board" means the Board of Trustees of the Minority Health Professions Education Foundation.

(b) "Commission" means the Health Manpower Policy Commission.

(c) "Director" means the Director of the Office of Statewide Health Planning and Development.

(d) "Foundation" means the Minority Health Professions Education Foundation.

(e) "Health professions" or "health professionals" means physicians and surgeons licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, dentists, registered nurses, and other health professionals determined by the office to be needed in medically underserved areas.

(f) "Office" means the Office of Statewide Health Planning and Development.

(g) "Underrepresented minority groups" means Blacks, Hispanics/Latinos, Native American Indians, or other persons underrepresented in medicine, dentistry, nursing, or other health professions as determined by the board. After January 1, 1990, the board, upon a finding that the action is necessary to meet the health care needs of medically underserved areas, may add a group comprising the economically disadvantaged to those groups authorized to receive assistance under this article.

128335. (a) The office shall establish a nonprofit public benefit corporation, to be known as the Minority Health Professions Education Foundation, that shall be governed by a board consisting of nine members appointed by the Governor, one member appointed by the Speaker of the Assembly, and one member appointed by the Senate Committee on Rules. The members of the

foundation board appointed by the Governor, Speaker of the Assembly, and Senate Committee on Rules may include representatives of minority groups which are underrepresented in the health professions, persons employed as health professionals, and other appropriate members of health or related professions. All persons considered for appointment shall have an interest in health programs, an interest in minority health educational opportunities, and the ability and desire to solicit funds for the purposes of this article as determined by the appointing power. The chairperson of the commission shall also be a nonvoting, ex officio member of the board.

(b) The Governor shall appoint the president of the board of trustees from among those members appointed by the Governor, the Speaker of the Assembly, and the Senate Committee on Rules.

(c) The director, after consultation with the president of the board, may appoint a council of advisers comprised of up to nine members. The council shall advise the director and the board on technical matters and programmatic issues related to the Minority Health Professions Education Foundation Program.

(d) Members of the board and members of the council shall serve without compensation but shall be reimbursed for any actual and necessary expenses incurred in connection with their duties as members of the board or the council.

(e) The foundation shall be subject to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 2 of the Corporations Code), except that if there is a conflict with this article and the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 2 of the Corporations Code), this article shall prevail.

128340. (a) Of the members of the board first appointed by the Governor pursuant to Section 128335, three members shall be appointed to serve a two-year term, three members shall be appointed to serve a three-year term, and three members shall be appointed to serve a four-year term.

(b) Of the members of the board first appointed by the Speaker of the Assembly and the Senate Committee on Rules pursuant to Section 128335, each member shall be appointed to serve a four-year term.

(c) Upon the expiration of the initial appointments for the board, each member shall be appointed to serve a four-year term.

128345. The Minority Health Professions Education Foundation may do any of the following:

(a) Solicit and receive funds from business, industry, foundations, and other private or public sources for the purpose of providing financial assistance in the form of scholarships or loans to Black students, Hispanic/Latino students, Native American Indian students, and other students from underrepresented minority

groups. These funds shall be expended by the office after transfer to the Minority Health Professions Education Fund, created pursuant to Section 128355.

(b) Recommend to the director the disbursement of private sector moneys deposited in the Minority Health Professions Education Fund to students from underrepresented minority groups accepted to or enrolled in schools of medicine, dentistry, nursing, or other health professions in the form of loans or scholarships.

(c) Recommend to the director a standard contractual agreement to be signed by the director and any participating student, that would require a period of obligated professional service in the areas in California designated by the commission as deficient in primary care services. The agreement shall include a clause entitling the state to recover the funds awarded plus the maximum allowable interest for failure to begin or complete the service obligation.

(d) Develop criteria for evaluating the likelihood that applicants for scholarships or loans would remain to practice their profession in designated areas deficient in primary care services.

(e) Develop application forms, that shall be disseminated to students from underrepresented minority groups interested in applying for scholarships or loans.

(f) Encourage private sector institutions, including hospitals, community clinics, and other health agencies to identify and provide educational experiences to students from underrepresented minority groups who are potential applicants to schools of medicine, dentistry, nursing, or other health professions.

(g) Prepare and submit an annual report to the office documenting the amount of money solicited from the private sector, the number of scholarships and loans awarded, the enrollment levels of students from underrepresented minority groups in schools of medicine, dentistry, nursing, and other health professions, and the projected need for scholarships and loans in the future.

(h) Recommend to the director that a portion of the funds solicited from the private sector be used for the administrative requirements of the foundation.

128350. The office shall do all of the following:

(a) Provide technical and staff support to the foundation in meeting all of its responsibilities.

(b) Provide financial management for the Minority Health Professions Education Fund.

(c) Enter into contractual agreements with students from underrepresented minority groups for the disbursement of scholarships or loans in return for the commitment of these students to practice their profession in an area in California designated as deficient in primary care services.

(d) Disseminate information regarding the areas in the state that are deficient in primary care services to potential applicants for the scholarships or loans.

(e) Monitor the practice locations of the recipients of the scholarships or loans.

(f) Recover funds, in accordance with the terms of the contractual agreements, from recipients of scholarships or loans who fail to begin or complete their obligated service. Funds so recovered shall be redeposited in the Minority Health Professions Education Fund.

(g) Contract with the institutions that train family practice residents, in order to increase the participation of students from underrepresented minority groups in entering the specialty of family practice. The director may seek the recommendations of the commission or foundation as to what programs best demonstrate the ability to meet this objective.

(h) Contract with training institutions that are involved in osteopathic postgraduate training in general or family practice medicine, in order to increase the participation of students from underrepresented minority groups participating in the practice of osteopathic medicine. The director may seek the recommendations of the commission or foundation as to what programs have demonstrated the ability to meet this objective.

(i) Enter into contractual agreements with graduated health professionals to repay some or all of the debts they incurred in health professional schools in return for practicing their professions in an area in California designated as deficient in primary care services.

(j) Contract with institutions that award baccalaureate of science of nursing degrees in order to increase the participation of students from underrepresented minority groups in the nursing profession. The director may seek the recommendations of the commission as to what programs have demonstrated the ability to meet this objective.

128355. There is hereby created within the office a Minority Health Professions Education Fund. The primary purpose of this fund is to provide scholarships and loans to students from underrepresented minority groups who are accepted to or enrolled in schools of medicine, dentistry, nursing, or other health professions, and to fund the Geriatric Nurse Practitioner and Clinical Nurse Specialist Scholarship Program pursuant to Article 3 (commencing with Section 128425). The fund shall also be used to pay for the cost of administering the program and for any other purpose authorized by this article. The level of expenditure by the office for the administrative support of the program created pursuant to this article shall be subject to review and approval annually through the state budget process. The office may receive private donations to be deposited into this fund. All money in the fund is continuously appropriated to the office for the purposes of this article and Article 3 (commencing with Section 128425). The office shall manage this fund prudently in accordance with other provisions of law.

128360. Any regulations the office adopts to implement this article shall be adopted as emergency regulations in accordance with Section 11346.1 of the Government Code, except that the regulations

shall be exempt from the requirements of subdivisions (e), (f), and (g) of that section. The regulations shall be deemed to be emergency regulations for the purposes of Section 11346.1 of the Government Code.

128365. Notwithstanding any other provision, meetings of the board need not be open to the public when the board discusses applications for financial assistance under this article, or other matters that the board and the office reasonably determine should not be discussed in public due to privacy considerations.

128370. Notwithstanding any other law, the office may exempt from public disclosure any document in the possession of the office that pertains to a donation made pursuant to this article if the donor has requested anonymity.

SEC. 363. Section 128440 is added to the Health and Safety Code, to read:

128440. Awards shall be coordinated with other financial assistance. An effort shall be made to reach all nurse practitioner and clinical nurse specialist education programs in California.

SEC. 364. Section 128445 is added to the Health and Safety Code, to read:

128445. In developing this program, the Minority Health Professions Education Foundation shall solicit the advice of the representatives of the Board of Registered Nursing, the Student Aid Commission, the California Nurses Association, the California Association of Health Facilities, the California Association of Homes for the Aging, the Chancellor of the California State University, the President of the University of California, and other entities as may be appropriate.

SEC. 365. Section 128450 is added to the Health and Safety Code, to read:

128450. This program shall be funded through the Minority Health Professions Education Fund pursuant to Section 128355.

SEC. 366. Section 128455 is added to the Health and Safety Code, to read:

128455. This article shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2000, deletes or extends that date.

SEC. 367. A Part 4 heading is added to Division 107, immediately preceding Section 128525, of the Health and Safety Code, to read:

PART 4. HEALTH CARE DEMONSTRATION PROJECTS

SEC. 368. Section 128525 of the Health and Safety Code is amended and renumbered, immediately following the Article 4 heading, to read:

100921. The Legislature finds and declares that:

(a) A pilot program was established by the Office of Statewide Health Planning and Development to test the feasibility of

performing high quality, safe diagnostic cardiac catheterization procedures in a freestanding cardiac catheterization laboratory.

(b) Evaluation of this pilot program by the office demonstrated that it is feasible to conduct these procedures in nonhospital settings and that these laboratories maintain the quality of the diagnostic procedures while also reducing the cost of care.

(c) Based on this evaluation, it is the intent of the Legislature that those freestanding cardiac catheterization laboratories that are in active status in the pilot program be licensed.

SEC. 368.5. Section 128530 of the Health and Safety Code is amended and renumbered, immediately following Section 100921, to read:

100922. (a) Notwithstanding any other provision of law, a freestanding cardiac catheterization laboratory that as of December 31, 1993, was in active status in the Health Care Pilot Project established pursuant to former Part 1.85 (commencing with Section 444) of Division 1, and that meets the requirements specified in this section, may be licensed by the State Department of Health Services as a freestanding cardiac catheterization laboratory. The license shall be subject to suspension or revocation, or both, in accordance with Article 5 (commencing with Section 1240) of Chapter 1 of Division 2. An application for licensure or annual renewal shall be accompanied by a fee of one thousand dollars ($1,000).

(b) A laboratory granted a license pursuant to this section shall be subject to the department's regulations that govern cardiac catheterization laboratories operating in hospitals without facilities for cardiac surgery, any similar regulations that may be developed by the department specifically to govern freestanding cardiac catheterization laboratories, and to the following regulations: subdivisions (a) and (d) of Section 70129 of; paragraphs (1), (2), (3), and (4) of subdivision (a) of, and subdivision (i) of Section 70433 of; paragraphs (1), (3), (4), and (5) of subdivision (a) of Section 70435 of; subparagraphs (A), (B), and (D) of paragraph (1) of, and paragraphs (5) and (7) of, subdivision (b) of Section 70437 of; subdivision (a) of Section 70439 of; Sections 70841, 75021, and 75022 of; subdivision (a) of Section 75023 of; Sections 75024, 75025, and 75026 of; subdivisions (a), (b), and (c) of Section 75027 of; subdivision (b) of Section 75029 of; Section 75030 of; subdivision (b) of Section 75031 of; Sections 75034, 75035, 75037, 75039, 75045, and 75046 of; subdivision (a) of Section 75047 of; and Sections 75050, 75051, 75052, 75053, 75054, 75055, 75057, 75059, 75060, 75061, 75062, 75063, 75064, 75065, 75066, 75071, and 75072 of; Title 22 of the California Code of Regulations.

(c) A laboratory granted a license pursuant to this section shall have a system for the ongoing evaluation of its operations and the services it provides. This system shall include a written plan for evaluating the efficiency and effectiveness of the health care services provided that describes the following:

(1) The scope of the services provided.

(2) Measurement indicators regarding the processes and outcomes of the services provided.

(3) The assignment of responsibility when the data from the measurement indicators demonstrates the need for action.

(4) A mechanism to ensure followup evaluation of the effectiveness of the actions taken.

(5) An annual evaluation of the plan.

(d) A laboratory granted a license pursuant to this section is authorized to perform only the following diagnostic procedures:

(1) Right heart catheterization or angiography, or both.

(2) Left heart catheterization or angiography, or both.

(3) Coronary catheterization and angiography.

(4) Electrophysiology studies.

(e) A laboratory granted a license pursuant to this section shall only perform its procedures on adults, on an outpatient basis. Each laboratory shall define patient characteristics that are appropriate for safe performance of procedures in the laboratory, and include evaluation of these criteria in its quality assurance process.

(f) Notwithstanding the requirements already set forth in this chapter, freestanding cardiac catheterization laboratories shall comply with all other applicable federal, state, and local laws.

(g) This section shall become operative on January 1, 1995, and does not require the department to adopt regulations.

SEC. 369. Section 128782 of the Health and Safety Code, as added by Chapter 415 of the Statutes of 1995, is amended to read:

128782. Notwithstanding any other provision of law, upon the request of a small and rural hospital, as defined in Section 124840, that did not file financial reports with the office by electronic media as of January 1, 1993, the office shall, on a case-by-case basis, do one of the following:

(a) Exempt the small and rural hospital from any electronic filing requirements of the office regarding annual or quarterly financial disclosure reports specified in Sections 128735 and 128740.

(b) Provide a one-time reduction in the fee charged to the small and rural hospital not to exceed the maximum amount assessed pursuant to Section 127280 by an amount equal to the costs incurred by the small and rural hospital to purchase the computer hardware and software necessary to comply with any electronic filing requirements of the office regarding annual or quarterly financial disclosure reports specified in Sections 128735 and 128740.

SEC. 370. Section 129295 of the Health and Safety Code, as added by Chapter 415 of the Statutes of 1995, is amended to read:

129295. The office shall establish a pilot program under this article of insuring loans to nonprofit borrowers that are not licensed to operate the facilities for which the loans are insured. The number of facilities for which loans are insured under this section shall not exceed 30 and the aggregate amount of loans insured under this

section shall not exceed six million dollars ($6,000,000), that may be in addition to the maximum loan insurance amount otherwise authorized by subdivision (b) of Section 129285. Construction of all projects assisted under this section shall be commenced on or before January 1, 1990.

The office may delay processing or decline acceptance of loan guarantee applications under this section if the volume of applications becomes too large for existing staff to process in a timely manner or if risks associated with the pilot program are determined by the office to be unreasonable.

The office shall submit a report to the Legislature, on or before January 1, 1991, specifically identifying potential problems and financial risks associated with insuring loans authorized by this section.

SEC. 371. Section 129725 of the Health and Safety Code, as added by Chapter 415 of the Statutes of 1995, is amended to read:

129725. (a) (1) "Hospital building" includes any building not specified in subdivision (b) that is used, or designed to be used, for a health facility of a type required to be licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.

(2) Except as provided in paragraph (9) of subdivision (b), hospital building includes a correctional treatment center, as defined in subdivision (j) of Section 1250, the construction of which was completed on or after March 7, 1973.

(b) "Hospital building" does not include any of the following:

(1) Any building where outpatient clinical services of a health facility licensed pursuant to Section 1250 are provided that is separated from a building in which hospital services are provided. If any one or more outpatient clinical services in the building provides services to inpatients, the building shall not be included as a "hospital building" if those services provided to inpatients represent no more than 25 percent of the total outpatient services provided at the building. Hospitals shall maintain on an ongoing basis, data on the patients receiving services in these buildings, including the number of patients seen, categorized by their inpatient or outpatient status. Hospitals shall submit this data annually to the State Department of Health Services.

(2) Any building used, or designed to be used, for a skilled nursing facility or intermediate care facility if the building is of single-story, wood-frame or light steel frame construction.

(3) Any building of single-story, wood-frame or light steel frame construction where only skilled nursing or intermediate care services are provided if the building is separated from a building housing other patients of the health facility receiving higher levels of care.

(4) Any freestanding structures of a chemical dependency recovery hospital exempted under subdivision (c) of Section 1275.2.

(5) Any building licensed to be used as an intermediate care facility/developmentally disabled habilitative with six beds or less

and any intermediate care facility/developmentally disabled habilitative of 7 to 15 beds that is a single-story, wood-frame or light steel frame building.

(6) Any building that has been used as a community care facility licensed pursuant to Chapter 3 (commencing with Section 1500) of Division 2, and was originally licensed to provide that level of care prior to March 7, 1973, if (A) the building complied with applicable building and safety standards at the time of that licensure, (B) the Director of the State Department of Health Services, upon application, determines that in order to continue to properly serve the facility's existing client population, relicensure as an intermediate care facility/developmentally disabled will be required, and (C) a notice of intent to obtain a certificate of need was filed with the area health planning agency and the office on or before March 1, 1983. The exemption provided in this paragraph extends only to use of the building as an intermediate care facility/developmentally disabled.

(7) Any building that has been used as a community care facility pursuant to paragraph (1) or (2) of subdivision (a) of Section 1502, and was originally licensed to provide that level of care if all of the following conditions are satisfied:

(A) The building complied with applicable building and safety standards for a community care facility at the time of that licensure.

(B) The facility conforms to the 1973 Edition of the Uniform Building Code of the International Conference of Building Officials as a community care facility.

(C) The facility is other than single story, but no more than two stories, and the upper story is licensed for ambulatory patients only.

(D) A certificate of need was granted prior to July 1, 1983, for conversion of a community care facility to an intermediate care facility.

(E) The facility otherwise meets all nonstructural construction standards for intermediate care facilities in existence on the effective date of this act or obtains waivers from the appropriate agency.

The exemption provided in this paragraph extends only to use of the building as an intermediate care facility as defined in subdivision (d) of Section 1250 and the facility is in Health Facilities Planning Area 1420.

(8) Any building subject to licensure as a correctional treatment center, as defined in subdivision (j) of Section 1250, the construction of which was completed prior to March 7, 1973.

(9) (A) Any building that meets the definition of a correctional treatment center, pursuant to subdivision (j) of Section 1250, for which the final design documents were completed or the construction of which was begun prior to January 1, 1994, operated by or to be operated by the Department of Corrections, the Department of the Youth Authority, or by a law enforcement agency of a city, county, or a city and county.

(B) In the case of reconstruction, alteration, or addition to, the facilities identified in this paragraph, and paragraph (8) or any other building subject to licensure as a general acute care hospital, acute psychiatric hospital, correctional treatment center, or nursing facility, as defined in subdivisions (a), (b), (j), and (k) of Section 1250, operated or to be operated by the Department of Corrections, the Department of the Youth Authority, or by a law enforcement agency of a city, county, or city and county, only the reconstruction, alteration, or addition, itself, and not the building as a whole, nor any other aspect thereof, shall be required to comply with this chapter or the regulations adopted pursuant thereto.

SEC. 372. Section 129730 of the Health and Safety Code, as added by Chapter 415 of the Statutes of 1995, is amended to read:

129730. (a) Space for the following functions shall be considered "outpatient clinical services," when provided in a freestanding building that is separated from a hospital building where inpatient hospital services are provided: administrative space; central sterile supply; storage; morgue and autopsy facilities; employee dressing rooms and lockers; janitorial and housekeeping facilities; and laundry.

(b) The outpatient portions of the following services may also be delivered in a freestanding building and shall be considered "outpatient clinical services:" intermediate care; chronic dialysis; psychiatry; rehabilitation; occupational therapy; physical therapy; maternity; dentistry; skilled nursing; and chemical dependency.

(c) Services that duplicate basic services, as defined in subdivision (a) of Section 1250, or services that are provided as part of a basic service, but are not required for facility licensure may also be provided in a freestanding building.

(d) The office shall not approve any plans that propose to locate any function listed in subdivision (a) in a freestanding building until the State Department of Health Services certifies to the office that it has received and approved a plan acceptable to the State Department of Health Services that demonstrates how the health facility will continue to provide all basic services in the event of any emergency when the freestanding building may no longer remain functional.

(e) Services listed in subdivisions (b) and (c) are subject to the same 25-percent inpatient limitation described in Section 129725.

SEC. 373. Section 129787 of the Health and Safety Code, as added by Chapter 415 of the Statutes of 1995, is amended to read:

129787. (a) The payment of the filing fee described in Section 129785 may be postponed by the office if all of the following conditions are met:

(1) The proposed construction or alteration has been proposed as a result of a seismic event that has been declared to be a disaster by the Governor.

(2) The office determines that the applicant cannot presently afford to pay the filing fee.

(3) The applicant has applied for federal disaster relief from the Federal Emergency Management Agency (FEMA) with respect to the disaster described in paragraph (1).

(4) The applicant is expected to receive disaster assistance within one year from the date of the application.

(b) If the office does not receive full payment of any fee for which payment has been postponed pursuant to subdivision (a) within one year from the date of plan approval, the statewide office may request an offset from the Controller for the unpaid amount against any amount owed by the state to the applicant, and may request additional offsets against amounts owed by the state to the applicant until the fee is paid in full. This subdivision shall not be construed to establish an offset as described in the preceding sentence as the exclusive remedy for the collection of any unpaid fee amount as described in that same sentence.

SEC. 373.3. Section 129880 of the Health and Safety Code is amended and renumbered to read:

129875. Construction or alterations of buildings specified in paragraphs (1), (2), and (3) of subdivision (b) of Section 129725 shall conform to the applicable provisions of the latest edition of the California Building Standards Code. The office shall independently review and inspect these buildings. For purposes of this section, "construction or alteration" includes the conversion of a building to a purpose specified in paragraphs (1), (2), and (3) of subdivision (b) of Section 129725. Any construction or alteration of any building subject to this section shall be exempt from any plan review and approval or construction inspection requirement of any city or county. The building standards for the construction or alteration of buildings specified in paragraph (1) of subdivision (b) of Section 129725 shall not be more restrictive or comprehensive than comparable building standards established, or otherwise applied, by the office to clinics licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.

The office may also exempt from the plan review process or expedite those projects undertaken by an applicant for a hospital building that the office determines do not materially alter the mechanical, electrical, architectural, or structural integrity of the facility. The office shall set forth criteria to expedite projects or to implement any exemptions made pursuant to this paragraph.

The Legislature recognizes the relative safety of single story, wood frame, and light steel frame construction for use in housing patients requiring skilled nursing and intermediate care services and it is, therefore, the intent of the Legislature to provide for reasonable flexibility in seismic safety standards for these structures. The office shall be reasonably flexible in the application of seismic standards for other buildings by allowing incidental and minor nonstructural

additions or nonstructural alterations to be accomplished with simplified written approval procedures as established by the office, with the advice of the office of the State Architect and the State Fire Marshal.

The office shall continue to implement, and modify as necessary, criteria that were initially developed and implemented prior to July 2, 1989, to exempt from the plan review process or expedite those projects for alterations of buildings specified in paragraphs (2) and (3) of subdivision (b) of Section 129725 that may include, but are not limited to, renovations, remodeling, or installations of necessary equipment such as hot water heaters, air-conditioning units, dishwashers, laundry equipment, handrails, lights, television brackets, small emergency generators (up to 25 kilowatts), storage shelves, and similar plant operations equipment; and decorative materials such as wall coverings, floor coverings, and paint.

The office shall include provisions for onsite field approvals by available office construction advisers and the preapproval of projects that comply with the requirements for which the office has developed standard architectural or engineering detail, or both standard architectural and engineering detail.

This section shall become operative on January 1, 1997.

SEC. 373.5. Section 129895 of the Health and Safety Code is amended to read:

129895. (a) The office shall adopt by regulations seismic safety standards for hospital equipment anchorages, as defined by the office. Those regulations shall include criteria for the testing of equipment anchorages.

(b) Any fixed hospital equipment anchorages purchased or acquired on or after either the effective date of the regulations adopted pursuant to subdivision (a), shall not be used or installed in any hospital building unless the equipment anchorages are approved by the office.

(c) Manufacturers, designers, or suppliers of equipment anchorages may submit data sufficient for the office to evaluate equipment anchorages' seismic safety prior to the selection of equipment anchorages for any specific hospital building.

(d) The office may charge a fee based on the actual costs incurred by it for data review, approvals, and field inspections pursuant to this section.

SEC. 373.7. Section 129905 of the Health and Safety Code is amended to read:

129905. Subject to the complete exemption contained in paragraphs (8) and (9) of subdivision (b) of Section 129725, and notwithstanding any other provision of law, plans for the construction or alteration of any hospital building, as defined in Section 1250, or any building specified in Section 129875, that are prepared by or under the supervision of the Department of Corrections or on behalf of the Department of the Youth Authority,

shall not require the review and approval of the statewide office. In lieu of review and approval by the statewide office, the Department of Corrections and the Department of the Youth Authority shall certify to the statewide office that their plans and construction are in full conformance with all applicable building standards, including, but not limited to, fire and life and safety standards, and the requirements of this chapter for the architectural, structural, mechanical, plumbing, and electrical systems. The Department of Corrections and the Department of the Youth Authority shall use a secondary peer review procedure to review designs to ensure the adherence to all design standards for all new construction projects, and shall ensure that the construction is inspected by a competent, onsite inspector to ensure the construction is in compliance with the design and plan specifications.

Subject to the complete exemption contained in paragraphs (8) and (9) of subdivision (b) of Section 129725, and notwithstanding any other provision of law, plans for the construction or alteration of any correctional treatment center that are prepared by or under the supervision of a law enforcement agency of a city, county, or city and county shall not require the review and approval of the statewide office. In lieu of review and approval by the statewide office, the law enforcement agency of a city, county, or city and county shall certify to the statewide office that the plans and construction are in full conformance with all applicable building standards, including, but not limited to, fire and life and safety standards, and the requirements of this chapter for the architectural, structural, mechanical, plumbing, and electrical systems.

It is the intent of the Legislature that, except as specified in this section, all hospital buildings as defined by this chapter constructed by or under the supervision of the Department of Corrections or local law enforcement agencies, or constructed on behalf of the Department of the Youth Authority shall at a minimum meet all applicable regulations adopted pursuant to this chapter and all other applicable state laws.

SEC. 374. Section 799.02 of the Insurance Code is amended to read:

799.02. Notwithstanding subdivision (f) of Section 120980 of the Health and Safety Code or any other provisions of law, a life or disability income insurer may decline a life or disability income insurance application or enrollment request on the basis of a positive ELISA test followed by a reactive Western Blot Assay performed by or at the direction of the insurer on the same specimen of the applicant's blood.

This authorization applies only to policies, certificates, and applications for coverage (a) that is issued, delivered, or received on or after the effective date of the urgency statute amending this section enacted during the 1989 portion of the 1989–90 Regular Session and (b) the issuance or granting of which is otherwise

contingent upon medical review for other diseases or medical conditions to be effective.

This article shall not be construed to prohibit an insurer from declining an application or enrollment request for insurance because the applicant has been diagnosed as having AIDS or ARC by a medical professional.

SEC. 375. Section 799.10 of the Insurance Code is amended to read:

799.10. (a) This section shall apply to the disclosure of the results of HIV antibody tests requested by an insurer pursuant to this article and, notwithstanding the provisions of Section 120980 of the Health and Safety Code, Section 120980 of the Health and Safety Code does not apply to the disclosure of the results of HIV antibody tests conducted pursuant to this article.

(b) Any person who negligently discloses results of an HIV antibody test to any third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in this article or in Section 1603.1 or 1603.3 of the Health and Safety Code, shall be assessed a civil penalty in an amount not to exceed one thousand dollars ($1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully discloses the results of an HIV antibody test to any third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in this article or in Section 1603.1 or 1603.3 of the Health and Safety Code, shall be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and not more than five thousand dollars ($5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(d) Any person who willfully or negligently discloses the results of an HIV antibody test to a third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), or except as provided in this article or in Section 1603.1 or 1603.3 of the Health and Safety Code, that results in economic, bodily, or psychological harm to the subject of the test, is guilty of a misdemeanor punishable by imprisonment in the county jail for a period not to exceed one year, by a fine of not to exceed ten thousand dollars ($10,000), or by both that fine and imprisonment.

(e) Any person who commits any act described in subdivision (b) or (c) shall be liable to the subject for all actual damages, including damages for economic, bodily, or psychological harm that is a proximate cause of the act.

(f) Each disclosure made in violation of this section is a separate and actionable offense.

(g) "Written authorization," as used in this section, applies only to the disclosure of test results by a person responsible for the care and treatment of the person subject to the test. Written authorization is required for each separate disclosure of the test results, and shall include to whom the disclosure would be made.

SEC. 376. Section 10123.35 of the Insurance Code, as amended by Chapter 695 of the Statutes of 1995, is amended to read:

10123.35. (a) This section shall apply to the disclosure of genetic test results contained in an applicant or enrollee's medical records by a self-insured welfare benefit plan.

(b) Any person who negligently discloses results of a test for a genetic characteristic to any third party, in a manner that identifies or provides identifying characteristics, of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), shall be assessed a civil penalty in an amount not to exceed one thousand dollars ($1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully discloses the results of a test for a genetic characteristic to any third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), shall be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and no more than five thousand dollars ($5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(d) Any person who willfully or negligently discloses the results of a test for a genetic characteristic to a third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), that results in economic, bodily, or emotional harm to the subject of the test, is guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars ($10,000).

(e) In addition to the penalties listed in subdivisions (b) and (c), any person who commits any act described in subdivision (b) or (c) shall be liable to the subject for all actual damages, including damages for economic, bodily, or emotional harm that is proximately caused by the act.

(f) Each disclosure made in violation of this section is a separate and actionable offense.

(g) The applicant's "written authorization," as used in this section, shall satisfy the following requirements:

(1) Is written in plain language.

(2) Is dated and signed by the individual or a person authorized to act on behalf of the individual.

(3) Specifies the types of persons authorized to disclose information about the individual.

(4) Specifies the nature of the information authorized to be disclosed.

(5) States the name or functions of the persons or entities authorized to receive the information.

(6) Specifies the purposes for which the information is collected.

(7) Specifies the length of time the authorization shall remain valid.

(8) Advises the person signing the authorization of the right to receive a copy of the authorization. Written authorization is required for each separate disclosure of the test results, and the authorization shall set forth the person or entity to whom the disclosure would be made.

(h) This section shall not apply to disclosures required by the Department of Health Services necessary to monitor compliance with the Hereditary Disorders Act, subdivision (b) of Section 27 of, and Sections 125070 and 125000 of, the Health and Safety Code, nor to disclosures required by the Department of Corporations necessary to administer and enforce compliance with Section 1374.7 of the Health and Safety Code.

SEC. 377. Section 10140.1 of the Insurance Code, as added by Chapter 695 of the Statutes of 1995, is amended to read:

10140.1. (a) This section shall apply to the disclosure of genetic test results contained in an applicant or enrollee's medical records by an admitted insurer licensed to issue life or disability insurance, except life and disability income policies issued or delivered on or after January 1, 1995, that are contingent upon review or testing for other diseases or medical conditions.

(b) Any person who negligently discloses results of a test for a genetic characteristic to any third party, in a manner that identifies or provides identifying characteristics, of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), this shall be assessed a civil penalty in an amount not to exceed one thousand dollars ($1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully discloses the results of a test for a genetic characteristic to any third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), shall be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and no more than five thousand dollars ($5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(d) Any person who willfully or negligently discloses the results of a test for a genetic characteristic to a third party, in a manner that identifies or provides identifying characteristics of the person to

whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), that results in economic, bodily, or emotional harm to the subject of the test, is guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars ($10,000).

(e) In addition to the penalties listed in subdivisions (b) and (c), any person who commits any act described in subdivision (b) or (c) shall be liable to the subject for all actual damages, including damages for economic, bodily, or emotional harm that is proximately caused by the act.

(f) Each disclosure made in violation of this section is a separate and actionable offense.

(g) The applicant's "written authorization," as used in this section, shall satisfy the following requirements:

(1) Is written in plain language.

(2) Is dated and signed by the individual or a person authorized to act on behalf of the individual.

(3) Specifies the types of persons authorized to disclose information about the individual.

(4) Specifies the nature of the information authorized to be disclosed.

(5) States the name or functions of the persons or entities authorized to receive the information.

(6) Specifies the purposes for which the information is collected.

(7) Specifies the length of time the authorization shall remain valid.

(8) Advises the person signing the authorization of the right to receive a copy of the authorization. Written authorization is required for each separate disclosure of the test results, and the authorization shall set forth the person or entity to whom the disclosure would be made.

(h) This section shall not apply to disclosures required by the Department of Health Services necessary to monitor compliance with the Hereditary Disorders Act, subdivision (b) of Section 27 of, and Sections 125070 and 125000 of, the Health and Safety Code, nor to disclosures required by the Department of Corporations necessary to administer and enforce compliance with Section 1374.7 of the Health and Safety Code.

SEC. 378. Section 11512.965 of the Insurance Code, as added by Chapter 695 of the Statutes of 1995, is amended to read:

11512.965. (a) This section shall apply to the disclosure of genetic test results contained in an applicant or enrollee's medical records by a nonprofit hospital service plan.

(b) Any person who negligently discloses results of a test for a genetic characteristic to any third party, in a manner that identifies or provides identifying characteristics, of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), shall be assessed a civil penalty in an amount not

to exceed one thousand dollars ($1,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(c) Any person who willfully discloses the results of a test for a genetic characteristic to any third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), shall be assessed a civil penalty in an amount not less than one thousand dollars ($1,000) and no more than five thousand dollars ($5,000) plus court costs, as determined by the court, which penalty and costs shall be paid to the subject of the test.

(d) Any person who willfully or negligently discloses the results of a test for a genetic characteristic to a third party, in a manner that identifies or provides identifying characteristics of the person to whom the test results apply, except pursuant to a written authorization, as described in subdivision (g), that results in economic, bodily, or emotional harm to the subject of the test, is guilty of a misdemeanor punishable by a fine not to exceed ten thousand dollars ($10,000).

(e) In addition to the penalties listed in subdivisions (b) and (c), any person who commits any act described in subdivision (b) or (c) shall be liable to the subject for all actual damages, including damages for economic, bodily, or emotional harm that is proximately caused by the act.

(f) Each disclosure made in violation of this section is a separate and actionable offense.

(g) The applicant's "written authorization," as used in this section, shall satisfy the following requirements:

(1) Is written in plain language.

(2) Is dated and signed by the individual or a person authorized to act on behalf of the individual.

(3) Specifies the types of persons authorized to disclose information about the individual.

(4) Specifies the nature of the information authorized to be disclosed.

(5) States the name or functions of the persons or entities authorized to receive the information.

(6) Specifies the purposes for which the information is collected.

(7) Specifies the length of time the authorization shall remain valid.

(8) Advises the person signing the authorization of the right to receive a copy of the authorization. Written authorization is required for each separate disclosure of the test results, and the authorization shall set forth the person or entity to whom the disclosure would be made.

(h) This section shall not apply to disclosures required by the Department of Health Services necessary to monitor compliance with the Hereditary Disorders Act, subdivision (b) of Section 27 of,

and Sections 125070 and 125000 of, the Health and Safety Code, nor to disclosures required by the Department of Corporations necessary to administer and enforce compliance with Section 1374.7 of the Health and Safety Code.

SEC. 379. Section 147.2 of the Labor Code is amended to read:

147.2. In accordance with Chapter 2 (commencing with Section 6350) of Part 1 of Division 5 of this code and Section 105175 of the Health and Safety Code, the Department of Industrial Relations shall, by interagency agreement with the State Department of Health Services, establish a repository of current data on toxic materials and harmful physical agents in use or potentially in use in places of employment in the state.

The repository shall fulfill all of the following functions:

(1) Provide reliable information of practical use to employers, employees, representatives of employees, and other governmental agencies on the possible hazards to employees of exposure to toxic materials or harmful physical agents.

(2) Collect and evaluate toxicological and epidemiological data and any other information that may be pertinent to establishing harmful effects on health of exposure to toxic materials or harmful physical agents. Nothing in this subdivision shall be construed as authorizing the repository to require employers to report any information not otherwise required by law.

(3) Recommend to the Chief of the Division of Occupational Safety and Health Administration that an occupational safety and health standard be developed whenever it has been determined that a substance in use or potentially in use in places of employment is potentially toxic at the concentrations or under the conditions used.

(4) Notify the Director of Food and Agriculture of any information developed by the repository that is relevant to carrying out his or her responsibilities under Chapters 2 (commencing with Section 12751) and 3 (commencing with Section 14001) of Division 7 of the Food and Agricultural Code.

The Director of Industrial Relations shall appoint an Advisory Committee to the repository. The Advisory Committee shall consist of four representatives from labor, four representatives from management, four active practitioners in the occupational health field, and three persons knowledgeable in biomedical statistics or information storage and retrieval systems. The Advisory Committee shall meet on a regular basis at the request of the director. The committee shall be consulted by, and shall advise the director at each phase of the structuring and functioning of the repository and alert system with regard to, the procedures, methodology, validity, and practical utility of collecting, evaluating, and disseminating information concerning hazardous substances, consistent with the primary goals and objectives of the repository.

Nothing in this section shall be construed to limit the ability of the State Department of Health Services to propose occupational safety

and health standards to the Occupational Safety and Health Standards Board.

Policies and procedures shall be developed to assure, to the extent possible, that the repository uses and does not duplicate the resources of the federal government and other states.

On or before December 31 of each year, the Department of Industrial Relations shall submit a report to the Legislature detailing the implementation and operation of the repository including, but not limited to, the amount and source of funds allocated and spent on repository activities, the toxic materials and harmful physical agents investigated during the past year and recommendations made concerning them, actions taken to inform interested persons of the possible hazards of exposure to toxic materials and harmful physical agents, and any recommendations for legislative changes relating to the functions of the repository.

SEC. 380. Section 2441 of the Labor Code is amended to read:

2441. (a) Every employer of labor in this state shall, without making a charge therefor, provide fresh and pure drinking water to his or her employees during working hours. Access to the drinking water shall be permitted at reasonable and convenient times and places. Any violation of this section is punishable for each offense by a fine of not less than fifty dollars ($50), nor more than two hundred dollars ($200), or by imprisonment for not more than 30 days, or by both the fine and imprisonment.

(b) The State Department of Health Services and all health officers of counties, cities, and health districts shall enforce the provisions of this section pursuant to subdivision (b) of Section 118390 of the Health and Safety Code. The enforcement shall not be construed to abridge or limit in any manner the jurisdiction of the Division of Industrial Safety of the Department of Industrial Relations pursuant to Division 5 (commencing with Section 6300).

SEC. 381. Section 2807 of the Labor Code is amended to read:

2807. (a) All employers, whether private or public, shall provide notification to former employees, along with the notification required by federal law pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), of the availability of continued coverage for medical, surgical, or hospital benefits, a standardized written description of the Health Insurance Premium Program established by the State Department of Health Services pursuant to Section 120835 of the Health and Safety Code and Section 14124.91 of the Welfare and Institutions Code. The employer shall utilize the standardized written description prepared by the State Department of Health Services pursuant to subdivision (b).

(b) The State Department of Health Services shall prepare and make available, on request, a standardized written description of the Health Insurance Premium Program, at cost.

SEC. 382. Section 5205 of the Labor Code is amended to read:

5205. Notwithstanding Article 6 (commencing with Section 650) of Chapter 1 of Division 2 of the Business and Professions Code, any organization may, except as limited by this subdivision, solicit or advertise with regard to the cost of subscription or enrollment, facilities and services rendered, provided, however, Article 5 (commencing with Section 600) of Chapter 1 of Division 2 of the Business and Professions Code remains in effect. Any price advertisement shall be exact, without the use of such phrases as "as low as," "and up," "lowest prices," or words or phrases of similar import. Any advertisement that refers to health care, or costs for the health care, and that uses words of comparison must be based on verifiable data substantiating the comparison. Any organization so advertising shall be prepared to provide information sufficient to establish the accuracy of the comparison. Price advertising shall not be fraudulent, deceitful, or misleading, nor contain any offers of discounts, premiums, gifts, or bait of similar nature. In connection with price advertising, the price for health care shall be clearly identifiable. The price advertised for products shall include charges for any related professional services, including dispensing and fitting services, unless the advertisement specifically and clearly indicates otherwise.

Nothing in this part shall be construed to repeal, abolish, or diminish the effect of Section 129450 of the Health and Safety Code.

SEC. 383. Section 6712 of the Labor Code is amended to read:

6712. (a) The standards board shall, no later than December 1, 1991, adopt an occupational safety and health standard for field sanitation. The standard shall comply with all of the following:

(1) The standard shall be at least as effective as the federal field sanitation standard contained in Section 1928.110 of Title 29 of the Code of Federal Regulations.

(2) The standard shall be at least as effective as California field sanitation requirements in effect as of July 1, 1990, pursuant to Article 4 (commencing with Section 113310) of Chapter 11 of Part 6 of Division 104 of the Health and Safety Code, Article 1 (commencing with Section 118375) of Chapter 1 of Part 15 of Division 104 of the Health and Safety Code, and Section 2441 of this code.

(3) The standard shall apply to all agricultural places of employment.

(4) The standard shall require that toilets are serviced and maintained in a clean, sanitary condition and kept in good repair at all times, including written records of that service and maintenance.

(b) Consistent with its mandatory investigation and reinspection duties under Sections 6309, 6313, and 6320, the division shall develop and implement a special emphasis program for enforcement of the standard for at least two years following its adoption. Not later than March 15, 1995, the division shall also develop a written plan to coordinate its enforcement program with other state and local agencies. The division shall be the lead enforcement agency. Other

state and local agencies shall cooperate with the division in the development and implementation of the plan. The division shall report to the Legislature, not later than January 1, 1994, on its enforcement program. The plan shall provide for coordination between the division and local officials in counties where the field sanitation facilities required by the standard adopted pursuant to subdivision (a) are registered by the county health officer or other appropriate official of the county where the facilities are located. The division shall establish guidelines to assist counties that choose to register sanitation facilities pursuant to this section, for developing service charges, fees, or assessments to defray the costs of registering the facilities, taking into consideration the differences between small and large employers.

(c) (1) Past violations by a fixed-site or nonfixed-site employer, occurring anywhere in the state within the previous five years, of one or more field sanitation regulations established pursuant to this section, or of Section 1928.110 of Title 29 of the Code of Federal Regulations, shall be considered for purposes of establishing whether a current violation is a repeat violation under Section 6429.

(2) Past violations by a fixed-site or nonfixed-site employer, occurring anywhere in the state within the previous five years, of one or more field sanitation regulations established pursuant to this section, Article 4 (commencing with Section 113310) of Chapter 11 of Part 6 of Division 104 of the Health and Safety Code, Article 1 (commencing with Section 118375) of Part 15 of Division 104 of the Health and Safety Code, or Section 2441 of this code, or of Section 1928.110 of Title 29 of the Code of Federal Regulations, shall constitute evidence of willfulness for purposes of Section 6429.

(d) (1) Notwithstanding Sections 6317 and 6434, any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty under the appropriate provisions of Sections 6427 to 6430, inclusive, except that in no case shall the penalty be less than seven hundred fifty dollars ($750) for each violation.

(2) Abatement periods fixed by the division pursuant to Section 6317 for violations shall be limited to one working day. However, the division may, pursuant to Section 6319.5, modify the period in cases where a good faith effort to comply with the abatement requirement is shown. The filing of an appeal with the appeals board pursuant to Sections 6319 and 6600 shall not stay the abatement period.

(3) An employer cited pursuant to paragraph (1) of this subdivision shall be required to annually complete a field sanitation compliance form which shall list the estimated peak number of employees, the toilets, washing, and drinking water facilities to be provided by the employer, any rental and maintenance agreements, and any other information considered relevant by the division for a period of five years following the citation. The employer shall be required to annually submit the completed form, subscribed under

penalty of perjury, to the division, or to an agency designated by the division.

(e) The division shall notify the State Department of Health Services and the appropriate local health officers whenever a violation of the standard adopted pursuant to this section may result in the adulteration of food with harmful bacteria or other deleterious substances within the meaning of Article 5 (commencing with Section 110545) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code.

(f) Pending final adoption and approval of the standard required by subdivision (a), the division may enforce the field sanitation standards prescribed by Section 1928.110 of Title 29 of the Code of Federal Regulations, except subdivision (a) of Section 1928.110, in the same manner as other standards contained in this division.

SEC. 384. Section 6717 of the Labor Code is amended to read:

6717. (a) On or before February 1, 1994, the division shall propose to the standards board for its review and adoption, a standard that protects the health and safety of employees who engage in lead-related construction work and meets all requirements imposed by the federal Occupational Safety and Health Administration. The standards board shall adopt the standard on or before December 31, 1994. The standard shall at least prescribe protective measures appropriate to the work activity and the lead content of materials to be disturbed by the activity, and shall include requirements and specifications pertaining to the following:

(1) Sampling and analysis of surface coatings and other materials that may contain significant amounts of lead.

(2) Concentrations and amounts of lead in surface coatings and other materials that may constitute a health hazard to employees engaged in lead-related construction work.

(3) Engineering controls, work practices, and personal protective equipment, including respiratory protection, fit-testing requirements, and protective clothing and equipment.

(4) Washing and showering facilities.

(5) Medical surveillance and medical removal protection.

(6) Establishment of regulated areas and appropriate posting and warning requirements.

(7) Recordkeeping.

(8) Training of employees engaged in lead-related construction work and their supervisors, that shall consist of current certification as required by regulations adopted under subdivision (c) of Section 105250 of the Health and Safety Code and include training with respect to at least the following:

(A) Health effects of lead exposure, including symptoms of overexposure.

(B) The construction activities, methods, processes, and materials that can result in lead exposure.

(C) The requirements of the lead standard promulgated pursuant to this section.

(D) Appropriate engineering controls, work practices, and personal protection for lead-related work.

(E) The necessity for fit-testing for respirator use and how fit-testing is conducted.

SEC. 385. Section 187 of the Penal Code is amended to read:

187. (a) Murder is the unlawful killing of a human being, or a fetus, with malice aforethought.

(b) This section shall not apply to any person who commits an act that results in the death of a fetus if any of the following apply:

(1) The act complied with the Therapeutic Abortion Act, Article 2 (commencing with Section 123400) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code.

(2) The act was committed by a holder of a physician's and surgeon's certificate, as defined in the Business and Professions Code, in a case where, to a medical certainty, the result of childbirth would be death of the mother of the fetus or where her death from childbirth, although not medically certain, would be substantially certain or more likely than not.

(3) The act was solicited, aided, abetted, or consented to by the mother of the fetus.

(c) Subdivision (b) shall not be construed to prohibit the prosecution of any person under any other provision of law.

SEC. 386. Section 193.8 of the Penal Code is amended to read:

193.8. (a) It is unlawful for any adult who is the registered owner of a motor vehicle or in possession of a motor vehicle to relinquish possession of the vehicle to a minor for the purpose of driving if the following conditions exist:

(1) The adult owner or person in possession of the vehicle knew or reasonably should have known that the minor was intoxicated at the time possession was relinquished.

(2) A petition was sustained or the minor was convicted of a violation of Section 23103 as specified in Section 23103.5, 23140, 23152, or 23153 of the Vehicle Code or a violation of Section 191.5 or paragraph (3) of subdivision (c) of Section 192.

(3) The minor does not otherwise have a lawful right to possession of the vehicle.

(b) The offense described in subdivision (a) shall not apply to commercial bailments, motor vehicle leases, or parking arrangements, whether or not for compensation, provided by hotels, motels, or food facilities for customers, guests, or other invitees thereof. For purposes of this subdivision, hotel and motel shall have the same meaning as in subdivision (b) of Section 25503.16 of the Business and Professions Code and food facility shall have the same meaning as in Section 113785 of the Health and Safety Code.

(c) If any adult is convicted of the offense described in subdivision (a), that person shall be punished by a fine not exceeding one

thousand dollars ($1,000), or by imprisonment in a county jail not exceeding six months, or by both the fine and imprisonment. Any adult convicted of the offense described in subdivision (a) shall not be subject to driver's license suspension or revocation or attendance at a licensed alcohol or drug education and counseling program for persons who drive under the influence.

SEC. 387. Section 274 of the Penal Code is amended to read:

274. Every person who provides, supplies, or administers to any woman, or procures any woman to take any medicine, drug, or substance, or uses or employs any instrument or other means whatever, with intent thereby to procure the miscarriage of the woman, except as provided in the Therapeutic Abortion Act, Article 2 (commencing with Section 123400) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code, is punishable by imprisonment in the state prison.

SEC. 388. Section 275 of the Penal Code is amended to read:

275. Every woman who solicits of any person any medicine, drug, or substance whatever, and takes the same, or who submits to any operation, or to the use of any means whatever, with intent thereby to procure a miscarriage, except as provided in the Therapeutic Abortion Act, Article 2 (commencing with Section 123400) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code, is punishable by imprisonment in the state prison.

SEC. 389. Section 276 of the Penal Code is amended to read:

276. Every person who solicits any woman to submit to any operation, or to the use of any means whatever, to procure a miscarriage, except as provided in the Therapeutic Abortion Act, Article 2 (commencing with Section 123400) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code, is punishable by imprisonment in the county jail not longer than one year or in the state prison, or by a fine of not more than ten thousand dollars ($10,000). This offense must be proved by the testimony of two witnesses, or of one witness and corroborating circumstances.

SEC. 389.1. Section 803 of the Penal Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

(9) A violation of Section 103800 of the Health and Safety Code.

(10) A violation of Section 529a.

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

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

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

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

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

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

(g) Notwithstanding any other limitation of time described in this section, a criminal complaint may be filed within one year of the date of a report to a law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim

of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5. This subdivision shall apply only if both of the following occur:

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

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

SEC. 390. Section 830.3 of the Penal Code is amended to read:

830.3. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 of the Penal Code as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. These peace officers may carry firearms only if authorized and under those terms and conditions as specified by their employing agencies:

(a) Persons employed by the Division of Investigation of the Department of Consumer Affairs and investigators of the Medical Board of California and the Board of Dental Examiners, who are designated by the Director of Consumer Affairs, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 160 of the Business and Professions Code.

(b) Voluntary fire wardens designated by the Director of Forestry and Fire Protection pursuant to Section 4156 of the Public Resources Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 4156 of that code.

(c) Employees of the Department of Motor Vehicles designated in Section 1655 of the Vehicle Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 1655 of that code.

(d) Investigators of the California Horse Racing Board designated by the board, provided that the primary duty of these peace officers shall be the enforcement of Chapter 4 (commencing with Section 19400) of Division 8 of the Business and Professions Code and Chapter 10 (commencing with Section 330) of Title 9 of Part 1 of this code.

(e) The State Fire Marshal and assistant or deputy state fire marshals appointed pursuant to Section 13103 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 13104 of that code.

(f) Inspectors of the food and drug section designated by the chief pursuant to subdivision (a) of Section 106500 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 106500 of that code.

(g) All investigators of the Division of Labor Standards Enforcement designated by the Labor Commissioner, provided that the primary duty of these peace officers shall be enforcement of the law as prescribed in Section 95 of the Labor Code.

(h) All investigators of the State Departments of Health Services, Social Services, Mental Health, Developmental Services, and Alcohol and Drug Programs, the Department of Toxic Substances Control, and the Office of Statewide Health Planning and Development, and the Public Employees' Retirement System, provided that the primary duty of these peace officers shall be the enforcement of the law relating to the duties of his or her department, or office. Notwithstanding any other provision of law, investigators of the Public Employees' Retirement System shall not carry firearms.

(i) The Chief of the Bureau of Fraudulent Claims of the Department of Insurance and those investigators designated by the chief, provided that the primary duty of those investigators shall be enforcement of Section 550 of the Penal Code.

(j) Employees of the Department of Housing and Community Development designated under Section 18023 of the Health and Safety Code, provided that the primary duty of these peace officers shall be the enforcement of the law as that duty is set forth in Section 18023 of that code.

(k) Investigators of the office of the Controller, provided that the primary duty of these investigators shall be the enforcement of the law relating to the duties of that office. Notwithstanding any other law, except as authorized by the Controller, the peace officers designated pursuant to this subdivision shall not carry firearms.

(*l*) Investigators of the Department of Corporations designated by the Commissioner of Corporations, provided that the primary duty of these investigators shall be enforcement of the provisions of law administered by the Department of Corporations. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(m) Persons employed by the Contractors' State License Board designated by the Director of Consumer Affairs pursuant to Section 7011.5 of the Business and Professions Code, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 7011.5, and in Chapter 9 (commencing with Section 7000) of Division 3, of that code. The Director of Consumer Affairs may designate as peace officers not more than three persons who shall at the time of their designation be assigned to the special investigations unit of the board. Notwithstanding any

other provision of law, the persons designated pursuant to this subdivision shall not carry firearms.

(n) The chief and coordinators of the Law Enforcement Division of the Office of Emergency Services.

(o) Investigators of the office of the Secretary of State designated by the Secretary of State, provided that the primary duty of these peace officers shall be the enforcement of the law as prescribed in Chapter 3 (commencing with Section 8200) of Division 1 of Title 2 of, and Section 12172.5 of, the Government Code. Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(p) The Deputy Director for Security designated by Section 8880.38 of the Government Code, and all lottery security personnel assigned to the California State Lottery and designated by the director, provided that the primary duty of any of those peace officers shall be the enforcement of the laws related to assuring the integrity, honesty, and fairness of the operation and administration of the California State Lottery.

(q) Investigators employed by the Investigation Division of the Employment Development Department designated by the director of the department, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 317 of the Unemployment Insurance Code.

Notwithstanding any other provision of law, the peace officers designated pursuant to this subdivision shall not carry firearms.

(r) The chief and assistant chief of museum security and safety of the California Museum of Science and Industry, as designated by the executive director pursuant to Section 4108 of the Food and Agricultural Code, provided that the primary duty of those peace officers shall be the enforcement of the law as that duty is set forth in Section 4108 of the Food and Agricultural Code.

(s) Notwithstanding any other provision of this section, a peace officer authorized by this section shall not be authorized to carry firearms by his or her employing agency until that agency has adopted a policy on the use of deadly force by those peace officers, and until those peace officers have been instructed in the employing agency's policy on the use of deadly force.

Every peace officer authorized pursuant to this section to carry firearms by his or her employing agency shall qualify in the use of the firearms at least every six months.

SEC. 391. Section 1202.1 of the Penal Code, as amended by Chapter 396 of the Statutes of 1995, is amended to read:

1202.1. (a) Notwithstanding Sections 120975 and 120990 of the Health and Safety Code, the court shall order every person who is convicted of, or adjudged by the court to be a person described by Section 601 or 602 of the Welfare and Institutions Code as provided in Section 725 of the Welfare and Institutions Code by reason of a violation of, a sexual offense listed in subdivision (e), whether or not

a sentence or fine is imposed or probation is granted, to submit to a blood test for evidence of antibodies to the probable causative agent of acquired immune deficiency syndrome (AIDS). Each person tested under this section shall be informed of the results of the blood test.

(b) Notwithstanding Section 120980 of the Health and Safety Code, the results of the blood test to detect antibodies to the probable causative agent of AIDS shall be transmitted by the clerk of the court to the Department of Justice and the local health officer.

(c) Notwithstanding Section 120980 of the Health and Safety Code, the Department of Justice shall provide the results of a test or tests as to persons under investigation or being prosecuted under Section 647f or 12022.85, if the results are on file with the department, to the defense attorney upon request; and the results also shall be available to the prosecuting attorney upon request for the purpose of either preparing counts for a subsequent offense under Section 647f or sentence enhancement under Section 12022.85 or complying with subdivision (d).

(d) (1) In every case in which a person is convicted of a sexual offense listed in subdivision (e) or adjudged by the court to be a person described by Section 601 or 602 of the Welfare and Institutions Code as provided in Section 725 of the Welfare and Institutions Code by reason of the commission of a sexual offense listed in subdivision (e), the prosecutor or the prosecutor's victim-witness assistance bureau shall advise the victim of his or her right to receive the results of the blood test performed pursuant to subdivision (a). The prosecutor or the prosecutor's victim-witness assistance bureau shall refer the victim to the local health officer for counseling to assist him or her in understanding the extent to which the particular circumstances of the crime may or may not have placed the victim at risk of transmission of human immunodeficiency virus (HIV) from the accused, to ensure that the victim understands the limitations and benefits of current tests for HIV, and to assist the victim in determining whether he or she should make the request.

(2) Notwithstanding any other law, upon the victim's request, the local health officer shall be responsible for disclosing test results to the victim who requested the test and the person who was tested. However, as specified in subdivision (g), positive test results shall not be disclosed to the victim or the person who was tested without offering or providing professional counseling appropriate to the circumstances as follows:

(A) To help the victim understand the extent to which the particular circumstances of the crime may or may not have put the victim at risk of transmission of HIV from the perpetrator.

(B) To ensure that the victim understands both the benefits and limitations of the current tests for HIV.

(C) To obtain referrals to appropriate health care and support services.

(e) For purposes of this section, "sexual offense" includes any of the following:

(1) Rape in violation of Section 261.

(2) Unlawful intercourse with a female under age 18 in violation of Section 261.5.

(3) Rape of a spouse in violation of Section 262.

(4) Sodomy in violation of Section 286.

(5) Oral copulation in violation of Section 288a.

(6) Lewd or lascivious acts with a child in violation of Section 288, if the court finds that there is probable cause to believe that blood, semen, or any other bodily fluid capable of transmitting HIV has been transferred from the defendant to the victim. For purposes of this paragraph, the court shall note its finding on the court docket and minute order if one is prepared.

(f) Any blood tested pursuant to subdivision (a) shall be subjected to appropriate confirmatory tests to ensure accuracy of the first test results, and under no circumstances shall test results be transmitted to the victim or the person who is tested unless any initially reactive test result has been confirmed by appropriate confirmatory tests for positive reactors.

(g) The local health officer shall be responsible for disclosing test results to the victim who requested the test and the person who was tested. However, positive test results shall not be disclosed to the victim or the person who was tested without offering or providing professional counseling appropriate to the circumstances.

(h) The local health officer and the victim shall comply with all laws and policies relating to medical confidentiality, subject to the disclosure authorized by subdivisions (g) and (i).

(i) Any victim who receives information from the local health officer pursuant to subdivision (g) may disclose the information as he or she deems necessary to protect his or her health and safety or the health and safety of his or her family or sexual partner.

(j) Any person who transmits test results or discloses information pursuant to this section shall be immune from civil liability for any action taken in compliance with this section.

SEC. 392. Section 1202.6 of the Penal Code is amended to read:

1202.6. (a) Notwithstanding Sections 120975, 120980, and 120990 of the Health and Safety Code, upon the first conviction of any person for a violation of subdivision (b) of Section 647, the court shall, before sentencing or as a condition of probation, order the defendant to complete instruction in the causes and consequences of acquired immune deficiency syndrome (AIDS) pursuant to subdivision (d) and shall order the defendant to submit to testing for AIDS in accordance with subdivision (e). In addition, the court shall refer a defendant, where appropriate, to a program under Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code or to any drug diversion program, or both.

(b) Upon a second or subsequent conviction of a violation of subdivision (b) of Section 647, the court shall, before sentencing, order the defendant to submit to testing for AIDS in accordance with subdivision (e).

(c) At the sentencing hearing of a defendant ordered to submit to testing for AIDS pursuant to subdivision (a) or (b), the court shall furnish the defendant with a copy of the report submitted pursuant to subdivision (e) and shall direct the clerk to note the receipt of the report by the defendant in the records of the case.

If the results of the test described in the report are positive, the court shall make certain that the defendant understands the nature and meaning of the contents of the report and shall further advise the defendant of the penalty established in Section 647f for a subsequent violation of subdivision (b) of Section 647.

(d) The county health officer in each county shall select an agency, or agencies, in the county that shall provide AIDS prevention education. The county health officer shall endeavor to select an agency, or agencies, that currently provide AIDS prevention education programs to substance abusers or prostitutes. If no agency is currently providing this education, the county agency responsible for substance abuse shall develop an AIDS prevention education program either within the agency or under contract with a community-based, nonprofit organization in the county. The county health officer shall forward to the courts a list of agencies selected for purposes of referral.

An AIDS prevention education program providing services, at a minimum, shall include details about the transmission of human immunodeficiency virus (HIV), the etiologic agent for AIDS, symptoms of AIDS or AIDS-related conditions, prevention through avoidance or cleaning of needles, sexual practices that constitute high risk, low risk, and no risk (including abstinence), and resources for assistance if the person decides to take a test for the etiologic agent for AIDS and receives a positive test result. The program also shall include other relevant medical and prevention information as it becomes available.

(e) The court shall order testing of every defendant as ordered pursuant to subdivision (a) or (b) for evidence of antibodies to the probable causative agent of acquired immune deficiency syndrome. Notwithstanding Section 120980 of the Health and Safety Code, written copies of the report on the test shall be furnished to both of the following:

(1) The court in which the defendant is to be sentenced.

(2) The State Department of Health Services.

(f) Except as provided in subdivisions (c) and (g), the reports required by subdivision (e) shall be confidential.

(g) The State Department of Health Services shall maintain the confidentiality of the reports received pursuant to subdivision (e),

except that the department shall furnish copies of any report to a district attorney upon request.

SEC. 393. Section 1524.1 of the Penal Code is amended to read:

1524.1. (a) The primary purpose of the testing and disclosure provided in this section is to benefit the victim of a crime by informing the victim whether the defendant is infected with the HIV virus. It is also the intent of the Legislature in enacting this section to protect the health of both victims of crime and those accused of committing a crime. Nothing in this section shall be construed to authorize mandatory testing or disclosure of test results for the purpose of a charging decision by a prosecutor, nor, except as specified in subdivisions (g) and (i), shall this section be construed to authorize breach of the confidentiality provisions contained in Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 of the Health and Safety Code.

(b) (1) Notwithstanding the provisions of Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 of the Health and Safety Code, when a defendant has been charged by complaint, information, or indictment with a crime, or a minor is the subject of a petition filed in juvenile court alleging the commission of a crime, the court, at the request of the victim, may issue a search warrant for the purpose of testing the accused's blood with any HIV test, as defined in Section 120775 of the Health and Safety Code only under the following circumstances: when the court finds, upon the conclusion of the hearing described in paragraph (3), or in those cases in which a preliminary hearing is not required to be held, the court also finds that there is probable cause to believe that the accused committed the offense, and that there is probable cause to believe that blood, semen, or any other body fluid identified by the State Department of Health Services in appropriate regulations as capable of transmitting the human immunodeficiency virus has been transferred from the accused to the victim.

(2) Notwithstanding Chapter 7 (commencing with Section 120975) of Part 4 of Division 105 of the Health and Safety Code, when a defendant has been charged by complaint, information, or indictment with a crime under Section 220, 261, 261.5, 262, 264.1, 286, 288, 288a, 288.5, 289, or 289.5, and is the subject of a police report alleging the commission of a separate, uncharged offense that could be charged under Section 220, 261, 261.5, 262, 264.1, 286, 288, 288a, 288.5, 289, or 289.5, or a minor is the subject of a petition filed in juvenile court alleging the commission of a crime under Section 220, 261, 261.5, 262, 264.1, 286, 288, 288a, 288.5, 289, or 289.5, and is the subject of a police report alleging the commission of a separate, uncharged offense that could be charged under Section 220, 261, 261.5, 262, 264.1, 286, 288, 288a, 288.5, 289, or 289.5, the court, at the request of the victim of the uncharged offense, may issue a search warrant for the purpose of testing the accused's blood with any HIV test, as defined in Section 120775 of the Health and Safety Code only

under the following circumstances: when the court finds that there is probable cause to believe that the accused committed the uncharged offense, and that there is probable cause to believe that blood, semen, or any other body fluid identified by the State Department of Health Services in appropriate regulations as capable of transmitting the human immunodeficiency virus has been transferred from the accused to the victim.

(3) (A) Prior to the issuance of a search warrant pursuant to paragraph (1), the court, where applicable and at the conclusion of the preliminary examination if the defendant is ordered to answer pursuant to Section 872, shall conduct a hearing at which both the victim and the defendant have the right to be present. During the hearing, only affidavits, counter affidavits, and medical reports regarding the facts that support or rebut the issuance of a search warrant under paragraph (1) shall be admissible.

(B) Prior to the issuance of a search warrant pursuant to paragraph (2), the court, where applicable, shall conduct a hearing at which both the victim and the defendant are present. During the hearing, only affidavits, counter affidavits, and medical reports regarding the facts that support or rebut the issuance of a search warrant under paragraph (2) shall be admissible.

(4) A request for a probable cause hearing made by a victim under paragraph (2) shall be made before sentencing in the municipal or superior court, or before disposition on a petition in a juvenile court, of the criminal charge or charges filed against the defendant.

(c) (1) In all cases in which the person has been charged by complaint, information, or indictment with a crime, or is the subject of a petition filed in a juvenile court alleging the commission of a crime, the prosecutor shall advise the victim of his or her right to make this request. To assist the victim of the crime to determine whether he or she should make this request, the prosecutor shall refer the victim to the local health officer for prerequest counseling to help that person understand the extent to which the particular circumstances of the crime may or may not have put the victim at risk of transmission of HIV from the accused, to ensure that the victim understands both the benefits and limitations of the current tests for HIV, to help the victim decide whether he or she wants to request that the accused be tested, and to help the victim decide whether he or she wants to be tested.

(2) The Department of Justice, in cooperation with the California District Attorneys Association, shall prepare a form to be used in providing victims with the notice required by paragraph (1).

(d) If the victim decides to request HIV testing of the accused, the victim shall request the issuance of a search warrant, as described in subdivision (b).

Neither the failure of a prosecutor to refer or advise the victim as provided in this subdivision, nor the failure or refusal by the victim

to seek or obtain counseling, shall be considered by the court in ruling on the victim's request.

(e) The local health officer shall make provision for administering all HIV tests ordered pursuant to subdivision (b).

(f) Any blood tested pursuant to subdivision (b) shall be subjected to appropriate confirmatory tests to ensure accuracy of the first test results, and under no circumstances shall test results be transmitted to the victim or the accused unless any initially reactive test result has been confirmed by appropriate confirmatory tests for positive reactors.

(g) The local health officer shall have the responsibility for disclosing test results to the victim who requested the test and to the accused who was tested. However, no positive test results shall be disclosed to the victim or to the accused without also providing or offering professional counseling appropriate to the circumstances.

(h) The local health officer and victim shall comply with all laws and policies relating to medical confidentiality subject to the disclosure authorized by subdivisions (g) and (i). Any individual who files a false report of sexual assault in order to obtain test result information pursuant to this section shall, in addition to any other liability under law, be guilty of a misdemeanor punishable as provided in subdivision (c) of Section 120980 of the Health and Safety Code. Any individual as described in the preceding sentence who discloses test result information obtained pursuant to this section shall also be guilty of an additional misdemeanor punishable as provided for in subdivision (c) of Section 120980 of the Health and Safety Code for each separate disclosure of that information.

(i) Any victim who receives information from the health officer pursuant to subdivision (g) may disclose the test results as the victim deems necessary to protect his or her health and safety or the health and safety of his or her family or sexual partner.

(j) Any person transmitting test results or disclosing information pursuant to this section shall be immune from civil liability for any actions taken in compliance with this section.

(k) The results of any blood tested pursuant to subdivision (b) shall not be used in any criminal proceeding as evidence of either guilt or innocence.

SEC. 394. Section 3405 of the Penal Code is amended to read:

3405. No condition or restriction upon the obtaining of an abortion by a prisoner, pursuant to the Therapeutic Abortion Act (Article 2 (commencing with Section 123400) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code), other than those contained in that act, shall be imposed. Prisoners found to be pregnant and desiring abortions, shall be permitted to determine their eligibility for an abortion pursuant to law, and if determined to be eligible, shall be permitted to obtain an abortion.

The rights provided for females by this section shall be posted in at least one conspicuous place to which all female prisoners have access.

SEC. 395. Section 4028 of the Penal Code is amended to read:

4028. No condition or restriction upon the obtaining of an abortion by a female detained in any local detention facility, pursuant to the Therapeutic Abortion Act (Article 2 (commencing with Section 123400) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code), other than those contained in that act, shall be imposed. Females found to be pregnant and desiring abortions shall be permitted to determine their eligibility for an abortion pursuant to law, and if determined to be eligible, shall be permitted to obtain an abortion.

For the purposes of this section, "local detention facility" means any city, county, or regional facility used for the confinement of any female person for more than 24 hours.

The rights provided for females by this section shall be posted in at least one conspicuous place to which all female prisoners have access.

SEC. 396. Section 6031.1 of the Penal Code is amended to read:

6031.1. Inspections of local detention facilities shall be made biennially. Inspections of privately operated work furlough facilities and programs shall be made biennially unless the work furlough administrator requests an earlier inspection. Inspections shall include, but not be limited to, the following:

(a) Health and safety inspections conducted pursuant to Section 101045 of the Health and Safety Code.

(b) Fire suppression preplanning inspections by the local fire department.

(c) Security, rehabilitation programs, recreation, treatment of persons confined in the facilities, and personnel training by the staff of the Board of Corrections.

Reports of each facility's inspection shall be furnished to the official in charge of the local detention facility or, in the case of a privately operated facility, the work furlough administrator, the local governing body, the grand jury, and the presiding or sole judge of the superior court in the county where the facility is located. These reports shall set forth the areas wherein the facility has complied and has failed to comply with the minimum standards established pursuant to Section 6030.

SEC. 397. Section 7504 of the Penal Code is amended to read:

7504. Actions taken pursuant to this title shall not be subject to subdivisions (a) to (c), inclusive, of Section 120980 of the Health and Safety Code. In addition, the requirements of subdivision (a) of Section 120990 of the Health and Safety Code, shall not apply to testing performed pursuant to this title.

SEC. 397.1. Section 11105 of the Penal Code, as amended by Chapter 806 of the Statutes of 1995, is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(A) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, photographs, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

(B) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to any of the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state as defined in Section 830.1, subdivisions (a), (b), and (f) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.

(5) Probation officers of the state.

(6) Parole officers of the state.

(7) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.

(8) A public defender or attorney of record when representing a person in a criminal case and if authorized access by statutory or decisional law.

(9) Any agency, officer, or official of the state if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(10) Any city or county, or city and county, or district, or any officer, or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county,

or district if the criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(11) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120), Chapter 1, Title 1 of Part 4.

(12) Any person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.

(13) Health officers of a city, county, or city and county, or district, when in the performance of their official duties enforcing Section 120175 of the Health and Safety Code.

(14) Any managing or supervising correctional officer of a county jail or other county correctional facility.

(15) Any humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 607f of the Civil Code for the appointment of level 1 humane officers.

(c) The Attorney General may furnish state summary criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) Any public utility as defined in Section 216 of the Public Utilities Code that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, he or she shall furnish a copy of the data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To a peace officer of another country.

(4) To public officers (other than peace officers) of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.

(5) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state

summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(6) The courts of the United States, other states or territories or possessions of the United States.

(7) Peace officers of the United States, other states, or territories or possessions of the United States.

(8) To any individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or any foreign nation.

(9) Any public utility as defined in Section 216 of the Public Utilities Code, if access is needed in order to assist in employing current or prospective employees who in the course of their employment may be seeking entrance to private residences. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

Any information obtained from the state summary criminal history is confidential and the receiving public utility shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information and all copies shall be destroyed not more than 30 days after the case is resolved.

A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility to recover damages proximately caused by the violations. Any public utility's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

Nothing in this section shall be construed as imposing any duty upon public utilities to request state summary criminal history information on any current or prospective employees.

(10) To any campus of the California State University or the University of California, or any four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to any special education program for convicted felons, including, but not limited to,

university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, any person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 12054 of the Penal Code, and Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7514 of the Business and Professions Code shall take priority over the processing of applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or any state or local law enforcement agency may require the

submission of fingerprints for the purpose of conducting summary criminal history information checks that are authorized by law.

SEC. 397.2. Section 11165.13 of the Penal Code is amended to read:

11165.13. For purposes of this article, a positive toxicology screen at the time of the delivery of an infant is not in and of itself a sufficient basis for reporting child abuse or neglect. However, any indication of maternal substance abuse shall lead to an assessment of the needs of the mother and child pursuant to Section 123605 of the Health and Safety Code. If other factors are present that indicate risk to a child, then a report shall be made. However, a report based on risk to a child which relates solely to the inability of the parent to provide the child with regular care due to the parent's substance abuse shall be made only to county welfare departments and not to law enforcement agencies.

SEC. 397.3. Section 14202 of the Penal Code is amended to read:

14202. (a) The Attorney General shall establish and maintain within the center an investigative support unit and an automated violent crime method of operation system to facilitate the identification and apprehension of persons responsible for murder, kidnap, including parental abduction, false imprisonment, or sexual assault. This unit shall be responsible for identifying perpetrators of violent felonies collected from the center and analyzing and comparing data on missing persons in order to determine possible leads which could assist local law enforcement agencies. This unit shall only release information about active investigations by police and sheriffs' departments to local law enforcement agencies.

(b) The Attorney General shall make available to the investigative support unit files organized by category of offender or victim and shall seek information from other files as needed by the unit. This set of files may include, among others, the following:

(1) Missing or unidentified, deceased persons dental files filed pursuant to this title or Section 102870 of the Health and Safety Code.

(2) Child abuse reports filed pursuant to Section 11169.

(3) Sex offender registration files maintained pursuant to Section 290.

(4) State summary criminal history information maintained pursuant to Section 11105.

(5) Information obtained pursuant to the parent locator service maintained pursuant to Section 11478.5 of the Welfare and Institutions Code.

(6) Information furnished to the Department of Justice pursuant to Section 11107.

(7) Other Attorney General's office files as requested by the investigative support unit.

This section shall become operative on July 1, 1989.

SEC. 398. Section 2356 of the Probate Code is amended to read:

2356. (a) No ward or conservatee may be placed in a mental health treatment facility under this division against the will of the ward or conservatee. Involuntary civil placement of a ward or conservatee in a mental health treatment facility may be obtained only pursuant to Chapter 2 (commencing with Section 5150) or Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. Nothing in this subdivision precludes the placing of a ward in a state hospital under Section 6000 of the Welfare and Institutions Code upon application of the guardian as provided in that section. The Director of Mental Health shall adopt and issue regulations defining "mental health treatment facility" for the purposes of this subdivision.

(b) No experimental drug as defined in Section 111515 of the Health and Safety Code may be prescribed for or administered to a ward or conservatee under this division. Such an experimental drug may be prescribed for or administered to a ward or conservatee only as provided in Article 4 (commencing with Section 111515) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code.

(c) No convulsive treatment as defined in Section 5325 of the Welfare and Institutions Code may be performed on a ward or conservatee under this division. Convulsive treatment may be performed on a ward or conservatee only as provided in Article 7 (commencing with Section 5325) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code.

(d) No minor may be sterilized under this division.

(e) This chapter is subject to any of the following instruments if valid and effective:

(1) A directive of the conservatee under Chapter 3.9 (commencing with Section 7185) of Part 1 of Division 7 of the Health and Safety Code (Natural Death Act).

(2) A power of attorney for health care, whether or not a durable power of attorney.

SEC. 399. Section 3211 of the Probate Code is amended to read:

3211. (a) No person may be placed in a mental health treatment facility under the provisions of this part.

(b) No experimental drug as defined in Section 111515 of the Health and Safety Code may be prescribed for or administered to any person under this part.

(c) No convulsive treatment as defined in Section 5325 of the Welfare and Institutions Code may be performed on any person under this part.

(d) No person may be sterilized under this part.

(e) The provisions of this part are subject to any of the following instruments if valid and effective:

(1) A directive of the patient under Chapter 3.9 (commencing with Section 7185) of Part 1 of Division 7 of the Health and Safety Code (Natural Death Act).

(2) A power of attorney for health care, whether or not a durable power of attorney.

SEC. 400. Section 5144 of the Probate Code is amended to read:

5144. "Proof of death" includes any of the following:

(a) An original or attested or certified copy of a death certificate.

(b) A record or report that is prima facie evidence of death under Section 103550 of the Health and Safety Code, Sections 1530 to 1532, inclusive, of the Evidence Code, or another statute of this state.

SEC. 401. Section 5099.7 of the Public Resources Code is amended to read:

5099.7. The director, after receiving a report from the health officer pursuant to subdivision (c) of Section 115885 of the Health and Safety Code, shall withhold any funds that are received on or after the effective date of this section from any local agency or subdivision of the state in which a public beach is located and that is in violation of the standards established pursuant to Section 115880 of the Health and Safety Code. The director may disburse any of those funds to the local agency or subdivision only when he or she determines the standards established pursuant to Section 115880 of the Health and Safety Code are being complied with.

SEC. 402. Section 21151.1 of the Public Resources Code, as amended by Chapter 861 of the Statutes of 1995, is amended to read:

21151.1. (a) Notwithstanding paragraph (6) of subdivision (b) of Section 21080, or Section 21080.5 or 21084, or any other provision of law, except as provided in this section, a lead agency shall prepare or cause to be prepared by contract, and certify the completion of, an environmental impact report or, if appropriate, a modification, addendum, or supplement to an existing environmental impact report, for any project involving any of the following:

(1) (A) The burning of municipal wastes, hazardous waste, or refuse-derived fuel, including, but not limited to, tires, if the project is either of the following:

(i) The construction of a new facility.

(ii) The expansion of an existing facility that burns hazardous waste that would increase its permitted capacity by more than 10 percent.

(B) This paragraph does not apply to any project exclusively burning hazardous waste, for which a final determination under Section 21080.1 has been made prior to July 14, 1989.

(2) The initial issuance of a hazardous waste facilities permit to a land disposal facility, as defined in subdivision (d) of Section 25199.1 of the Health and Safety Code.

(3) The initial issuance of a hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code to an offsite large treatment facility, as defined pursuant to subdivision (d) of Section 25205.1 of the Health and Safety Code.

(4) A base reuse plan as defined in Section 21083.8 or 21083.8.1. The Legislature hereby finds that no reimbursement is required

pursuant to Section 6 of Article XIII B of the California Constitution for an environmental impact report for a base reuse plan if an environmental impact report is otherwise required for that base reuse plan pursuant to any other provision of this division.

(b) For purposes of clause (ii) of subparagraph (A) of subparagraph (B) of paragraph (1) of subdivision (a), the amount of expansion of an existing facility shall be calculated by comparing the proposed facility capacity with whichever of the following is applicable:

(1) The facility capacity authorized in the facility's hazardous waste facilities permit pursuant to Section 25200 of the Health and Safety Code or its grant of interim status pursuant to Section 25200.5 of the Health and Safety Code, or the facility capacity authorized in any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted before January 1, 1990.

(2) The facility capacity authorized in the facility's original hazardous waste facilities permit, grant of interim status, or any state or local agency permit allowing the construction or operation of a facility for the burning of hazardous waste, granted on or after January 1, 1990.

(c) For purposes of paragraphs (2) and (3) of subdivision (a), the initial issuance of a hazardous waste facilities permit does not include the issuance of a closure or postclosure permit pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code.

(d) Paragraph (1) of subdivision (a) does not apply to any project that does any of the following:

(1) Exclusively burns digester gas produced from manure or any other solid or semisolid animal waste.

(2) Exclusively burns methane gas produced from a disposal site, as defined in Section 40122, that is used only for the disposal of solid waste, as defined in Section 40191.

(3) Exclusively burns forest, agricultural, wood, or other biomass wastes.

(4) Exclusively burns hazardous waste in an incineration unit that is transportable and that is either at a site for not longer than three years or is part of a remedial or removal action. For purposes of this paragraph, "transportable" means any equipment that performs a "treatment" as defined in Section 66216 of Title 22 of the California Code of Regulations, and that is transported on a vehicle as defined in Section 66230 of Title 22 of the California Code of Regulations.

(5) Exclusively burns refinery waste in a flare on the site of generation.

(6) Exclusively burns in a flare methane gas produced at a municipal sewage treatment plant.

(7) Exclusively burns hazardous waste, or exclusively burns hazardous waste as a supplemental fuel, as part of a research,

development, or demonstration project that, consistent with federal regulations implementing the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. Sec. 6901 et seq.), has been determined to be innovative and experimental by the Department of Toxic Substances Control and that is limited in type and quantity of waste to that necessary to determine the efficacy and performance capabilities of the technology or process; provided, however, that any facility that operated as a research, development, or demonstration project and for which an application is thereafter submitted for a hazardous waste facility permit for operation other than as a research, development, or demonstration project shall be considered a new facility for the burning of hazardous waste and shall be subject to subdivision (a) of Section 21151.1.

(8) Exclusively burns soils contaminated only with petroleum fuels or the vapors from these soils.

(9) Exclusively treats less than 3,000 pounds of hazardous waste per day in a thermal processing unit operated in the absence of open flame, and submits a worst-case health risk assessment of the technology to the Department of Toxic Substances Control for review and distribution to the interested public. This assessment shall be prepared in accordance with guidelines set forth in the Air Toxics Assessment Manual of the California Air Pollution Control Officers Association.

(10) Exclusively burns less than 1,200 pounds per day of medical waste, as defined in Section 117690 of the Health and Safety Code, on hospital sites.

(11) Exclusively burns chemicals and fuels as part of firefighter training.

(12) Exclusively conducts open burns of explosives subject to the requirements of the air pollution control district or air quality management district and in compliance with OSHA and Cal-OSHA regulations.

(13) Exclusively conducts onsite burning of less than 3,000 pounds per day of fumes directly from a manufacturing or commercial process.

(14) Exclusively conducts onsite burning of hazardous waste in an industrial furnace that recovers hydrogen chloride from the flue gas if the hydrogen chloride is subsequently sold, distributed in commerce, or used in a manufacturing process at the site where the hydrogen chloride is recovered, and the burning is in compliance with the requirements of the air pollution control district or air quality management district and the Department of Toxic Substances Control.

(e) Paragraph (1) of subdivision (a) does not apply to any project for which the State Energy Resources Conservation and Development Commission has assumed jurisdiction under Chapter 6 (commencing with Section 25500) of Division 15.

(f) Paragraphs (2) and (3) of subdivision (a) shall not apply if the facility only manages hazardous waste that is identified or listed pursuant to Section 25140 or 25141 on or after January 1, 1992, but not before that date, or only conducts activities that are regulated pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code on or after January 1, 1992, but not before that date.

(g) This section does not exempt any project from any other requirement of this division.

(h) For purposes of this section, offsite facility means a facility that serves more than one generator of hazardous waste.

SEC. 403. Section 40191 of the Public Resources Code is amended to read:

40191. (a) Except as provided in subdivision (b), "solid waste" means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge that is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes.

(b) "Solid waste" does not include hazardous waste or low-level radioactive waste regulated under Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code.

(c) "Solid waste" does not include medical waste that is regulated pursuant to the Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code). Untreated medical waste shall not be disposed of in a solid waste landfill, as defined in Section 46027. Medical waste that has been treated and that is deemed to be solid waste shall be regulated pursuant to this division.

SEC. 404. Section 42290 of the Public Resources Code is amended to read:

42290. For purposes of this chapter, the following terms have the following meaning:

(a) "Manufacturer" means a person who manufactures plastic trash bags for sale in this state.

(b) (1) "Plastic trash bag" means a bag that is manufactured for intended use as a container to hold, store, or transport materials to be discarded, composted, or recycled, including, but not limited to, garbage bags, composting bags, lawn and leaf bags, can-liner bags, kitchen bags, compactor bags, and recycling bags.

(2) A plastic trash bag does not include a grocery sack or any other bag that is manufactured for intended use as a container to hold, store, or transport food.

(3) A plastic trash bag does not include any plastic bag that is used for the purpose of containing either of the following wastes:

(A) "Hazardous waste," as defined in Section 25117 of the Health and Safety Code.

(B) "Medical waste," as defined in Section 117690 of the Health and Safety Code.

(c) "Postconsumer material" means a finished product that would normally be disposed of as solid waste, having completed its intended end-use and product life cycle. "Postconsumer material" does not include manufacturing and fabrication scrap.

(d) "Wholesaler" means any person who purchases plastic trash bags from a manufacturer for resale in this state.

SEC. 405. Section 43020 of the Public Resources Code is amended to read:

43020. The board shall adopt and revise regulations which set forth minimum standards for solid waste handling, transfer, composting, transformation, and disposal, in accordance with this division, and Section 117590 of, and Chapter 6.5 (commencing with Section 25100) of Division 20 of, the Health and Safety Code. The board shall not include any requirements that are already under the authority of the State Air Resources Board for the prevention of air pollution or of the state water board for the prevention of water pollution.

SEC. 406. Section 43210 of the Public Resources Code is amended to read:

43210. For those facilities which accept only hazardous wastes, or which accept only low-level radioactive wastes, or facilities that only accept both, and to which Chapter 6.5 (commencing with Section 25100) or Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code apply, the board and the enforcement agency have no enforcement or regulatory authority. All enforcement activities for the facilities relative to the control of hazardous wastes or low-level radioactive wastes shall be performed by the State Department of Health Services pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5 or Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code.

SEC. 407. Section 43211 of the Public Resources Code is amended to read:

43211. (a) For those facilities that accept both hazardous wastes and other solid wastes, the State Department of Health Services shall exercise enforcement and regulatory powers relating to the control of the hazardous wastes at the facility pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code. The board and the enforcement agency shall, at solid waste disposal facilities, exercise enforcement and regulatory powers relating to the control of solid wastes and asbestos containing waste, as provided in Section 44820.

(b) For purposes of this section, "asbestos containing waste" means waste that contains more than 1 percent by weight, of asbestos that is either friable or nonfriable.

SEC. 408. Section 43308 of the Public Resources Code is amended to read:

43308. For those facilities that accept only hazardous wastes and to which Chapter 6.5 (commencing with Section 25100) of Division 20 and Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code apply, or that accept only low-level radioactive wastes and to which Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code applies, or for those facilities that accept both, the board shall have no enforcement or regulatory authority. Except as otherwise provided in Section 40052, all enforcement activities for those facilities relative to the control of hazardous wastes or low-level radioactive wastes shall be performed by the State Department of Health Services pursuant to Article 8 (commencing with Section 25180) of Chapter 6.5 or pursuant to Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code.

SEC. 409. Section 44103 of the Public Resources Code is amended to read:

44103. (a) For those facilities that accept only hazardous wastes, or that accept only low-level radioactive wastes, or that accept both, a solid waste facilities permit issued by the enforcement agency is not required. A single hazardous waste facilities permit or low-level radioactive waste facilities permit issued by the State Department of Health Services pursuant to Article 9 (commencing with Section 25200) of Chapter 6.5 or Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code shall be the only waste facilities permit or permits necessary for the use and operation of hazardous waste or low-level radioactive waste disposal facilities.

(b) For those facilities that accept both hazardous wastes and other solid wastes, two permits shall be required, as follows:

(1) The hazardous waste facilities permit issued by the State Department of Health Services pursuant to Article 9 (commencing with Section 25200) of Division 20 of the Health and Safety Code.

(2) The solid waste facilities permit issued by the enforcement agency pursuant to this chapter.

(c) Nothing in this section limits or supersedes any other permit or licensing requirements imposed by other provisions of law.

SEC. 410. Section 770 of the Public Utilities Code is amended to read:

770. The commission may after hearing:

(a) Ascertain and fix just and reasonable standards, classifications, regulations, practices, measurements, or service to be furnished,

imposed, observed, and followed by all electrical, gas, water, and heat corporations.

(b) Ascertain and fix adequate and serviceable standards for the measurement of quantity, quality, pressure, or other condition pertaining to the supply of the product, commodity, or service furnished or rendered by any such public utility. No standard of the commission applicable to any water corporation shall be inconsistent with the regulations and standards of the State Department of Health pursuant to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code.

(c) Prescribe reasonable regulations for the examination and testing of the product, commodity, or service and for the measurement thereof.

(d) Establish reasonable rules, specifications, and standards to secure the accuracy of all meters and appliances for measurements. The commission shall require a public utility that estimates meter readings to so indicate on its billings, and shall require any estimate that is incorrect to be corrected by the next billing period, except that for reasons beyond its control due to weather, or in cases of unusual conditions, corrections for any overestimate or underestimate shall be reflected on the first regularly scheduled bill and based on an actual reading following the period of inaccessibility.

(e) Provide for the examination and testing of any and all appliances used for the measurement of any product, commodity, or service of any such public utility.

SEC. 411. Section 12814 of the Public Utilities Code is amended to read:

12814. A district may add fluorine or fluorine compounds to the water supply of the district only if the voters of the district have approved the addition of the fluorine and fluorine compounds to the water supply. If a majority of the voters of a district voting upon the proposition at an election called and held as prescribed in Section 12815 have voted in favor of the addition of fluorine and fluorine compounds to the water supply of the district, the district shall, subject to Article 1 (commencing with Section 116275), of Chapter 4 of Part 12 of Division 104 of, and Sections 116325, 116340, 116345, and 116500 of, the Health and Safety Code, add to water intended for consumption or use by the public, including domestic, industrial, and other uses, fluorine and fluorine compounds.

SEC. 412. Section 12821 of the Public Utilities Code is amended to read:

12821. (a) Notwithstanding Section 117070 or 117120 of the Health and Safety Code, any violation of a rule or regulation of a district adopted pursuant to Section 117060 or 117105 of the Health and Safety Code shall be a misdemeanor unless the district by ordinance declares the violations to be an infraction.

(b) Every violation declared an infraction pursuant to subdivision (a) shall be punishable by (1) a fine not exceeding fifty dollars ($50)

for a first violation; (2) a fine not exceeding one hundred dollars ($100) for a second violation of the same ordinance within one year; and (3) a fine not exceeding two hundred fifty dollars ($250) for each additional violation of the same ordinance within one year.

SEC. 413. Section 6074 of the Revenue and Taxation Code is amended to read:

6074. (a) When the board determines it is necessary for the efficient administration of this part, the board may, by written notice, require any person making sales to operators of catering trucks, operated out of that person's facility pursuant to Section 114295 of the Health and Safety Code, who resell the property in the regular course of his or her business, to obtain evidence that the operator is the holder of a valid seller's permit issued pursuant to Section 6067.

At any time as the board may specify in a written notice, but in no case more than three times in a calendar year, the board may require a person making sales to operators of catering trucks to submit to the board a listing of operators of catering trucks who purchase goods from that person. Each listing shall be provided to the board within 30 days after the date of the board's notice, and shall include the name and seller's permit number on file of each operator, or, for those operators who do not provide evidence of a valid seller's permit, the operator's name, address, and telephone number.

The board may also, by written notice, require a person making sales to operators of catering trucks to promptly notify the board if a newly purchasing operator does not provide to the person, within 30 days of the date of the first purchase, evidence of a valid seller's permit.

Persons required by written notice of the board to obtain evidence, or provide a listing or notification, who fail to comply, may be subject to a penalty not to exceed five hundred dollars ($500) for each failure.

(b) Persons making sales to operators of catering trucks who do not have valid seller's permits or whose permits have been revoked shall report and pay the tax on property as if the property were sold at retail at the time of the sale. Nothing in this section shall relieve any operator of a catering truck of his or her obligations as a seller under this part.

(c) If the board finds that a person's failure to comply with this section is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty imposed by this section.

Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 414. Section 30461.6 of the Revenue and Taxation Code is amended to read:

30461.6. (a) Notwithstanding Section 30461, the board shall transmit the revenue derived from the increase in the cigarette tax

rate of one mill ($0.001) per cigarette imposed by Section 30101 on and after January 1, 1994, to the Treasurer to be deposited in the State Treasury to the credit of the Breast Cancer Fund, which fund is hereby created. The Breast Cancer Fund shall consist of two accounts: the Breast Cancer Research Account and the Breast Cancer Control Account. The revenues deposited in the fund shall be divided equally between the two accounts.

(b) The moneys in the accounts within the Breast Cancer Fund shall, upon appropriation by the Legislature, be allocated as follows:

(1) The moneys in the Breast Cancer Research Account shall be allocated for research with respect to the cause, cure, treatment, earlier detection, and prevention of breast cancer as follows:

(A) Ten percent to the Cancer Surveillance Section of the State Department of Health Services for the collection of breast cancer-related data and the conduct of breast cancer-related epidemiological research by the state cancer registry established pursuant to Section 103885 of the Health and Safety Code.

(B) Ninety percent to the Breast Cancer Research Program, that is hereby created at the University of California, for the awarding of grants and contracts to researchers for research with respect to the cause, cure, treatment, prevention, and earlier detection of breast cancer and with respect to the cultural barriers to accessing the health care system for early detection and treatment of breast cancer.

(2) The moneys in the Breast Cancer Control Account shall be allocated to the Breast Cancer Control Program, that is hereby created for the provision of early breast cancer detection services for uninsured and underinsured women. The Breast Cancer Control Program shall be established in the State Department of Health Services and shall be administered in coordination with the breast and cervical cancer control program established pursuant to Public Law 101-354.

(c) The early breast cancer detection services provided by the Breast Cancer Control Program shall include all of the following:

(1) Screening, including mammography, of women for breast cancer as an early detection health care measure.

(2) After screening, medical referral of screened women and services necessary for definitive diagnosis, including nonradiological techniques or biopsy.

(3) If a positive diagnosis is made, then assistance and advocacy shall be provided to help the person obtain necessary treatment.

(4) Outreach and health education activities to ensure that uninsured and underinsured women are aware of and appropriately utilize the services provided by the Breast Cancer Control Program.

(d) Any entity funded by the Breast Cancer Control Program shall coordinate with other local providers of breast cancer screening, diagnostic, followup, education, and advocacy services to avoid duplication of effort. Any entity funded by the program shall comply

with any applicable state and federal standards regarding mammography quality assurance.

(e) Administrative costs of the State Department of Health Services shall not exceed 10 percent of the funds allocated to the Breast Cancer Control Program created pursuant to paragraph (2) of subdivision (b). Indirect costs of the entities funded by this program shall not exceed 12 percent. The department shall define "indirect costs" in accordance with applicable state and federal law.

(f) Any entity funded by the Breast Cancer Control Program shall collect data and maintain records that are determined by the State Department of Health Services to be necessary to facilitate the state department's ability to monitor and evaluate the effectiveness of the entities and the program. Commencing with the program's second year of operation, the State Department of Health Services shall submit an annual report to the Legislature and any other appropriate entity. The costs associated with this report shall be paid from the allocation made pursuant to paragraph (2) of subdivision (b). The report shall describe the activities and effectiveness of the program and shall include, but not be limited to, the following types of information regarding those served by the program:

(1) The number.

(2) The ethnic, geographic, and age breakdown.

(3) The stages of presentation.

(4) The diagnostic and treatment status.

(g) The Breast Cancer Control Program shall be conducted in consultation with the Breast Cancer Research Program created pursuant to subparagraph (B) of paragraph (1) of subdivision (b).

(h) In implementing the Breast Cancer Control Program, the State Department of Health Services may appoint and consult with an advisory panel appointed by the State Director of Health Services and consisting of one ex officio, nonvoting member from the Breast Cancer Research Program, breast cancer researchers, and representatives from voluntary, nonprofit health organizations, health care professional organizations, breast cancer survivor groups, and breast cancer and health care-related advocacy groups. It is the intent of the Legislature that breast cancer-related survivors and advocates and health advocates for low-income women compose at least one-third of the advisory panel. It is also the intent of the Legislature that the State Department of Health Services collaborate closely with the panel.

(i) It is the intent of the Legislature in enacting the Breast Cancer Control Program to decrease cancer mortality rates attributable to breast cancer among uninsured and underinsured women, with special emphasis on low-income, Native American, and minority women. It is also the intent of the Legislature that the communities served by the Breast Cancer Control Program reflect the ethnic, racial, cultural, and geographic diversity of the state and that the

Breast Cancer Control Program fund entities where uninsured and underinsured women are most likely to seek their health care.

(j) The State Department of Health Services or any entity funded by the Breast Cancer Control Program shall collect personal and medical information necessary to administer this program from any individual applying for services under the program. The information shall be confidential and shall not be disclosed other than for purposes directly connected with the administration of this program or except as otherwise provided by law or pursuant to prior written consent of the subject of the information.

The State Department of Health Services or any entity funded by the Breast Cancer Control Program may disclose the confidential information to medical personnel and fiscal intermediaries of the state to the extent necessary to administer this program, and to other state public health agencies or medical researchers when the confidential information is necessary to carry out the duties of those agencies or researchers in the investigation, control, or surveillance of breast cancer.

(k) The State Department of Health Services shall adopt regulations to implement this act in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The initial adoption of implementing regulations shall be deemed an emergency and shall be considered as necessary for the immediate preservation of the public peace, health and safety, or general welfare, within the meaning of Section 11346.1. Emergency regulations adopted pursuant to this section shall remain in effect for no more than 180 days.

(*l*) It is the intent of the Legislature in enacting this section that this section supersede and be operative in place of Section 30461.6 of the Revenue and Taxation Code as added by Assembly Bill 478 of the 1993–94 Regular Session.

SEC. 415. Section 43012 of the Revenue and Taxation Code is amended to read:

43012. For purposes of this part, "taxpayer" means any person liable for the payment of a fee or a tax specified in subdivision (a) of Section 25174 of the Health and Safety Code or subdivision (e) of Section 25221 of the Health and Safety Code, or imposed by Section 105310 or 25174.1 of the Health and Safety Code.

SEC. 416. Section 43056 of the Revenue and Taxation Code is amended to read:

43056. The fee imposed pursuant to Section 105190 of the Health and Safety Code shall be administered and collected by the board in accordance with this part.

SEC. 417. Section 43057 of the Revenue and Taxation Code is amended to read:

43057. The fee imposed pursuant to Section 105310 of the Health and Safety Code shall be administered and collected by the board in accordance with this part.

SEC. 418. Section 43101 of the Revenue and Taxation Code is amended to read:

43101. Every person, as defined in Section 25118 of the Health and Safety Code, who is subject to the fees specified in subdivision (a) of Section 25174 of the Health and Safety Code, Section 25174.1, 25205.14, or 105190 of the Health and Safety Code, or subject to the surcharge imposed pursuant to Section 25205.9 of the Health and Safety Code shall register with the board on forms provided by the board.

SEC. 419. Section 43152.13 of the Revenue and Taxation Code is amended to read:

43152.13. (a) The fee imposed pursuant to Section 105190 of the Health and Safety Code, that is collected and administered under Section 43056, is due and payable on the last day of the second month following the end of the calendar year.

(b) Every employer subject to the fee imposed pursuant to Section 105190 of the Health and Safety Code shall, on forms provided by the board, file an annual return and pay the proper amount of fee due.

SEC. 420. Section 43152.14 of the Revenue and Taxation Code is amended to read:

43152.14. The fee imposed pursuant to Section 105310 of the Health and Safety Code, that is collected and administered under Section 43057, is due and payable on or before April 1 of each year for the previous calendar year.

SEC. 421. Section 165.5 of the Vehicle Code is amended to read:

165.5. No act or omission of any rescue team operating in conjunction with an authorized emergency vehicle as defined in Section 165, while attempting to resuscitate any person who is in immediate danger of loss of life, shall impose any liability upon the rescue team or the owners or operators of any authorized emergency vehicle, if good faith is exercised.

For the purposes of this section, "rescue team" means a special group of physicians and surgeons, nurses, volunteers, or employees of the owners or operators of the authorized emergency vehicle who have been trained in cardiopulmonary resuscitation and have been designated by the owners or operators of the emergency vehicle to attempt to resuscitate persons who are in immediate danger of loss of life in cases of emergency.

This section shall not relieve the owners or operators of any other duty imposed upon them by law for the designation and training of members of a rescue team or for any provisions regarding maintenance of equipment to be used by the rescue team.

Members of a rescue team shall receive the training in a program approved by, or conforming to, standards prescribed by an

emergency medical care committee established pursuant to Article 3 (commencing with Section 1797.270) of Chapter 4 of Division 2.5 of the Health and Safety Code, or a voluntary area health planning agency established pursuant to Section 127155 of the Health and Safety Code.

SEC. 422. Section 353 of the Vehicle Code is amended to read:

353. "Hazardous material" is any substance, material, or device posing an unreasonable risk to health, safety, or property during transportation, as defined by regulations adopted pursuant to Section 2402.7. "Hazardous material" includes explosives and hazardous wastes or substances as defined by regulations adopted pursuant to Section 25141 of the Health and Safety Code and medical wastes, as defined in Section 117690 of the Health and Safety Code.

SEC. 423. Section 2401.1 of the Vehicle Code is amended to read:

2401.1. The commissioner may enforce those provisions relating to the transportation of hazardous waste found in Article 6 (commencing with Section 25160), Article 6.5 (commencing with Section 25167.1), and Article 8 (commencing with Section 25180), of Chapter 6.5 of Division 20 of the Health and Safety Code, pursuant to subdivision (d) of Section 25180 of the Health and Safety Code and the provisions relating to the transportation of medical waste found in Chapter 6 (commencing with Section 118000) of, and Chapter 10 (commencing with Section 118325) of, Part 14 of Division 104 of the Health and Safety Code.

SEC. 424. Section 2452 of the Vehicle Code is amended to read:

2452. "Hazardous substance" means any hazardous material defined in Section 353 and any toxic substance defined pursuant to Section 108145 of the Health and Safety Code.

SEC. 425. Section 20017 of the Vehicle Code is amended to read:

20017. Any peace officer who knows, or has reasonable cause to believe, that a pesticide has been spilled or otherwise accidentally released, shall report the spill as required in Section 105215 of the Health and Safety Code.

SEC. 426. Section 27903 of the Vehicle Code is amended to read:

27903. Subject to Section 114765 of the Health and Safety Code, any vehicle transporting any explosive, blasting agent, flammable liquid, flammable solid, oxidizing material, corrosive, compressed gas, poison, radioactive material, or other hazardous materials, of the type and in quantities that require the display of placards or markings on the vehicle exterior by the United States Department of Transportation regulations (49 C.F.R., Parts 172, 173, and 177), shall display the placards and markings in the manner and under conditions prescribed by those regulations of the United States Department of Transportation.

This section does not apply if the vehicles are transporting not more than 20 pounds of smokeless powder or not more than five pounds of black sporting powder or any combination thereof.

SEC. 427. Section 33000 of the Vehicle Code is amended to read:

33000. Subject to the provisions of Section 114765 of the Health and Safety Code, the Department of the California Highway Patrol, after consulting with the State Department of Health Services, shall adopt regulations specifying the time that shipments may occur and the routes that are to be used in the transportation of cargoes of hazardous radioactive materials, as are defined in regulations of the State Department of Health Services.

SEC. 428. Section 10617 of the Water Code is amended to read:

10617. "Urban water supplier" means a supplier, either publicly or privately owned, providing water for municipal purposes either directly or indirectly to more than 3,000 customers or supplying more than 3,000 acre-feet of water annually. An urban water supplier includes a supplier or contractor for water, regardless of the basis of right, which distributes or sells for ultimate resale to customers. This part applies only to water supplied from public water systems subject to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code.

SEC. 429. Section 13050 of the Water Code, as amended by Chapter 847 of the Statutes of 1995, is amended to read:

13050. As used in this division:

(a) "State board" means the State Water Resources Control Board.

(b) "Regional board" means any California regional water quality control board for a region as specified in Section 13200.

(c) "Person" includes any city, county, district, the state, and the United States, to the extent authorized by federal law.

(d) "Waste" includes sewage and any and all other waste substances, liquid, solid, gaseous, or radioactive, associated with human habitation, or of human or animal origin, or from any producing, manufacturing, or processing operation, including waste placed within containers of whatever nature prior to, and for purposes of, disposal.

(e) "Waters of the state" means any surface water or groundwater, including saline waters, within the boundaries of the state.

(f) "Beneficial uses" of the waters of the state that may be protected against quality degradation include, but are not limited to, domestic, municipal, agricultural and industrial supply; power generation; recreation; aesthetic enjoyment; navigation; and preservation and enhancement of fish, wildlife, and other aquatic resources or preserves.

(g) "Quality of the water" refers to chemical, physical, biological, bacteriological, radiological, and other properties and characteristics of water which affect its use.

(h) "Water quality objectives" means the limits or levels of water quality constituents or characteristics which are established for the reasonable protection of beneficial uses of water or the prevention of nuisance within a specific area.

(i) "Water quality control" means the regulation of any activity or factor which may affect the quality of the waters of the state and includes the prevention and correction of water pollution and nuisance.

(j) "Water quality control plan" consists of a designation or establishment for the waters within a specified area of all of the following:

(1) Beneficial uses to be protected.

(2) Water quality objectives.

(3) A program of implementation needed for achieving water quality objectives.

(k) "Contamination" means an impairment of the quality of the waters of the state by waste to a degree which creates a hazard to the public health through poisoning or through the spread of disease. "Contamination" includes any equivalent effect resulting from the disposal of waste, whether or not waters of the state are affected.

(*l*) (1) "Pollution" means an alteration of the quality of the waters of the state by waste to a degree which unreasonably affects either of the following:

(A) The waters for beneficial uses.

(B) Facilities which serve these beneficial uses.

(2) "Pollution" may include "contamination."

(m) "Nuisance" means anything which meets all of the following requirements:

(1) Is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property.

(2) Affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

(3) Occurs during, or as a result of, the treatment or disposal of wastes.

(n) "Recycled water" means water which, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefor considered a valuable resource.

(o) "Citizen or domiciliary" of the state includes a foreign corporation having substantial business contacts in the state or which is subject to service of process in this state.

(p) (1) "Hazardous substance" means either of the following:

(A) For discharge to surface waters, any substance determined to be a hazardous substance pursuant to Section 311(b)(2) of the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.).

(B) For discharge to groundwater, any substance listed as a hazardous waste or hazardous material pursuant to Section 25140 of the Health and Safety Code, without regard to whether the substance is intended to be used, reused, or discarded, except that "hazardous

substance" does not include any substance excluded from Section 311(b)(2) of the Federal Water Pollution Control Act because it is within the scope of Section 311(a)(1) of that act.

(2) "Hazardous substance" does not include any of the following:

(A) Nontoxic, nonflammable, and noncorrosive stormwater runoff drained from underground vaults, chambers, or manholes into gutters or storm sewers.

(B) Any pesticide which is applied for agricultural purposes or is applied in accordance with a cooperative agreement authorized by Section 116180 of the Health and Safety Code, and is not discharged accidentally or for purposes of disposal, the application of which is in compliance with all applicable state and federal laws and regulations.

(C) Any discharge to surface water of a quantity less than a reportable quantity as determined by regulations issued pursuant to Section 311(b)(4) of the Federal Water Pollution Control Act.

(D) Any discharge to land which results, or probably will result, in a discharge to groundwater if the amount of the discharge to land is less than a reportable quantity, as determined by regulations adopted pursuant to Section 13271, for substances listed as hazardous pursuant to Section 25140 of the Health and Safety Code. No discharge shall be deemed a discharge of a reportable quantity until regulations set a reportable quantity for the substance discharged.

(q) (1) "Mining waste" means all solid, semisolid, and liquid waste materials from the extraction, beneficiation, and processing of ores and minerals. Mining waste includes, but is not limited to, soil, waste rock, and overburden, as defined in Section 2732 of the Public Resources Code, and tailings, slag, and other processed waste materials, including cementitious materials that are managed at the cement manufacturing facility where the materials were generated.

(2) For the purposes of this subdivision, "cementitious material" means cement, cement kiln dust, clinker, and clinker dust.

(r) "Master recycling permit" means a permit issued to a supplier or a distributor, or both, of recycled water, that includes waste discharge requirements prescribed pursuant to Section 13263 and water recycling requirements prescribed pursuant to Section 13523.1.

SEC. 430. Section 13176 of the Water Code is amended to read:

13176. (a) The analysis of any material required by this division shall be performed by a laboratory registered by the State Department of Health Services under Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101 of the Health and Safety Code, except that the terms "accreditation" and "certificate of accreditation" in Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101 of the Health and Safety Code, shall mean "registration" and "certificate of registration" respectively, and except that paragraphs (1) and (2) of subdivision (b) of Section 100850 of the Health and Safety Code shall not apply. This subdivision shall remain operative until January 1, 1991, or one

year after regulations pursuant to Section 100830 have taken effect, whichever occurs later, after that time subdivision (b) of this section shall apply.

(b) The analysis of any material required by this division shall be performed by a laboratory accredited by the State Department of Health Services under Article 3 (commencing with Section 100825) of Chapter 4 of Part 1 of Division 101 of the Health and Safety Code.

(c) No person or public entity of the state shall contract with a laboratory for environmental analyses for which the department requires registration or accreditation pursuant to this chapter, unless the laboratory holds a valid certificate of registration or accreditation.

SEC. 431. Section 13281 of the Water Code is amended to read:

13281. In making the determination, the regional board shall consider all relevant evidence related to the discharge, including, but not limited to, those factors set forth in Section 13241, information provided pursuant to Section 117435 of the Health and Safety Code, possible adverse impacts if the discharge is permitted, failure rates of any existing individual disposal systems whether due to inadequate design, construction, maintenance, or unsuitable hydrogeologic conditions, evidence of any existing, prior, or potential contamination, existing and planned land use, dwelling density, historical population growth, and any other criteria as may be established pursuant to guidelines, regulations, or policies adopted by the state board.

SEC. 432. Section 13755 of the Water Code is amended to read:

13755. Nothing in this chapter shall affect the powers and duties of the State Department of Health Services with respect to water and water systems pursuant to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code. Every person shall comply with this chapter and any regulation adopted pursuant thereto, in addition to standards adopted by any city or county.

SEC. 433. Section 13813 of the Water Code is amended to read:

13813. The Legislature further finds and declares that it is the intent of the Legislature to provide for the upgrading of domestic water supply systems to assure that all domestic water supplies at least meet minimum domestic water supply standards established under Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code.

SEC. 434. Section 13819 of the Water Code is amended to read:

13819. (a) The moneys in the fund are hereby continuously appropriated and shall be used for the purposes set forth in this section.

(b) The department may enter into contracts with suppliers having authority to construct, operate, and maintain domestic water systems, for loans to suppliers to aid in the construction of projects that will enable the supplier to meet, at a minimum, safe drinking water standards established pursuant to Chapter 4 (commencing

with Section 116275) of Part 12 of Division 104 of the Health and Safety Code.

(c) Any contract entered into pursuant to this section may include provisions as agreed by the parties thereto, and the contract shall include, in substance, all of the following provisions:

(1) An estimate of the reasonable cost of the project.

(2) An agreement by the department to loan to the supplier, during the progress of construction or following completion of construction as agreed by the parties, an amount that equals the portion of construction costs found by the department to be eligible for a state loan.

(3) An agreement by the supplier to repay the state over a period not to exceed 50 years, (A) the amount of the loan, (B) the administrative fee as described in Section 13830, and (C) interest on the principal, that is the amount of the loan plus the administrative fee.

(4) An agreement by the supplier, (A) to proceed expeditiously with, and complete, the project, (B) to commence operation of the project upon completion thereof, and to properly operate and maintain the project in accordance with the applicable provisions of law, (C) to apply for, and make reasonable efforts, to secure federal assistance for the project, (D) to secure approval of the department and of the State Department of Health Services before applying for federal assistance in order to maximize and best utilize the amounts of that assistance available, and (E) to provide for payment of the supplier's share of the cost of the project, if any.

(d) Bond proceeds may be used for a grant program in accordance with this chapter, with grants provided to suppliers that are political subdivisions of the state that are otherwise unable to meet minimum safe drinking water standards established pursuant to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code. The total amount of grants made pursuant to this chapter shall not exceed twenty-five million dollars ($25,000,000). The Legislative Analyst shall review the grant program and report to the Legislature not later than June 1, 1987.

(e) Notwithstanding any other provision, the proceeds of any bonds authorized to be issued under the California Safe Drinking Water Bond Law of 1976 (Chapter 10.5 (commencing with Section 13850)), that are unissued and uncommitted on the effective date of this chapter, shall be used for loans to suppliers in accordance with the terms, conditions, and purposes of this chapter.

SEC. 435. Section 13820 of the Water Code is amended to read:

13820. (a) The department may make state grants to suppliers that are political subdivisions of the state, from moneys in the fund available for that purpose pursuant to subdivision (d) of Section 13819, to aid in the construction of projects that will enable the public agency to meet, at a minimum, safe drinking water standards established pursuant to Chapter 4 (commencing with Section

116275) of Part 12 of Division 104 of the Health and Safety Code. A grant may be made by the department only upon the specific approval of the Legislature, by an act enacted after the receipt of a report filed pursuant to Section 13822.

(b) Any contract for a grant entered into pursuant to this chapter may include provisions as agreed by the parties thereto, and the contract shall include, in substance, all of the following provisions:

(1) An estimate of the reasonable cost of the project.

(2) An agreement by the department to grant to the public agency, during the progress of construction or following completion of construction as agreed by the parties, an amount that equals the portion of construction costs found by the department to be eligible for a state grant.

(3) An agreement by the public agency, (A) to proceed expeditiously with, and complete, the project, (B) to commence operation of the project upon completion thereof, and to properly operate and maintain the project in accordance with the applicable provisions of law, (C) to apply for, and make reasonable efforts to secure, federal assistance for the project, (D) to secure approval of the department and of the State Department of Health Services before applying for federal assistance in order to maximize and best utilize the amounts of that assistance available, and (E) to provide for payment of the public agency's share of the cost of the project, if any.

SEC. 436. Section 13824 of the Water Code is amended to read:

13824. An application for a grant pursuant to this chapter shall not be approved by the department, unless the department determines that the public agency is otherwise unable to meet minimum safe drinking water standards established pursuant to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code.

No grant shall be made by the department except upon approval by the State Department of Health Services of project plans submitted by the applicant and upon issuance to the public agency of a permit or amended permit as specified in Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code.

SEC. 437. Section 13837 of the Water Code is amended to read:

13837. Upon approval by the State Department of Health Services of project plans submitted by a supplier on the priority list and upon issuance to the supplier of a permit or amended permit as specified in Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code, the department may enter into a contract with the supplier.

SEC. 438. Section 13855 of the Water Code is amended to read:

13855. The Legislature further finds and declares that it is the intent of the Legislature to provide for the upgrading of domestic water supply systems to assure that all domestic water supplies at least meet minimum domestic water supply standards established

under Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code.

SEC. 439. Section 13861 of the Water Code is amended to read:

13861. (a) The moneys in the fund are hereby continuously appropriated and shall be used for the purposes set forth in this section.

(b) The department is authorized to enter into contracts with suppliers having authority to construct, operate, and maintain domestic water systems, for loans to the suppliers to aid in the construction of projects that will enable the supplier to meet, at a minimum, safe drinking water standards established pursuant to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code.

(c) Any contract pursuant to this section may include provisions as may be agreed upon by the parties thereto, and the contract shall include, in substance, the following provisions:

(1) An estimate of the reasonable cost of the project.

(2) An agreement by the department to loan to the supplier, during the progress of construction or following completion of construction as may be agreed upon by the parties, an amount that equals the portion of construction costs found by the department to be eligible for a state loan.

(3) An agreement by the supplier to repay the state, (i) over a period not to exceed 50 years, (ii) the amount of the loan, (iii) the administrative fee as described in Section 13862, and (iv) interest on the principal, that is the amount of the loan plus the administrative fee.

(4) An agreement by the supplier, (i) to proceed expeditiously with, and complete, the project, (ii) to commence operation of the project upon completion thereof, and to properly operate and maintain the project in accordance with the applicable provisions of law, (iii) to apply for and make reasonable efforts to secure federal assistance for the project, (iv) to secure approval of the department and of the State Department of Health Services before applying for federal assistance in order to maximize and best utilize the amounts of the assistance available, and (v) to provide for payment of the supplier's share of the cost of the project, if any.

(d) By statute, the Legislature may authorize bond proceeds to be used for a grant program, with grants provided to suppliers that are political subdivisions of the state, if it is determined that the suppliers are otherwise unable to meet minimum safe drinking water standards established pursuant to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code. The total amount of grants shall not exceed thirty million dollars ($30,000,000), of which up to fifteen million dollars ($15,000,000) may be used for grants for projects for the construction, improvement, or rehabilitation of domestic water systems that have become contaminated by organic or inorganic compounds (such as

nitrates, DBCP (dibromochloropropane), TCE (trichloroethylene), and arsenic), or radiation, in amounts as to render the water unfit or hazardous for human consumption, and no one supplier may receive more than four hundred thousand dollars ($400,000) in total. Any of the moneys made available pursuant to this subdivision, for grants for projects, that have not been encumbered within two years after the effective date of amendments to this subdivision made by Assembly Bill No. 2404 of the 1979–80 Regular Session shall be available only for loans pursuant to this section.

The Legislative Analyst shall review the grant programs and report to the Legislature not later than February 1, 1981.

SEC. 440. Section 13868.5 of the Water Code is amended to read:

13868.5. Upon approval by the State Department of Health Services of project plans submitted by a supplier on the priority list and upon issuance to the supplier of a permit or amended permit as specified in Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code, the department may enter into a contract with the supplier.

SEC. 441. Section 13880 of the Water Code is amended to read:

13880. The purpose of this chapter is to authorize the use of moneys in the California Safe Drinking Water Fund for a grant program for public agencies owning or operating domestic water systems, as authorized pursuant to the provisions of the California Safe Drinking Water Bond Law of 1976. The Legislature hereby finds and declares that it is necessary to establish a grant program to aid public agencies in the construction of projects for domestic water systems, and that certain public agencies owning or operating domestic water systems will be otherwise unable to meet minimum safe drinking water standards established pursuant to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code.

SEC. 442. Section 13882 of the Water Code is amended to read:

13882. (a) The department, subject to the requirements of this chapter, is authorized to make state grants to public agencies from moneys in the fund available for that purpose pursuant to subdivision (d) of Section 13861, to aid in the planning and construction of projects that will enable the public agency to meet, at a minimum, safe drinking water standards established pursuant to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code. Any grant in excess of one hundred thousand dollars ($100,000) may be made by the department only upon the specific approval of the Legislature, by an act enacted after the receipt of a report filed pursuant to Section 13884.

(b) Any contract for a grant pursuant to this chapter may include provisions as may be agreed upon by the parties thereto, and the contract shall include, in substance, the following provisions:

(1) An estimate of the reasonable cost of the project, that may include planning costs.

(2) An agreement by the department to grant to the public agency, during the progress of construction or following completion of construction as may be agreed upon by the parties, an amount that equals the portion of construction and planning costs found by the department to be eligible for a state grant.

(3) An agreement by the public agency, (i) to proceed expeditiously with, and complete, the project, (ii) to commence operation of the project upon completion thereof, and to properly operate and maintain the project in accordance with the applicable provisions of law, (iii) to apply for and make reasonable efforts to secure federal assistance for the project, (iv) to secure approval of the department and of the State Department of Health Services before applying for federal assistance in order to maximize and best utilize the amounts of the assistance available, and (v) to provide for payment of the public agency's share of the cost of the project, if any.

SEC. 443. Section 13886 of the Water Code is amended to read:

13886. An application for a grant pursuant to this chapter shall not be approved by the department unless the department determines that the public agency is otherwise unable to meet minimum safe drinking water standards established pursuant to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code. No grant shall be made by the department except upon approval by the State Department of Health Services of project plans submitted by the applicant and upon issuance to the public agency of a permit or amended permit as specified in Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code.

SEC. 444. Section 13895.3 of the Water Code is amended to read:

13895.3. The Legislature further finds and declares that it is the intent of the Legislature to provide for the upgrading of domestic water supply systems to assure that all domestic water supplies at least meet minimum domestic water supply standards established under Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code.

SEC. 445. Section 13895.9 of the Water Code is amended to read:

13895.9. (a) An aggregate amount of one hundred million dollars ($100,000,000) of the moneys in the fund are hereby continuously appropriated and shall be used for the purposes set forth in this section and Section 13898.

(b) The department may enter into contracts with suppliers having authority to construct, operate, and maintain domestic water systems, for loans to suppliers to aid in the construction of projects that will enable the supplier to meet, at a minimum, safe drinking water standards established pursuant to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code.

(c) Any contract entered into pursuant to this section may include provisions as agreed by the parties thereto, and the contract shall include, in substance, all of the following provisions:

(1) An estimate of the reasonable cost of the project.

(2) An agreement by the department to loan to the supplier, during the progress of construction or following completion of construction as agreed by the parties, an amount that equals the portion of construction costs found by the department to be eligible for a state loan.

(3) An agreement by the supplier to repay the state over a period not to exceed 50 years, (A) the amount of the loan, (B) the administrative fee as described in Section 13897, and (C) interest on the principal, that is the amount of the loan plus the administrative fee.

(4) An agreement by the supplier, (A) to proceed expeditiously with, and complete, the project, (B) to commence operation of the project upon completion thereof, and to properly operate and maintain the project in accordance with the applicable provisions of law, (C) to apply for, and make reasonable efforts to secure, federal assistance for the project, (D) to secure approval of the department and of the State Department of Health Services before applying for federal assistance in order to maximize and best utilize the amounts of that assistance available, and (E) to provide for payment of the supplier's share of the cost of the project, if any.

(d) Bond proceeds may be used for a grant program in accordance with this chapter, with grants provided to suppliers that are political subdivisions of the state that are otherwise unable to meet minimum safe drinking water standards established pursuant to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code. The total amount of grants made pursuant to this chapter shall not exceed twenty-five million dollars ($25,000,000).

(e) Notwithstanding any other provision, the proceeds of any bonds authorized to be issued under the California Safe Drinking Water Bond Law of 1976 (Chapter 10.5 (commencing with Section 13850)), and the California Safe Drinking Water Bond Law of 1984 (Chapter 10.2 (commencing with Section 13810)) that are unissued and uncommitted on the effective date of this chapter, shall be used for loans and grants to suppliers in accordance with the terms, conditions, and purposes of this chapter. Loans made after November 6, 1984, pursuant to Chapter 10.2 (commencing with Section 13810) shall carry an interest rate calculated as prescribed in Section 13897.3.

SEC. 446. Section 13896 of the Water Code is amended to read:

13896. (a) The department may make state grants to suppliers that are political subdivisions of the state, from moneys in the fund available for that purpose pursuant to subdivision (d) of Section 13895.9, to aid in the construction of projects that will enable the public agency to meet, at a minimum, safe drinking water standards

established pursuant to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code. A grant may be made by the department only upon the specific approval of the Legislature, by an act enacted after the receipt of a report filed pursuant to Section 13896.2.

(b) Any contract for a grant entered into pursuant to this chapter may include provisions as agreed by the parties thereto, and the contract shall include, in substance, all of the following provisions:

(1) An estimate of the reasonable cost of the project.

(2) An agreement by the department to grant to the public agency, during the progress of construction or following completion of construction as agreed by the parties, an amount that equals the portion of construction costs found by the department to be eligible for a state grant.

(3) An agreement by the public agency, (A) to proceed expeditiously with, and complete, the project, (B) to commence operation of the project upon completion thereof, and to properly operate and maintain the project in accordance with the applicable provisions of law, (C) to apply for, and make reasonable efforts to secure, federal assistance for the project, (D) to secure approval of the department and of the State Department of Health Services before applying for federal assistance in order to maximize and best utilize the amounts of that assistance available, and (E) to provide for payment of the public agency's share of the cost of the project, if any.

SEC. 447. Section 13896.4 of the Water Code is amended to read:

13896.4. An application for a grant pursuant to this chapter shall not be approved by the department, unless the department determines that the public agency is otherwise unable to meet minimum safe drinking water standards established pursuant to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code.

No grant shall be made by the department except upon approval by the State Department of Health Services of project plans submitted by the applicant and upon written approval by the State Department of Health Services that the proposed project is consistent with Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code.

SEC. 448. Section 14003 of the Water Code is amended to read:

14003. The Legislature further finds and declares that it is the intent of the Legislature to provide for the upgrading of domestic water supply systems to assure that all domestic water supplies at least meet minimum domestic water supply standards established under Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code.

SEC. 449. Section 14011 of the Water Code is amended to read:

14011. (a) Notwithstanding Section 13340 of the Government Code, an aggregate amount of seventy-five million dollars ($75,000,000) of the moneys in the fund are hereby continuously

appropriated and shall be used for the purposes set forth in this section and Section 14029.

(b) The department may enter into contracts with suppliers having authority to construct, operate, and maintain domestic water systems, for loans to suppliers to aid in the construction of projects that will enable the supplier to meet, at a minimum, safe drinking water standards established pursuant to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code.

(c) Any contract entered into pursuant to this section may include provisions as agreed by the parties thereto, and the contract shall include, in substance, all of the following provisions:

(1) An estimate of the reasonable cost of the project.

(2) An agreement by the department to loan to the supplier, during the progress of construction or following completion of construction as agreed by the parties, an amount that equals the portion of construction costs found by the department to be eligible for a state loan.

(3) An agreement by the supplier to repay the state over a period not to exceed 50 years, (A) the amount of the loan, (B) the administrative fee as described in Section 14022, and (C) interest on the principal, that is the amount of the loan plus the administrative fee.

(4) An agreement by the supplier, (A) to proceed expeditiously with, and complete, the project, (B) to commence operation of the project upon completion thereof, and to properly operate and maintain the project in accordance with the applicable provisions of law, (C) to apply for, and make reasonable efforts to secure, federal assistance for the project, (D) to secure approval of the department and of the State Department of Health Services before applying for federal assistance in order to maximize and best utilize the amounts of that assistance available, and (E) to provide for payment of the supplier's share of the cost of the project, if any.

(d) Bond proceeds may be used for a grant program in accordance with this chapter, with grants provided to suppliers that are political subdivisions of the state that are otherwise unable to meet minimum safe drinking water standards established pursuant to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code. The total amount of grants made pursuant to this chapter shall not exceed twenty-five million dollars ($25,000,000).

(e) Notwithstanding any other provision, the proceeds of any bonds authorized to be issued under the California Safe Drinking Water Bond Law of 1976 (Chapter 10.5 (commencing with Section 13850)), the California Safe Drinking Water Bond Law of 1984 (Chapter 10.2 (commencing with Section 13810)), and the California Safe Drinking Water Bond Law of 1986 (Chapter 10.7 (commencing with Section 13895)) that are unissued and uncommitted on the

effective date of this chapter, shall be used for loans and grants to suppliers in accordance with the terms, conditions, and purposes of this chapter.

(f) The Treasurer shall determine the interest rate to be paid on loans issued under the Safe Drinking Water Bond Law of 1976 (Chapter 10.5 (commencing with Section 13850)), as required under Section 13867, equal to the average interest rate, computed by the true interest cost method, paid by the state on general obligation bonds sold pursuant to that chapter up to the effective date of this chapter.

SEC. 450. Section 14012 of the Water Code is amended to read:

14012. (a) The department may make state grants to suppliers that are political subdivisions of the state, from moneys in the fund available for that purpose pursuant to subdivision (d) of Section 14011, to aid in the construction of projects that will enable the public agency to meet, at a minimum, safe drinking water standards established pursuant to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code. A grant may be made by the department only upon the specific approval of the Legislature.

(b) Any contract for a grant entered into pursuant to this chapter may include provisions as agreed by the parties thereto, and the contract shall include, in substance, all of the following provisions:

(1) An estimate of the reasonable cost of the project.

(2) An agreement by the department to grant to the public agency, during the progress of construction or following completion of construction as agreed by the parties, an amount that equals the portion of construction costs found by the department to be eligible for a state grant.

(3) An agreement by the public agency, (A) to proceed expeditiously with, and complete, the project, (B) to commence operation of the project upon completion thereof, and to properly operate and maintain the project in accordance with the applicable provisions of law, (C) to apply for, and make reasonable efforts to secure, federal assistance for the project, (D) to secure approval of the department and of the State Department of Health Services before applying for federal assistance in order to maximize and best utilize the amounts of that assistance available, and (E) to provide for payment of the public agency's share of the cost of the project, if any.

SEC. 451. Section 14016 of the Water Code is amended to read:

14016. An application for a grant pursuant to this chapter shall not be approved by the department, unless the State Department of Health Services determines that the public agency is otherwise unable to meet minimum safe drinking water standards established pursuant to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code.

No grant shall be made by the department except upon approval by the State Department of Health Services of project plans

submitted by the applicant and upon written approval by the State Department of Health Services that the proposed project is consistent with Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code.

SEC. 452. Section 14952 of the Water Code is amended to read:

14952. For the purposes of this chapter, a commercial shellfish growing area is an area certified pursuant to Section 112170 of the Health and Safety Code in which shellfish are grown and harvested.

SEC. 453. Section 22264 of the Water Code is amended to read:

22264. Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code shall not apply to districts except in specific areas concerning which the State Department of Health Services gives written notice to the district.

In areas where the service rendered by the district is primarily agricultural and domestic service is only incidental thereto, the State Department of Health Services may prescribe reasonable and feasible action to be taken by the district and the consumers to insure that their domestic water will not be injurious to health.

Municipal and public corporations or utilities, other than a district, that distribute water within a district are not excepted from Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code by this section.

SEC. 454. Section 36153 of the Water Code is amended to read:

36153. In addition to any and all other provisions of this division and any other applicable laws for the issuance of general obligation bonds by a district, general obligation bonds may be issued by a district where the proceeds are to be used to construct facilities in compliance with an order adopted by the State Department of Health pursuant to Chapter 4 (commencing with Section 116275) of Part 12 of Division 104 of the Health and Safety Code and the bonds to be sold have been approved by the State Treasurer in accordance with the provisions of Division 10 (commencing with Section 20000). Bonds issued pursuant to this section shall be issued by a district as otherwise provided in this division without regard to the election procedures of Chapter 3 (commencing with Section 35150) of Part 4 of this division and shall be secured by unlimited ad valorem assessments on land in the district without regard to any limitations set forth in Chapter 3 (commencing with Section 2201) of Part 4 of Division 1 of the Revenue and Taxation Code. If 50 percent or more of the voters within the district or if the owners of 50 percent or more of the assessed valuation within the district submit written protests to the district secretary within the 30 days after the date the board adopts the resolution authorizing the issuance of the bonds, the proceedings for the issuance of bonds pursuant to this section shall be terminated and no further proceedings shall be taken pursuant to this section for a period of at least one year.

SEC. 455. Section 220 of the Welfare and Institutions Code is amended to read:

220. No condition or restriction upon the obtaining of an abortion by a female detained in any local juvenile facility, pursuant to the Therapeutic Abortion Act (Article 2 (commencing with Section 123400) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code), other than those contained in that act, shall be imposed. Females found to be pregnant and desiring abortions, shall be permitted to determine their eligibility for an abortion pursuant to law, and if determined to be eligible, shall be permitted to obtain an abortion.

For the purposes of this section, "local juvenile facility" means any city, county, or regional facility used for the confinement of female juveniles for more than 24 hours.

The rights provided for females by this section shall be posted in at least one conspicuous place to which all females have access.

SEC. 456. Section 729.8 of the Welfare and Institutions Code is amended to read:

729.8. (a) If a minor is found to be a person described in Section 602 by reason of the unlawful possession, use, sale, or other furnishing of a controlled substance, as defined in Chapter 2 (commencing with Section 11053) of the Health and Safety Code, an imitation controlled substance, as defined in Section 109550 of the Health and Safety Code, or toluene or a toxic, as described in Section 381 of the Penal Code, upon the grounds of any school providing instruction in kindergarten, or any of grades 1 to 12, inclusive, or any church or synagogue, playground, public or private youth center, child day care facility, or public swimming pool, during hours in which these facilities are open for business, classes, or school-related activities or programs, or at any time when minors are using the facility, the court, as a condition of probation, except in any case in which the court makes a finding and states on the record its reasons that the condition would be inappropriate, shall require the minor to perform not more than 100 hours of community service.

(b) The definitions contained in subdivision (e) of Section 11353.1 shall apply to this section.

(c) As used in this section, "community service" means any of the following:

(1) Picking up litter along public streets or highways.

(2) Cleaning up graffiti on school grounds or any public property.

(3) Performing services in a drug rehabilitation center.

SEC. 457. Section 903 of the Welfare and Institutions Code is amended to read:

903. (a) The father, mother, spouse, or other person liable for the support of a minor, the estate of that person, and the estate of the minor, shall be liable for the reasonable costs of support of the minor while the minor is placed, or detained in, or committed to, any institution or other place pursuant to Section 625 or pursuant to an order of the juvenile court. However, a county shall not levy charges for the costs of support of a minor detained pursuant to Section 625

unless, at the detention hearing, the juvenile court determines that detention of the minor should be continued, the petition for the offense for which the minor is detained is subsequently sustained, or the minor agrees to a program of supervision pursuant to Section 654. The liability of these persons and estates shall be a joint and several liability.

(b) The county shall limit the charges it seeks to impose to the reasonable costs of support of the minor and shall exclude any costs of incarceration, treatment, or supervision for the protection of society and the minor and the rehabilitation of the minor. In the event that court-ordered child support paid to the county pursuant to subdivision (a) exceeds the amount of the costs authorized by this subdivision and subdivision (a), the county shall either hold the excess in trust for the minor's future needs pursuant to Section 302.52 of Title 45 of the Code of Federal Regulations or, with the approval of the minor's caseworker or the probation officer, pay the excess directly to the minor.

(c) It is the intent of the Legislature in enacting this subdivision to protect the fiscal integrity of the county, to protect persons against whom the county seeks to impose liability from excessive charges, to ensure reasonable uniformity throughout the state in the level of liability being imposed, and to ensure that liability is imposed only on persons with the ability to pay. In evaluating a family's financial ability to pay under this section, the county shall take into consideration the family income, the necessary obligations of the family, and the number of persons dependent upon this income. Except as provided in paragraphs (1), (2), (3), and (4), "costs of support" as used in this section means only actual costs incurred by the county for food and food preparation, clothing, personal supplies, and medical expenses, not to exceed a combined maximum cost of fifteen dollars ($15) per day, except that:

(1) The maximum cost of fifteen dollars ($15) per day shall be adjusted every third year beginning January 1, 1988, to reflect the percentage change in the calendar year annual average of the California Consumer Price Index, All Urban Consumers, published by the Department of Industrial Relations, for the three-year period.

(2) No cost for medical expenses shall be imposed by the county until the county has first exhausted any eligibility the minor may have under private insurance coverage, standard or medically indigent Medi-Cal coverage, and the Robert W. Crown California Children's Services Act (Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code).

(3) In calculating the cost of medical expenses, the county shall not charge in excess of 100 percent of the AFDC fee for service average Medi-Cal payment for that county for that fiscal year as calculated by the State Department of Health Services; however, if a minor has extraordinary medical or dental costs that are not met

under any of the coverages listed in paragraph (2), the county may impose these additional costs.

(4) For those placements of a minor subject to this section in which an AFDC–FC grant is made, the district attorney shall seek an order pursuant to Section 11350 and the statewide child support guideline in effect in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 of the Family Code. For purposes of determining the correct amount of support of a minor subject to this section, the rebuttable presumption set forth in Section 4057 of the Family Code is applicable.

SEC. 458. Section 1715 of the Welfare and Institutions Code is amended to read:

1715. From funds available for the support of the Youth Authority, the director may reimburse persons employed by the authority and certified as radiologic technologists pursuant to the Radiologic Technology Act (subdivision (f) of Section 27 of the Health and Safety Code) for the fees incurred both in connection with the obtaining of the certification since July 1, 1971, and with regard to the renewal thereof.

SEC. 459. Section 1768.9 of the Welfare and Institutions Code is amended to read:

1768.9. (a) Notwithstanding any other provision of law, a person under the jurisdiction or control of the Department of the Youth Authority is obligated to submit to a test for the probable causative agent of AIDS upon a determination of the chief medical officer of the facility that clinical symptoms of AIDS or AIDS-related complex, as recognized by the Centers for Disease Control, is present in the person. In the event that the subject of the test refuses to submit to such a test, the department may seek a court order to require him or her to submit to the test.

(b) Prior to ordering a test pursuant to subdivision (a), the chief medical officer shall ensure that the subject of the test receives pretest counseling. The counseling shall include:

(1) Testing procedures, effectiveness, reliability, and confidentiality.

(2) The mode of transmission of HIV.

(3) Symptoms of AIDS and AIDS-related complex.

(4) Precautions to avoid exposure and transmission.

The chief medical officer shall also encourage the subject of the test to undergo voluntary testing prior to ordering a test. The chief medical officer shall also ensure that the subject of the test receives posttest counseling.

(c) The following procedures shall apply to testing conducted under this section:

(1) The withdrawal of blood shall be performed in a medically approved manner. Only a physician, registered nurse, licensed vocational nurse, licensed medical technician, or licensed

phlebotomist may withdraw blood specimens for the purposes of this section.

(2) The chief medical officer shall order that the blood specimens be transmitted to a licensed medical laboratory which has been approved by the State Department of Health Services for the conducting of AIDS testing, and that tests, including all readily available confirmatory tests, be conducted thereon for medically accepted indications of exposure to or infection with HIV.

(3) The subject of the test shall be notified face-to-face as to the results of the test.

(d) All counseling and notification of test results shall be conducted by one of the following:

(1) A physician and surgeon who has received training in the subjects described in subdivision (b).

(2) A registered nurse who has received training in the subjects described in subdivision (b).

(3) A psychologist who has received training in the subjects described in subdivision (b) and who is under the purview of either a registered nurse or physician and surgeon who has received training in the subjects described in subdivision (b).

(4) A licensed social worker who has received training in the subjects described in subdivision (b) and who is under the purview of either a registered nurse or physician and surgeon who has received training in the subjects described in subdivision (b).

(5) A trained volunteer counselor who has received training in the subjects described in subdivision (b) and who is under the supervision of either a registered nurse or physician and surgeon who has received training in the subjects described in subdivision (b).

(e) The Department of the Youth Authority shall provide medical services appropriate for the diagnosis and treatment of those infected with HIV.

(f) The Department of the Youth Authority may operate separate housing facilities for wards and inmates who have tested positive for HIV infection and who continue to engage in activities which transmit HIV. These facilities shall be comparable to those of other wards and inmates with access to recreational and educational facilities, commensurate with the facilities available in the institution.

(g) Notwithstanding any other provision of law, the chief medical officer of a facility of the Department of the Youth Authority may do all of the following:

(1) Disclose results of a test for the probable causative agent of AIDS to the superintendent or administrator of the facility where the test subject is confined.

(2) When test results are positive, inform the test subject's known sexual partners or needle contacts in a Department of the Youth Authority facility of the positive results, provided that the test subject's identity is kept confidential. All wards and inmates who are

provided with this information shall be provided with the counseling described in subdivision (b).

(3) Include the test results in the subject's confidential medical record which is to be maintained separate from other case files and records.

(h) Actions taken pursuant to this section shall not be subject to subdivisions (a) to (c), inclusive, of Section 120980 of the Health and Safety Code. In addition, the requirements of subdivision (a) of Section 120990 of the Health and Safety Code shall not apply to testing performed pursuant to this section.

SEC. 460. Section 1773 of the Welfare and Institutions Code is amended to read:

1773. No condition or restriction upon the obtaining of an abortion by a female committed to the authority, pursuant to the Therapeutic Abortion Act (Article 2 (commencing with Section 123400) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code), other than those contained in that act, shall be imposed. Females found to be pregnant and desiring abortions, shall be permitted to determine their eligibility for an abortion pursuant to law, and if determined to be eligible, shall be permitted to obtain an abortion.

The rights provided for females by this section shall be posted in at least one conspicuous place to which all females have access.

If Assembly Bill No. 2087 of the 1972 Regular Session of the Legislature is chaptered, this section shall remain in effect only until the 61st day after the final adjournment of the 1974 Regular Session of the Legislature, and as of that date is repealed.

SEC. 461. Section 4134 of the Welfare and Institutions Code is amended to read:

4134. The state mental hospitals under the jurisdiction of the State Department of Mental Health shall comply with the California Food Sanitation Act, Article 1 (commencing with Section 111950) of Chapter 4 of Part 6 of Division 104 of the Health and Safety Code.

The state mental hospitals under the jurisdiction of the State Department of Mental Health shall also comply with the California Uniform Retail Food Facilities Law, Chapter 4 (commencing with Section 113700) of Part 7 of Division 104 of the Health and Safety Code.

Sanitation, health and hygiene standards that have been adopted by a city, county, or city and county that are more strict than those of the California Uniform Retail Food Facilities Law or the California Food Sanitation Act shall not be applicable to state mental hospitals that are under the jurisdiction of the State Department of Mental Health.

SEC. 462. Section 4472 of the Welfare and Institutions Code is amended to read:

4472. The state hospitals under the jurisdiction of the State Department of Developmental Services shall comply with the

California Food Sanitation Act, Article 1 (commencing with Section 111950) of Chapter 4 of Part 6 of Division 104 of the Health and Safety Code.

The state hospitals under the jurisdiction of the State Department of Developmental Services shall also comply with the California Uniform Retail Food Facilities Law, Chapter 4 (commencing with Section 113700) of Part 7 of Division 104.

Sanitation, health and hygiene standards that have been adopted by a city, county, or city and county that are more strict than those of the California Uniform Retail Food Facilities Law or the California Food Sanitation Act shall not be applicable to state hospitals that are under the jurisdiction of the State Department of Developmental Services.

SEC. 463. Section 4780 of the Welfare and Institutions Code is amended to read:

4780. When appropriated by the Legislature, the department may receive and expend all funds made available by the federal government, the state, its political subdivisions, and other sources, and, within the limitation of the funds made available, shall act as an agent for the transmittal of the funds for services through the regional centers. The department may use any funds received under Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code for the purposes of this division.

SEC. 464. Section 5328 of the Welfare and Institutions Code is amended to read:

5328. All information and records obtained in the course of providing services under Division 4 (commencing with Section 4000), Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100), to either voluntary or involuntary recipients of services shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons in the provision of services or appropriate referrals, or in the course of conservatorship proceedings. The consent of the patient, or his or her guardian or conservator shall be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person not employed by the facility who does not have the medical or psychological responsibility for the patient's care.

(b) When the patient, with the approval of the physician, licensed psychologist, or social worker with a master's degree in social work, who is in charge of the patient, designates persons to whom

information or records may be released, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him or her in confidence by members of a patient's family.

(c) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(d) If the recipient of services is a minor, ward, or conservatee, and his or her parent, guardian, guardian ad litem, or conservator designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.

(e) For research, provided that the Director of Mental Health or the Director of Developmental Services designates by regulation, rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. The rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

_____

Date

As a condition of doing research concerning persons who have received services from _____ (fill in the facility, agency or person), I, _____, agree to obtain the prior informed consent of the persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, and I further agree not to divulge any information obtained in the course of the research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services such that the person who received services is identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

(h) To the Senate Rules Committee or the Assembly Rules Committee for the purposes of legislative investigation authorized by the committee.

(i) If the recipient of services who applies for life or disability insurance designates in writing the insurer to which records or information may be disclosed.

(j) To the attorney for the patient in any and all proceedings upon presentation of a release of information signed by the patient, except that when the patient is unable to sign the release, the staff of the facility, upon satisfying itself of the identity of the attorney, and of the fact that the attorney does represent the interests of the patient, may release all information and records relating to the patient except that nothing in this article shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.

(k) Upon written agreement by a person previously confined in or otherwise treated by a facility, the professional person in charge of the facility or his or her designee may release any information, except information that has been given in confidence by members of the person's family, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the professional person in charge of the facility determines that the information is relevant to the evaluation. The agreement shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

(*l*) Between persons who are trained and qualified to serve on "multidisciplinary personnel" teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

(m) To county patients' rights advocates who have been given knowing voluntary authorization by a client or a guardian ad litem. The client or guardian ad litem, whoever entered into the agreement, may revoke the authorization at any time, either in writing or by oral declaration to an approved advocate.

(n) To a committee established in compliance with Sections 4070 and 5624.

(o) In providing information as described in Section 7325.5. Nothing in this subdivision shall permit the release of any information other than that described in Section 7325.5.

(p) To the county mental health director or the director's designee, or to a law enforcement officer, or to the person designated by a law enforcement agency, pursuant to Sections 5152.1 and 5250.1.

(q) If the patient gives his or her consent, information specifically pertaining to the existence of genetically handicapping conditions, as defined in Section 125135 of the Health and Safety Code, may be released to qualified professional persons for purposes of genetic counseling for blood relatives upon request of the blood relative. For purposes of this subdivision, "qualified professional persons" means those persons with the qualifications necessary to carry out the genetic counseling duties under this subdivision as determined by the genetic disease unit established in the State Department of Health Services under Section 125000 of the Health and Safety Code. If the patient does not respond or cannot respond to a request for permission to release information pursuant to this subdivision after reasonable attempts have been made over a two-week period to get a response, the information may be released upon request of the blood relative.

(r) When the patient, in the opinion of his or her psychotherapist, presents a serious danger of violence to a reasonably foreseeable victim or victims, then any of the information or records specified in this section may be released to that person or persons and to law enforcement agencies as the psychotherapist determines is needed for the protection of that person or persons. For purposes of this subdivision, "psychotherapist" means anyone so defined within Section 1010 of the Evidence Code.

(s) To persons serving on an interagency case management council established in compliance with Section 5606.6 to the extent necessary to perform its duties. This council shall attempt to obtain the consent of the client. If this consent is not given by the client, the council shall justify in the client's chart why these records are necessary for the work of the council.

The amendment of subdivision (d) enacted at the 1970 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the preexisting law.

SEC. 465. Section 5717 of the Welfare and Institutions Code is amended to read:

5717. (a) Expenditures that may be funded from amounts allocated to the county by the department from funds appropriated to the department shall include negotiated rates and net amounts; salaries of personnel; approved facilities and services provided through contract; operation, maintenance and service costs including insurance costs or departmental charges for participation in a county self-insurance program if the charges are not in excess of comparable available commercial insurance premiums and on the condition that any surplus reserves be used to reduce future year contributions; depreciation of county facilities as established in the state's uniform accounting manual, disregarding depreciation on the facility to the extent it was financed by state funds under this part; lease of facilities where there is no intention to, nor option to, purchase; expenses incurred under this act by members of the

California Conference of Local Mental Health Directors for attendance at regular meetings of these conferences; expenses incurred by either the chairperson or elected representative of the local mental health advisory boards for attendance at regular meetings of the Organization of Mental Health Advisory Boards; expenditures included in approved countywide cost allocation plans submitted in accordance with the Controller's guidelines, including, but not limited to, adjustments of prior year estimated general county overhead to actual costs, but excluding allowable costs otherwise compensated by state funding; net costs of conservatorship investigation, approved by the Director of Mental Health. Except for expenditures made pursuant to Article 6 (commencing with Section 129225) of Chapter 1 of Part 6 of Division 107 of the Health and Safety Code, it shall not include expenditures for initial capital improvements; the purchaser or construction of buildings except for equipment items and remodeling expense as may be provided for in regulations of the State Department of Mental Health; compensation to members of a local mental health advisory board, except actual and necessary expenses incurred in the performance of official duties that may include travel, lodging, and meals while on official business; or expenditures for a purpose for which state reimbursement is claimed under any other provision of law.

(b) The director may make investigations and audits of expenditures the director may deem necessary.

(c) With respect to funds allocated to a county by the department from funds appropriated to the department, the county shall repay to the state amounts found not to have been expended in accordance with the requirements set forth in this part. Repayment shall be within 30 days after it is determined that an expenditure has been made that is not in accordance with the requirements. In the event that repayment is not made in a timely manner, the department shall offset any amount improperly expended against the amount of any current or future advance payment or cost report settlement from the state for mental health services. Repayment provisions shall not apply to Short-Doyle funds allocated by the department for fiscal years up to and including the 1990–91 fiscal year.

SEC. 466. Section 9390.5 of the Welfare and Institutions Code is amended to read:

9390.5. (a) The State Department of Health Services shall conduct preadmission screening statewide.

(1) Preadmission screening shall be conducted by the Medi-Cal field offices which shall utilize the option of directly authorizing preadmission screening activities by Medi-Cal service providers, including, but not limited to, multipurpose senior services programs, adult day health care, home health agencies, or other comparable Medi-Cal service providers.

(2) The State Department of Health Services may delegate preadmission screening of general acute care hospital patients to

discharge planning units of general acute care hospitals and to multilevel facilities, as defined in paragraph (9) of subdivision (d) of Section 15432 of the Government Code, that agree to accept the delegation. The delegated preadmission screening shall be performed in accordance with criteria established by the State Department of Health Services, in consultation with representatives of general acute care hospitals and community-based services. The criteria shall include referrals to community-based resources as defined in Section 9390.1 and shall emphasize the importance of making the referrals in a timely manner. Prior to implementation of the delegated preadmission screening program, orientation sessions regarding preadmission screening program procedures shall be conducted.

The State Department of Health Services shall work with general acute care hospitals and general acute care hospital association representatives to develop an acute care hospital reporting mechanism that would allow an independent review of the success of the delegated program. The review shall, at the minimum, include the number of home-and-community-based waiver services that were utilized to divert patients into the community. The State Department of Health Services shall report to the Legislature on the results of this review by March 31, 1989. The report shall include all of the following:

(A) The total number of preadmission screens performed.

(B) The total number of preadmission screens from the community.

(C) The total number of preadmission screens from acute care hospitals.

(D) The total number of patients screened that were determined to be prolonged-stay patients.

(E) The total number of patients screened that were determined to be short-stay patients.

(F) The total number of patients diverted from nursing homes.

(G) The total number of patients who could not be diverted.

It is further the intent of the Legislature that the discharge planning units of general acute care hospitals that agree to accept delegated preadmission screening, shall coordinate with the multipurpose senior services program to the extent possible.

(b) Every long-term health care facility that receives an application for admission of a Medi-Cal eligible or Medicare/Medi-Cal eligible person shall contact by telephone the appropriate State Department of Health Services Medi-Cal field office or the appropriate general acute care hospital discharge planner for the purpose of conducting preadmission screening.

(c) Except where the State Department of Health Services has delegated preadmission screening functions to a general acute care hospital discharge planner, every general acute care hospital that identifies a Medi-Cal eligible or Medicare/Medi-Cal eligible patient

for referral to a long-term health care facility shall contact by telephone the appropriate State Department of Health Services Medi-Cal field office for the purpose of conducting preadmission screening. Where preadmission screening of acute care hospital patients has been delegated to discharge planning units, the Medi-Cal field office shall review and approve a determination to refer a patient to a nursing facility that is owned or operated by the referring hospital.

(d) For the purpose of conducting preadmission screening, and subject to applicable confidentiality requirements, including Section 14100.2, the State Department of Health Services, or its designated representatives, shall have access to all medical records of Medi-Cal or Medicare/Medi-Cal eligible persons who apply or are referred for admission to a long-term health care facility. It is further the intent of the Legislature that the State Department of Health Services shall coordinate with the Multipurpose Senior Services Program or similar case management agencies, to the extent possible.

(e) All persons who are admitted to nursing homes for a short stay as a result of preadmission screening shall have a discharge plan, including projected length of stay and proposed discharge goal, that shall be reviewed at least monthly for up to four months until the medical status, the ability to perform activities of daily living, and the determination of service needs indicate referral to community-based services for care at home is appropriate.

All persons who are admitted to nursing homes for prolonged care as a result of preadmission screening shall be reviewed for their potential for community-based care during the process of reauthorization of prolonged care Treatment Authorization Request (TAR) and, if appropriate, be referred to community-based service.

(f) All Medi-Cal recipients residing in nursing homes who have not been preadmission screened shall be reviewed for their potential for postadmission screening. Those persons identified as having the potential for living in the community with the support of community-based services shall be postadmission screened and referral made to community-based services, if appropriate. Priority for postadmission screening shall be given to those persons who have been in nursing homes six months or less. All Medi-Cal recipients residing in nursing homes on a six-month or less Treatment Authorization Request (TAR) shall be postadmission screened within six months of the effective date of this section. All other Medi-Cal recipients residing in nursing homes shall be postadmission screened within 12 months of the effective date of this section. The State Department of Health Services shall give priority to qualified Multipurpose Senior Services Providers (MSSP) to conduct postadmission screening.

(g) Contractors operating under Medi-Cal capitated, case management-based contracts entered into under the authority of this chapter or Chapter 8 (commencing with Section 14200) of Part 3 of

Division 9 shall assess each covered Medi-Cal patient residing in a long-term care facility or for whom long-term institutional care is contemplated, is assessed for diversion by referral to community-based resources and ambulatory health care services and makes the diversion when feasible on a timely basis. Contractors with existing department-approved utilization review plans that include an activity of this type shall be deemed to be in compliance with this section.

(h) The State Department of Health Services may delegate the responsibility for carrying out the provisions of this section to Medi-Cal at risk, capitated contractors or projects which do not have a case management feature. The contracts or projects shall operate under one of the following arrangements:

(1) The contractor or project shall adhere to the procedures developed by the State Department of Health Services to carry out this section.

(2) The contractor or project may, subject to the approval of the State Department of Health Services, revise the department's procedures or adopt its own procedures, provided that the alternative procedures satisfy the intent of this section.

(i) Contractors operating as Medi-Cal capitated case management based contractors pursuant to contracts entered into under the authority of Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 and Sections 101750 and 101755 of the Health and Safety Code shall ensure that for each covered Medi-Cal patient resident in a long-term care facility or for whom long-term institutional care is contemplated, the patient's potential is assessed for diversion by referral to community-based resources and ambulatory health care services and that the diversion occurs, when feasible, on a timely basis. Contractors with approved utilization review plans approved by the State Department of Health Services that included an activity of this type through delegation or other acceptable means, shall be deemed to be in compliance with this section.

(j) The State Department of Health Services shall review each capitated contractor's arrangements for and provision of preadmission and postadmission screening during the annual medical audit of the contractor.

SEC. 467. Section 11330.8 of the Welfare and Institutions Code is amended to read:

11330.8. (a) Counties may contract for the provision of case management services, as defined in subdivision (b) of Section 11330.2, and in Section 11330.5, only with public or nonprofit agencies that administer services under the Adolescent Family Life Program (Article 1 (commencing with Section 124175) of Chapter 4 of Part 2 of Division 106 of the Health and Safety Code), school districts, or other public or nonprofit agencies approved by the department.

(b) Contracting with an adolescent family life program shall be deemed to fulfill the case management requirements of subdivision (b) of Section 11330.2.

(c) If a county chooses to contract out some or all of the case management services required under this article, the county plan shall specifically list the reasons for that decision.

(d) If a county chooses to contract for case management services pursuant to subdivision (a), the county shall maintain one or more liaison staff members who have expertise in the special needs of teenage parents.

SEC. 468. Section 11333 of the Welfare and Institutions Code is amended to read:

11333. (a) Except as provided in subdivision (b), counties shall contract for the provision of case management services, as described in subdivision (b) of Section 11331.7 and in Section 11332.5, with public or nonprofit agencies or school districts that administer services under the Adolescent Family Life Program (Article 1 (commencing with Section 124175) of Chapter 4 of Part 2 of Division 106 of the Health and Safety Code).

(b) Counties may contract with other public or nonprofit agencies or school districts for case management services or provide case management services directly in cases where services from contractors under the Adolescent Family Life Program are not available or cost-effective, or where the county has an existing teen services program, and if all the following conditions are met:

(1) The Director of Health Services has determined that the services conform to the standards and scope of services provided through the Adolescent Family Life Program.

(2) The county plan includes a justification for not contracting with the Adolescent Family Life Program.

(3) The services are designed with the cooperation of the local health agency.

(c) Counties shall include Adolescent Family Life Program contractors in their planning of Cal-Learn implementation.

(d) In implementing this section and developing model contracts, the department shall consult with the State Department of Health Services so as to promote the purposes of this program.

SEC. 469. Section 14021.7 of the Welfare and Institutions Code is amended to read:

14021.7. (a) The department shall amend the state plan for medical assistance under the Medicaid program pursuant to subdivision (g) of Section 1396n of Title 42 of the United States Code, to add targeted case management services for those pregnant and parenting adolescents and their children, targeted by the department, in those localities served on January 1, 1991, by the Adolescent Family Life Program (Article 1 (commencing with Section 124175) of Chapter 4 of Part 2 of Division 106 of the Health and Safety Code), as a covered benefit under the Medi-Cal program.

The department shall submit the amended plan for federal approval by April 1, 1991.

(b) For purposes of this section, the term "targeted case management services" shall be defined as those services provided to pregnant and parenting adolescents pursuant to Article 1 (commencing with Section 124175) of Chapter 4 of Part 2 of Division 106 of the Health and Safety Code.

(c) Upon federal approval for federal financial assistance, the department shall establish the standards under which targeted case management services qualify as a Medi-Cal reimbursable service, subject to the availability of funding through the budget process, and shall develop an appropriate rate of reimbursement, subject to utilization controls.

SEC. 470. Section 14081.5 of the Welfare and Institutions Code is amended to read:

14081.5. Hospitals that are not selected for contracting under this article and that have negotiated in good faith to obtain a contract need not fulfill preexisting obligations relating to the provision of inpatient services to Medi-Cal beneficiaries arising under Section 15459 of the Government Code, and subdivision (j) of Section 129050 of, paragraph (4) of subdivision (b) of Section 127175 of, the Health and Safety Code, so long as this article remains in effect.

SEC. 471. Section 14087.6 of the Welfare and Institutions Code is amended to read:

14087.6. A county that has contracted for the provision of services pursuant to this article may provide the services directly to recipients, or arrange for any or all of the services to be provided by subcontracting with primary care providers, health maintenance organizations, insurance carriers, or other entities or individuals. The subcontracts may utilize a prospectively negotiated reimbursement rate, fee-for-service, retainer, capitation, or other basis for payment. The rate of payment established under the contract shall not exceed the total per capita amount that the department estimates would be payable for all services and requirements covered under the contract if all these services and requirements were to be furnished Medi-Cal beneficiaries under the Medi-Cal fee-for-service program.

Counties that are responsible for providing health care under this chapter shall make efforts to utilize existing health service resources where these resources can be estimated by the county to result in lower total long-term costs and accessibility quality care to persons served under this chapter. The granting of a certificate of need pursuant to the criteria set forth in Section 127200 of the Health and Safety Code or a certificate of exemption pursuant to the criteria set forth in Section 127175 of the Health and Safety Code shall satisfy the intent of this provision.

SEC. 472. Section 14094.3 of the Welfare and Institutions Code is amended to read:

14094.3. (a) Notwithstanding this article or Section 14093.05 or 14094.1, CCS covered services shall not be incorporated into any Medi-Cal managed care contract entered into after August 1, 1994, pursuant to Article 2.7 (commencing with Section 14087.3), Article 2.8 (commencing with Section 14087.5), Article 2.9 (commencing with Section 14088), Article 2.91 (commencing with Section 14089), Article 2.95 (commencing with Section 14092); or either Article 2 (commencing with Section 14200), or Article 7 (commencing with Section 14490) of Chapter 8, until three years after the effective date of the contract.

(b) Notwithstanding any other provision of this chapter, providers serving children under the CCS program who are enrolled with a Medi-Cal managed care contractor but who are not enrolled in a pilot project pursuant to subdivision (c) shall continue to submit billing for CCS covered services on a fee-for-service basis until CCS covered services are incorporated into the Medi-Cal managed care contracts described in subdivision (a).

(c) (1) The department may authorize a pilot project in Solano County in which reimbursement for conditions eligible under the CCS program may be reimbursed on a capitated basis pursuant to Section 14093.05, and provided all CCS program's guidelines, standards, and regulations are adhered to, and CCS program's case management is utilized.

(2) During the three-year time period described in subdivision (a), the department may approve, implement, and evaluate limited pilot projects under the CCS program to test alternative managed care models tailored to the special health care needs of children under the CCS program. The pilot projects may include, but need not be limited to, coverage of different geographic areas, focusing on certain subpopulations, and the employment of different payment and incentive models. Pilot project proposals from CCS program-approved providers shall be given preference. All pilot projects shall utilize CCS program-approved standards and providers pursuant to Section 14094.1.

(d) (1) The department shall submit to the appropriate committees of the Legislature an evaluation of pilot projects established pursuant to subdivision (c) based on at least one full year of operation.

(2) The evaluation required by paragraph (1) shall address the impact of the pilot projects on outcomes as set forth in paragraph (4) and, in addition, shall do both of the following:

(A) Examine the barriers, if any, to incorporating CCS covered services into the Medi-Cal managed care contracts described in subdivision (a).

(B) Compare different pilot project models with the fee-for-service system. The evaluation shall identify, to the extent possible, those factors that make pilot projects most effective in meeting the special needs of children with CCS eligible conditions.

(3) CCS covered services shall not be incorporated into the Medi-Cal managed care contracts described in subdivision (a) before the evaluation process has been completed.

(4) The pilot projects shall be evaluated to determine if:

(A) All children enrolled with a Medi-Cal managed care contractor described in subdivision (a) identified as having a CCS eligible condition are referred in a timely fashion for appropriate health care.

(B) All children in the CCS program have access to coordinated care that includes primary care services in their own community.

(C) CCS program standards are adhered to.

(e) For purposes of this section, CCS covered services include all program benefits administered by the program specified in Section 123840 of the Health and Safety Code regardless of the funding source.

(f) Nothing in this section shall be construed to exclude or restrict CCS eligible children from enrollment with a managed care contractor or from receiving from the managed care contractor with which they are enrolled primary and other health care unrelated to the treatment of the CCS eligible condition.

SEC. 473. Section 14103.8 of the Welfare and Institutions Code is amended to read:

14103.8. (a) Medi-Cal services for beneficiaries who are eligible for services under the California Children's Services Act (Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code) as well as the Medi-Cal program shall be subject to prior authorization by the director.

(b) Claims for payment of prior authorized services shall be reviewed by postpayment audit conducted by the department, and shall not be subject to prepayment review under the California Children's Services Act prior to submission to the Medi-Cal fiscal intermediary.

(c) The California Children's Services program may require all applicants who are potentially eligible for cash grant public assistance to apply for Medi-Cal eligibility prior to becoming eligible for funded services.

SEC. 473.5. Section 14105.5 of the Welfare and Institutions Code is amended to read:

14105.5. The director or prepaid health plans shall make no payment for services rendered prior to January 1, 1977, to any health facility that secures a license under the provisions of Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code after July 1, 1970, covering a new facility or additional bed capacity or the conversion of existing bed capacity to a different license category, unless the licensee received a favorable final decision by the voluntary area health planning agency in the area, the consumer members of a voluntary area health planning agency acting as an appeals body or the Advisory Health Council pursuant

to Sections 127155 to 127235, inclusive, of the Health and Safety Code; or unless the licensee had filed an application for a license prior to January 1, 1970, and the application met all then-existing requirements and regulations of the appropriate state agency at the time of application including, at least, preliminary submission of plans, and if the licensee commences construction of his or her project prior to July 1, 1971, and if the licensee has on file with the department a notarized affidavit from the building department having jurisdiction indicating that substantial progress on the approved project was attained by January 1, 1973, and the licensee has on file with the county recorder and department a valid notice of construction completion indicating January 1, 1974, as the completion date; except that the department shall extend the foregoing dates by no more than a total of two years in the case of projects where delay has resulted from the death of the original applicant, and shall extend the foregoing dates by no more than a total of one year in the case of projects where other good cause has been shown why the extension should be granted. The exception provided for in the preceding sentence with respect to applications filed prior to January 1, 1970, except for transfers executed before November 30, 1970, or after July 1, 1971, shall not apply to transferees of the applications of the original applicants.

Voluntary area health planning agencies may extend, until July 1, 1972, the date upon which applicants, qualifying under the exception in this section, shall commence construction, if the voluntary area health planning agencies declare that good cause has been shown why the extension should be granted, provided that an applicant applying for the extension had, prior to January 1, 1970, received approval of a health planning association in the county wherein the applicant is located. Applicants receiving extension of the construction commencement date shall have on file with the department a notarized affidavit from the building department having jurisdiction indicating that substantial progress on the approved project was attained by January 1, 1974, and have on file with the county recorder and department a valid notice of construction completion indicating January 1, 1975, as the completion date; except that the department shall extend each of the foregoing dates by no more than a total of one year in the case of projects where good cause has been shown why the extension should be granted.

(a) For the purposes of this section, "substantial progress" is defined and evidenced as follows:

(1) For structures of three or fewer stories, completion of the foundations and footings; the structural frame; the mechanical, electrical, and plumbing rough-in; the rough flooring; the exterior walls and windows; and the finished roof.

(2) For structures of more than three stories, a contractor's schedule of work shall be filed with the department by January 1,

1973. Every three months thereafter, until completion, evidence shall be submitted to the department that construction is progressing on that schedule.

(b) For the purposes of this section, construction of a project is deemed commenced on the date the applicant was so notified by the department, if so notified, or on the date the applicant has completed not less than all of the following:

(1) Submission to the appropriate state agency of a written agreement executed between the applicant and a licensed general contractor to construct and complete the facility within a designated time schedule in accordance with final architectural plans and specifications approved by the agency.

(2) Obtaining the initial permits or approval for commencing work on the project that is customarily issued for projects of the scope of applicant by the governmental agency having jurisdiction over the construction.

(3) Completion of construction work on the project to such a degree as to justify and require a progress payment by the applicant to the general contractor under terms of the construction agreement.

SEC. 474. Section 14126.25 of the Welfare and Institutions Code is amended to read:

14126.25. (a) The department shall establish rates pursuant to this article on the basis of facility cost data reported in the integrated long-term care disclosure and Medi-Cal cost report required by Section 128730 of the Health and Safety Code.

(b) (1) The department and the Office of Statewide Health Planning and Development, in consultation with nursing home labor, patient rights advocates, and provider associations shall make changes to the disclosure and cost report necessary to implement this article.

(2) In addition to changes to the disclosure and cost reports identified in paragraph (1) of subdivision (b), raw food costs shall be separately reported on the cost reports.

(c) The process of making those changes shall be exempt from the public hearing process.

(d) Facilities shall submit annual reports representing a fiscal reporting period, including any partial period report required by law.

(e) The facilities shall submit the reports required by subdivision (d) pursuant to Section 128755 of the Health and Safety Code.

(f) The Office of Statewide Health Planning and Development shall develop any procedures necessary to phase in this section.

(g) (1) Facilities providing intermediate care-habilitative and intermediate care-nursing services shall submit cost reports to the department within four months after the close of the filing organization's fiscal year.

(2) Cost reports required by paragraph (1) shall be filed by electronic media, as determined by the department. This filing

period shall be implemented during a transition period, determined by the department in consultation with the State Department of Developmental Services and provider associations.

(3) The department shall establish reimbursement rates August 1 of each year on the basis of cost data submitted by facilities required to report under this section for the most recent reporting period available from the Office of Statewide Health Planning, as defined under the state medicaid plan.

SEC. 475. Section 14126.40 of the Welfare and Institutions Code is amended to read:

14126.40. (a) To facilitate expeditious review by the department, an application for a new license shall include an estimated date of actual sale.

(b) A copy of the application for a new license shall be submitted to the Office of Statewide Health Planning and Development.

(c) The previous licensee of the facility shall send the department a copy of the final reports submitted to the Office of Statewide Health Planning and Development pursuant to Section 128735, and subdivision (b) of Section 128755 of the Health and Safety Code.

(d) If the director determines that a closeout audit of the facility is appropriate, the department shall conduct and complete the audit and issue a report within 60 days after a complete and usable cost report has been filed with the office and received by the department in accordance with subdivision (c).

SEC. 476. Section 14132.22 of the Welfare and Institutions Code, as amended by Chapter 537 of the Statutes of 1995, is amended to read:

14132.22. (a) (1) Transitional inpatient care services, as described in this section and provided by a qualified health facility, is a covered benefit under this chapter, subject to utilization controls and subject to the availability of federal financial participation. These services shall be available to individuals needing short-term medically complex or intensive rehabilitative services, or both.

(2) The department shall seek any necessary approvals from the federal Health Care Financing Administration to ensure that transitional inpatient care services, when provided by a general acute care hospital, will be considered for purposes of determining whether a hospital is deemed to be a disproportionate share hospital pursuant to Section 1396r-4(b) of Title 42 of the United States Code or any successor statute.

(3) Transitional inpatient care services shall be available to Medi-Cal beneficiaries who do not meet the criteria for eligibility for the subacute program provided for pursuant to Section 14132.25, but who need more medically complex and intensive rehabilitative services than are generally available in a skilled nursing facility, and who are clinically stable and no longer need the level of diagnostic and ancillary services provided generally in an acute care facility.

(b) For purposes of this section, "transitional inpatient care" means the level of care needed by an individual who has suffered an illness, injury, or exacerbation of a disease, and whose medical condition has clinically stabilized so that daily physician services and the immediate availability of technically complex diagnostic and invasive procedures usually available only in the acute care hospital are not medically necessary, and when the physician assuming the responsibility of treatment management of the patient in transitional care has developed a definitive and time-limited course of treatment. The individual's care needs may be medical, rehabilitative, or both. However, the individual shall fall within one of the two following patient groups:

(1) "Transitional medical patient," which means a medically stable patient with short-term transitional care needs, whose primary barrier to discharge to a residential setting is medical status rather than functional status. These patients may require simple rehabilitation therapy, but not a rehabilitation program appropriate for multiple interrelated areas of functional disability.

(2) "Transitional rehabilitation patient," which means a medically stable patient with short-term transitional care needs, whose primary barrier to discharge to a residential setting is functional status, rather than medical status, and who has the capacity to benefit from a rehabilitation program as determined by a physiatrist or physician otherwise skilled in rehabilitation medicine. These patients may have unresolved medical problems, but these problems must be sufficiently controlled to allow participation in the rehabilitation program.

(c) In implementing the transitional inpatient care program the department shall consider the differences between the two patient groups described in paragraphs (1) and (2) of subdivision (b) and shall assure that each group's specific health care needs are met.

(d) For the initial two years following the implementation of this program, transitional inpatient care services shall be made available only to qualifying Medi-Cal beneficiaries who are 18 years of age or older.

(e) For the initial two years following implementation of this program, transitional inpatient care services shall not be available to patients in acute care hospitals defined as small and rural pursuant to Section 124840 of the Health and Safety Code.

(f) (1) Transitional inpatient care services may be provided by general acute care hospitals that are licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code. General acute care hospitals may provide transitional inpatient care services in the acute care hospital, an acute rehabilitation center, or the distinct part skilled nursing unit of the acute care hospital. Licensed skilled nursing facilities, as defined in subdivision (c) of Section 1250 of the Health and Safety Code, may also provide the services described in subdivision (b).

(2) Costs of providing transitional inpatient care services in nonsegregated parts of the distinct part skilled nursing unit of the acute care hospital shall be determinable, in the absence of distinct and separate cost centers established for this purpose. Costs of providing transitional inpatient care services in nondistinct parts of the acute care hospital shall be determinable, in the absence of distinct and separate cost centers established for this purpose. A separate and distinct cost center shall be maintained or established for each unit in freestanding skilled nursing facilities in which the services described in subdivision (b) are provided, in order to identify and segregate costs for transitional inpatient care patients from costs for other patients who may be served within the parent facility.

(g) In order to participate as a provider in the transitional inpatient care program, a facility shall meet all applicable standards necessary for participation in the Medi-Cal program and all of the following:

(1) If the health facility is a freestanding nursing facility, it shall be located in close proximity to a general acute care hospital with which the facility has a transfer agreement in order to support the capability to respond to medical emergencies.

(2) The health facility shall demonstrate, to the department, competency in providing high quality care to all patients for whom the facility provides care, experience in providing high quality care to the types of transitional inpatient care patients the facility proposes to serve, and the ability to provide transitional inpatient care to patients pursuant to this chapter.

(3) The health facility shall enter into a provider agreement with the department for the provision of transitional inpatient care. The provider agreement shall specify whether the facility is authorized to serve transitional medical patients or transitional rehabilitation patients, or both, depending on the facility's demonstrated ability to meet standards specific to each patient group. Continuation of the provider agreement shall be contingent upon the facility's continued compliance with all the applicable requirements of this section and any other applicable laws or regulations.

(h) In determining a facility's qualifications for initial participation, an onsite review shall be conducted by the department. Subsequent review shall be conducted onsite as necessary, but not less frequently than annually. Initial and subsequent reviews shall be conducted by appropriate department personnel, who shall include a registered nurse and other health professionals where appropriate. The department shall develop written protocols for reviews.

(i) Transitional inpatient care services shall be available to patients receiving care in an acute care hospital. Under specified circumstances, as set forth in regulations, transitional inpatient care shall be available to patients transferring directly from a skilled

nursing facility level of care, a physician's office, a clinic, or from the emergency room of a general acute care hospital, provided they have received a comprehensive medical assessment conducted by a physician, and the physician determines, and documents in the medical record, that the patient has been clinically stable for the 24 hours preceding admission to the transitional inpatient care program.

(j) A health facility providing transitional inpatient care shall accept and retain only those patients for whom it can provide adequate, safe, therapeutic, and effective care, and as identified in its application for participation as a transitional inpatient care provider. The facility's determination to accept a patient into the transitional inpatient care unit shall be based on its preadmission screening process conducted by appropriate facility personnel.

(k) The department shall establish a process for providing timely, concurrent authorization and coordination, as required, of all medically necessary services for transitional inpatient care.

(*l*) The department shall adopt regulations specifying admission criteria and an admission process appropriate to each of the transitional inpatient care patient groups specified in subdivision (b). Patient admission criteria to transitional inpatient care shall include, but not be limited to, the following:

(1) Prior to admission to transitional inpatient care, the patient shall be determined to have been clinically stable for the preceding 24 hours by the attending physician and the physician assuming the responsibility of treatment management of the patient in the transitional inpatient care program.

(2) The patient shall be admitted to transitional inpatient care on the order of the physician assuming the responsibility of the management of the patient, with an established diagnosis, and an explicit time-limited course of treatment of sufficient detail to allow the facility to initiate appropriate assessments and services. No patient shall be transferred from an acute care hospital to a transitional inpatient care program that is in a freestanding nursing facility if the patient's attending physician documents in the medical record that the transfer would cause physical or psychological harm to the patient.

(3) (A) Medical necessity for transitional care shall include, but not be limited to, one or more of the following:

(i) Intravenous therapy.

(ii) Rehabilitative services.

(iii) Wound care.

(iv) Respiratory therapy.

(v) Traction.

(B) The department shall develop regulations further defining the services to be provided pursuant to clauses (i) to (v), inclusive, and the circumstances under which these services shall be provided.

(m) Registered nurses shall be assigned to the transitional inpatient care unit at all times and in sufficient numbers to allow for the ongoing patient assessment, patient care, and supervision of licensed and unlicensed staff. Participating facilities shall assure that staffing is adequate in number and skill mix, at all times, to address reasonably anticipated admissions, discharges, transfers, patient emergencies, and temporary absences of staff from the transitional care unit including, but not limited to, absences to attend meetings or inservice training. All licensed and certified health care personnel shall hold valid, current licensure or certification.

(n) Continued medical assessments shall be of sufficient frequency as to adequately review, evaluate, and alter plans of care as needed in response to patients' medical progress.

(o) The department shall develop a rate of reimbursement for transitional inpatient care services for providers as specified in subdivision (f). Reimbursement rates shall be specified in regulation and in accordance with methodologies developed by the department and may include the following:

(1) All inclusive per diem rates.

(2) Individual patient specific rates according to the needs of the individual transitional care patient.

(3) Other rates subject to negotiation with the health facility.

(p) Reimbursement at transitional inpatient care rates shall only be implemented when funds are available for this purpose pursuant to the annual Budget Act. Funds expended to implement this section shall be used by providers to assure safe, therapeutic and effective patient care by staffing at levels which meet patients' needs, and to ensure that these providers have the needed resources and staff to provide quality care to transitional inpatient care patients.

(q) (1) The department shall reimburse physicians for all medically necessary care provided to transitional inpatient care patients and shall establish Medi-Cal physician reimbursement rates commensurate with those for visits to nontransitional acute care patients in acute care hospitals.

(2) It is the intent of this subdivision to cover physician costs not included in the per diem rate.

(r) No later than January 1, 1999, the department shall evaluate, and make recommendations regarding, the effectiveness and safety of the transitional inpatient care program. The evaluation shall be developed in consultation with representatives of providers, facility employees, and consumers. The department may contract for all or a portion of the evaluation. The evaluation shall be for the purpose of determining the impact of the transitional inpatient care program on patient care, including functional outcomes, if applicable, on whether the care costs less than other alternatives, and whether it results in the deterioration of patient health and safety as compared to other placements. The evaluation shall also be for the purpose of determining the effect on patients other than those receiving

transitional inpatient care in participating facilities. The evaluation shall include:

(1) Data on patient mortality, patients served, length of stay, and subsequent placement or discharge.

(2) Data on readmission to acute care and emergency room transfers.

(3) Staffing standards in the facilities.

(4) Other outcome measures and indicia of patient health and safety otherwise required to be reported by federal or state law.

(s) The department shall develop regulations to amend Sections 51540 to 51556, inclusive, of Title 22 of the California Code of Regulations, to exclude the cost of transitional inpatient care services rendered in general acute care hospitals from the hospital's inpatient services reimbursement.

(t) The department may adopt emergency regulations as necessary to implement this section in accordance with the Administrative Procedures Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The initial adoption of emergency regulations shall be deemed to be an emergency and considered by the Office of Administrative Law as necessary for the immediate preservation of public peace, health and safety, or general welfare. Emergency regulations adopted pursuant to this section shall remain in effect for no more than 180 days. If the department adopts emergency regulations to implement this section, the department shall obtain input from interested parties to address the unique needs of medically complex and intensive rehabilitative patients qualifying for transitional inpatient care. Notwithstanding the requirements of this section, the department shall, if it adopts emergency regulations to implement this section, address the following major subject areas:

(1) Patient selection and assessment criteria, including, but not limited to, preadmission screening, patient assessments, physician services, and interdisciplinary teams.

(2) Facility participation criteria and agreements, including but not limited to, facility licensing and certification history, demonstration to the department of a preexisting history in providing care to medically complex or intensive rehabilitative patients, data reporting requirements, demonstration of continued ability to provide high quality of care to all patients, nurse staffing requirements, ancillary services, and staffing requirements.

(u) This section shall remain in effect only until January 1, 2000, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2000, deletes or extends that date.

SEC. 477. Section 14132.77 of the Welfare and Institutions Code is amended to read:

14132.77. (a) (1) Any rural hospital may request to participate in a two-year pilot project to perform delegated acute inpatient

hospital treatment authorization review under the Medi-Cal program.

(2) Any hospital that elects to participate in the pilot project under this section shall enter into an agreement with the department to ensure the appropriateness of the treatments and services that it provides to a Medi-Cal beneficiary.

(3) Any rural hospital that elects to participate in a pilot project pursuant to this section shall remain in the project for not less than one year, unless it is removed by the department pursuant to subdivision (c).

(b) The department shall review, on a random basis, every six months, up to 25 percent of the Medi-Cal beneficiaries treated by each participating hospital. As long as a hospital participates in a pilot project authorized by this section, reviews required by this section shall not interfere with, or delay, the processing of the hospital's claims for payment. Consistent with subdivision (c), if the department finds that a hospital participating in a pilot project under this section is accumulating a significant overpayment, the department shall notify the provider.

(c) (1) (A) If the department determines, as a result of a review required by subdivision (b), that the hospital has provided treatment that cannot be approved by the department, the department shall take an immediate disallowance that shall require offsets against pending Medi-Cal payments and any direct payment that may be required by the department. The disallowance shall be based on full extrapolation of the sample to the universe of Medi-Cal days covered by the sample period.

(B) In addition to the requirements of subparagraph (A), if the department determines that the hospital has provided treatment that cannot be approved by the department for 3 percent or more of the Medi-Cal beneficiary days, the department shall take corrective action relative to the hospital's participation in the pilot project. The corrective action shall include at least one of the following actions:

(i) The revocation of the hospital's participation pursuant to subdivision (a).

(ii) An increased random review process.

(iii) Mandatory educational programs.

(2) After the random review required by subdivision (b), the hospital shall, through the reduction of the regularly scheduled periodic interim payment over a one-year period, pay the state an amount equal to the reimbursement received by the hospital for services for which approval has been denied and extrapolated pursuant to paragraph (1). This paragraph does not preclude any hospital from appealing a determination of the department under Article 5.3 (commencing with Section 14170). However, any issue under appeal shall not delay any disallowance or corrective action

taken by the department under paragraph (1) until the appeal is resolved.

(d) The department may reinstate any hospital's participation revoked pursuant to subdivision (c) if, after a period of three months, the hospital's requests for a treatment authorization are not denied in 3 percent or more of the Medi-Cal days.

(e) Six months after the conclusion of the first year of the pilot project, the department shall prepare a report with an evaluation of the project and shall submit it to the appropriate committees of the Legislature. The department shall include its determination as to whether the project should be extended, modified, or terminated in the report and the basis for any determinations made by the department.

(f) (1) As part of the pilot project implemented under this section, the department may, subject to federal approval, authorize the reimbursement of a participating rural hospital at a predetermined amount every two weeks or on some other basis determined to be appropriate by the department. Following every six-month period, the department shall immediately begin adjustment of any overpayment or underpayment, based on the amount paid to the provider as compared to the actual amount of claims approved by the department. Any hospital that is selected to participate in the pilot project under this section that elects to be paid for acute inpatient services under this subdivision shall be subject to the payment provisions of this section for the duration of the hospital's participation in the pilot project.

(2) The amount of reimbursement under paragraph (1) shall be based on the actual claims payment experience for each hospital for the immediately preceding period of six months and rate adjustments made in accordance with existing Medi-Cal reimbursement requirements.

(g) For purposes of this section, "rural hospital" means a small and rural hospital as defined in Section 124840 of the Health and Safety Code.

(h) The scope of the pilot project shall be subject to federal approval and the necessary resources made available from sources other than the General Fund or savings from program efficiencies that may be identified for this purpose.

(i) The department shall implement this section only upon receipt of all appropriate federal waivers.

SEC. 478. Section 14138 of the Welfare and Institutions Code is amended to read:

14138. (a) To the extent permitted by federal law, the department shall purchase vaccines and biological products in bulk from the Centers for Disease Control or any other sources at the lowest cost possible, for use by providers of services under this chapter and the Child Health and Disability Prevention program under Article 6 (commencing with Section 124025) of Chapter 3 of

Part 2 of Division 106 of the Health and Safety Code, in the immunization of eligible children.

(b) It is the intent of the Legislature that, to the maximum extent possible, any savings of General Fund moneys realized from the program established pursuant to this section shall be reinvested in programs that are most likely to increase access to, and the quality of, immunization services for children.

(c) In order to achieve maximum cost savings, the Legislature hereby determines that an expedited contract process for contracts under this section is necessary. Therefore, contracts under this section may be on a nonbid basis and shall be exempt from the provisions of the Public Contract Code.

(d) No part of this section shall be construed to require the department to undertake distribution of vaccines and biological products.

SEC. 479. Section 14139 of the Welfare and Institutions Code is amended to read:

14139. (a) The department shall expend, upon appropriation, any savings accrued from the establishment and implementation of a bulk purchase vaccine program to increase the participation of physicians and surgeons, public and community-based health clinics, and health care facilities as immunization providers under the Medi-Cal program and under the child health and disability prevention programs established pursuant to Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code and to increase access to, and the quality of, immunization services for publicly insured and uninsured children, and to provide funding to counties to assist in the administration of local immunization programs. These funds shall supplement, not supplant, existing state and local funds.

(b) The department shall implement subdivision (a) at the earliest possible time after a bulk purchase program for child vaccines is implemented and savings from that program are realized.

(c) The department is encouraged to enlist the help of state and local medical, nursing, and other appropriate associations and societies to enhance private provider outreach programs, that shall include, but not be limited to, components emphasizing the purposes of the public vaccine program and discouraging the practice of sending Medi-Cal and child health and disability prevention program eligible children into county and other public clinics for immunizations.

SEC. 480. Section 14148.3 of the Welfare and Institutions Code is amended to read:

14148.3. The department shall seek federal approval to implement obstetrical case management for Medi-Cal eligible pregnant women when provided through the Child Health and Disability Prevention program authorized under Article 6

(commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code.

SEC. 481. Section 14163 of the Welfare and Institutions Code, as amended by Chapter 198 of the Statutes of 1996, is amended to read:

14163. (a) For purposes of this section, the following definitions shall apply:

(1) "Public entity" means a county, a city, a city and county, the University of California, a local hospital district, a local health authority, or any other political subdivision of the state.

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

(3) "Disproportionate share hospital" means a hospital providing acute inpatient services to Medi-Cal beneficiaries that meets the criteria for disproportionate share status relating to acute inpatient services set forth in Section 14105.98.

(4) "Disproportionate share list" means the annual list of disproportionate share hospitals for acute inpatient services issued by the department pursuant to Section 14105.98.

(5) "Fund" means the Medi-Cal Inpatient Payment Adjustment Fund.

(6) "Eligible hospital" means, for a particular state fiscal year, a hospital on the disproportionate share list that is eligible to receive payment adjustment amounts under Section 14105.98 with respect to that state fiscal year.

(7) "Transfer year" means the particular state fiscal year during which, or with respect to which, public entities are required by this section to make an intergovernmental transfer of funds to the Controller.

(8) "Transferor entity" means a public entity that, with respect to a particular transfer year, is required by this section to make an intergovernmental transfer of funds to the Controller.

(9) "Transfer amount" means an amount of intergovernmental transfer of funds that this section requires for a particular transferor entity with respect to a particular transfer year.

(10) "Intergovernmental transfer" means a transfer of funds from a public entity to the state, that is local government financial participation in Medi-Cal pursuant to the terms of this section.

(11) "Licensee" means an entity that has been issued a license to operate a hospital by the department.

(12) "Annualized Medi-Cal inpatient paid days" means the total number of Medi-Cal acute inpatient hospital days, regardless of dates of service, for which payment was made by or on behalf of the department to a hospital, under present or previous ownership, during the most recent calendar year ending prior to the beginning of a particular transfer year, including all Medi-Cal acute inpatient

covered days of care for hospitals that are paid on a different basis than per diem payments.

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

(14) "OBRA 1993 payment limitation" means the hospital-specific limitation on the total annual amount of payment adjustments to each eligible hospital under the payment adjustment program that can be made with federal financial participation under Section 1396r-4(g) of Title 42 of the United States Code as implemented pursuant to the Medi-Cal State Plan.

(b) The Medi-Cal Inpatient Payment Adjustment Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to, and under the administrative control of, the department for the purposes specified in subdivision (d). The fund shall consist of the following:

(1) Transfer amounts collected by the Controller under this section, whether submitted by transferor entities pursuant to applicable provisions of this section or obtained by offset pursuant to subdivision (j).

(2) Any other intergovernmental transfers deposited in the fund, as permitted by Section 14164.

(3) Any interest that accrues with respect to amounts in the fund.

(c) Moneys in the fund, which shall not consist of any state general funds, shall be used as the source for the nonfederal share of payments to hospitals pursuant to Section 14105.98. Moneys shall be allocated from the fund by the department and matched by federal funds in accordance with customary Medi-Cal accounting procedures, and used to make payments pursuant to Section 14105.98.

(d) Except as otherwise provided in Section 14105.98 or in any provision of law appropriating a specified sum of money to the department for administering this section and Section 14105.98, moneys in the fund shall be used only for the following:

(1) Payments to hospitals pursuant to Section 14105.98.

(2) Except for the amount transferred pursuant to paragraph (3), transfers to the Health Care Deposit Fund as follows:

(A) In the amount of two hundred thirty-nine million seven hundred fifty-seven thousand six hundred ninety dollars ($239,757,690), for the 1994–95 and 1995–96 fiscal years.

(B) In the amount of two hundred twenty-nine million seven hundred fifty-seven thousand six hundred ninety dollars ($229,757,690) for the 1996–97 fiscal year and each fiscal year thereafter.

(C) Notwithstanding any other provision of law, the amount specified in this paragraph shall be in addition to any amounts transferred to the Health Care Deposit Fund arising from changes of any kind attributable to payment adjustment years prior to the 1993–94 payment adjustment year. These transfers from the fund shall be made in six equal monthly installments to the Medi-Cal local assistance appropriation item (Item 4260-101-001 of the annual Budget Act) in support of Medi-Cal expenditures. The first installment shall accrue in October of each transfer year, and all other installments shall accrue monthly thereafter from November through March.

(3) In the 1993–94 fiscal year, in addition to the amount transferred as specified in paragraph (2), fifteen million dollars ($15,000,000) shall also be transferred to the Medi-Cal local assistance appropriation item (Item 4260-101-001) of the Budget Act of 1993.

(e) For the 1991–92 state fiscal year, the department shall determine, no later than 70 days after the enactment of this section, the transferor entities for the 1991–92 transfer year. To make this determination, the department shall utilize the disproportionate share list for the 1991–92 fiscal year, which shall be issued by the department no later than 65 days after the enactment of this section, pursuant to paragraph (1) of subdivision (f) of Section 14105.98. The department shall identify each eligible hospital on the list for which a public entity is the licensee as of July 1, 1991. The public entity that is the licensee of each identified eligible hospital shall be a transferor entity for the 1991–92 transfer year.

(f) The department shall determine, no later than 70 days after the enactment of this section, the transfer amounts for the 1991–92 transfer year.

The transfer amounts shall be determined as follows:

(1) The eligible hospitals for 1991–92 shall be identified. For each hospital, the applicable total per diem payment adjustment amount under Section 14105.98 for the 1991–92 transfer year shall be computed. This amount shall be multiplied by 80 percent of the eligible hospital's annualized Medi-Cal inpatient paid days as determined from all Medi-Cal paid claims records available through April 1, 1991. The products of these calculations for all eligible hospitals shall be added together to determine an aggregate sum for the 1991–92 transfer year.

(2) The eligible hospitals for 1991–92 involving transferor entities as licensees shall be identified. For each hospital, the applicable total per diem payment adjustment amount under Section 14105.98 for the 1991–92 transfer year shall be computed. This amount shall be multiplied by 80 percent of the eligible hospital's annualized Medi-Cal inpatient paid days as determined from all Medi-Cal paid claims records available through April 1, 1991. The products of these calculations for all eligible hospitals with transferor entities as

licensees shall be added together to determine an aggregate sum for the 1991–92 transfer year.

(3) The aggregate sum determined under paragraph (1) shall be divided by the aggregate sum determined under paragraph (2), yielding a factor to be utilized in paragraph (4).

(4) The factor determined in paragraph (3) shall be multiplied by the amount determined for each hospital under paragraph (2). The product of this calculation for each hospital in paragraph (2) shall be divided by 1.771, yielding a transfer amount for the particular transferor entity for the transfer year.

(g) For the 1991–92 transfer year, the department shall notify each transferor entity in writing of its applicable transfer amount or amounts no later than 70 days after the enactment of this section.

(h) For the 1992–93 transfer year and subsequent transfer years, transfer amounts shall be determined in the same procedural manner as set forth in subdivision (f), except:

(1) The department shall use all of the following:

(A) The disproportionate share list applicable to the particular transfer year to determine the eligible hospitals.

(B) The payment adjustment amounts calculated under Section 14105.98 for the particular transfer year. These amounts shall take into account any projected or actual increases or decreases in the size of the payment adjustment program as are required under Section 14105.98 for the particular year in question, including any decreases resulting from the application of the OBRA 1993 payment limitation. Subject to the installment schedule in paragraph (5) of subdivision (i) regarding transfer amounts, the department may issue interim, revised, and supplemental transfer requests as necessary and appropriate to address changes in payment adjustment levels that occur under Section 14105.98. All transfer requests, or adjustments thereto, issued to transferor entities by the department shall meet the requirements set forth in subparagraph (E) of paragraph (5) of subdivision (i).

(C) Data regarding annualized Medi-Cal inpatient paid days for the most recent calendar year ending prior to the beginning of the particular transfer year, as determined from all Medi-Cal paid claims records available through April 1 preceding the particular transfer year.

(D) The status of public entities as licensees of eligible hospitals as of July 1 of the particular transfer year.

(E) (i) Except as provided in subparagraph (ii), for transfer amounts calculated by the department may be increased or decreased by a percentage amount consistent with the Medi-Cal State Plan.

(ii) For the 1995–96 transfer year, the nonfederal share of the secondary supplemental payment adjustments described in paragraph (9) of subdivision (y) of Section 14105.98 shall be funded as follows:

(I) Ninety-nine percent of the nonfederal share shall be funded by a transfer from the University of California.

(II) One percent of the nonfederal share shall be funded by transfers from those public entities that are the licensees of the hospitals included in the "other public hospitals" group referred to in clauses (ii) and (iii) of subparagraph (B) of paragraph (9) of subdivision (y) of Section 14105.98. The transfer responsibilities for this one percent shall be allocated to the particular public entities on a pro rata basis, based on a formula or formulae customarily used by the department for allocating transfer amounts under this section. The formula or formulae shall take into account, through reallocation of transfer amounts as appropriate, the situation of hospitals whose secondary supplemental payment adjustments are restricted due to the application of the limitation set forth in clause (v) of subparagraph (B) of paragraph (9) of subdivision (y) of Section 14105.98.

(III) All transfer amounts under this subparagraph shall be paid by the particular transferor entities within 30 days after the department notifies the transferor entity in writing of the transfer amount to be paid.

(2) For the 1993–94 transfer year and subsequent transfer years, transfer amounts shall be increased on a pro rata basis for each transferor entity for the particular transfer year in the amounts necessary to fund the nonfederal share of the total supplemental lump-sum payment adjustment amounts that arise under Section 14105.98. For purposes of this paragraph, the supplemental lump-sum payment adjustment amounts shall be deemed to arise for the particular transfer year as of the date specified in Section 14105.98. Transfer amounts to fund the nonfederal share of the payments shall be paid by the transferor entities for the particular transfer year within 20 days after the department notifies the transferor entity in writing of the additional transfer amount to be paid.

(3) The department shall prepare preliminary analyses and calculations regarding potential transfer amounts, and potential transferor entities shall be notified by the department of estimated transfer amounts as soon as reasonably feasible regarding any particular transfer year. Written notices of transfer amounts shall be issued by the department as soon as possible with respect to each transfer year. All state agencies shall take all necessary steps in order to supply applicable data to the department to accomplish these tasks. The Office of Statewide Health Planning and Development shall provide to the department quarterly access to the edited and unedited confidential patient discharge data files for all Medi-Cal eligible patients. The department shall maintain the confidentiality of that data to the same extent as is required of the Office of Statewide Health Planning and Development. In addition, the Office of Statewide Health Planning and Development shall provide to the department, not later than March 1 of each year, the data specified

by the department, as the data existed on the statewide data base file as of February 1 of each year, from all of the following:

(A) Hospital annual disclosure reports, filed with the Office of Statewide Health Planning and Development pursuant to Section 128735 of the Health and Safety Code, for hospital fiscal years that ended during the calendar year ending 13 months prior to the applicable February 1.

(B) Annual reports of hospitals, filed with the Office of Statewide Health Planning and Development pursuant to Section 127285 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(C) Hospital patient discharge data reports, filed with the Office of Statewide Health Planning and Development pursuant to subdivision (g) of Section 128735 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(D) Any other materials on file with the Office of Statewide Health Planning and Development.

(4) For the 1993–94 transfer year and subsequent transfer years, the divisor to be used for purposes of the calculation referred to in paragraph (4) of subdivision (f) shall be determined by the department. The divisor shall be calculated to ensure that the appropriate amount of transfers from transferor entities are received into the fund to satisfy the requirements of Section 14105.98 for the particular transfer year. For the 1993–94 transfer year, the divisor shall be 1.742.

(5) For the 1993–94 fiscal year, the transfer amount that would otherwise be required from the University of California shall be increased by fifteen million dollars ($15,000,000).

(6) Notwithstanding any other provision of law, the total amount of transfers required from the transferor entities for any particular transfer year shall not exceed the sum of the following:

(A) The amount needed to fund the nonfederal share of all payment adjustment amounts applicable to the particular payment adjustment year as calculated under Section 14105.98. Included in the calculations for this purpose shall be any decreases in the program as a whole, and for individual hospitals, that arise due to the provisions of Section 1396r-4(f) or (g) of Title 42 of the United States Code.

(B) The amount needed to fund the transfers to the Health Care Deposit Fund, as referred to in paragraphs (2) and (3) of subdivision (d).

(7) (A) Except as provided in paragraph (2) of subdivision (j), and except for a prudent reserve not to exceed two million dollars ($2,000,000) in the Medi-Cal Inpatient Payment Adjustment Fund, any amounts in the fund, including interest that accrues with respect to the amounts in the fund, that are not expended, or estimated to be required for expenditure, under Section 14105.98 with respect to a particular transfer year shall be returned on a pro rata basis to the

transferor entities for the particular transfer year within 120 days after the department determines that the funds are not needed for an expenditure in connection with the particular transfer year.

(B) The department shall determine the interest amounts that have accrued in the fund from its inception through June 30, 1995, and, no later than January 1, 1996, shall distribute these interest amounts to transferor entities, as follows:

(i) The total amount transferred to the fund by each transferor entity for all transfer years from the inception of the fund through June 30, 1995, shall be determined.

(ii) The total amounts determined for all transferor entities under clause (i) shall be added together, yielding an aggregate of the total amounts transferred to the fund for all transfer years from the inception of the fund through June 30, 1995.

(iii) The total amount determined under clause (i) for each transferor entity shall be divided by the aggregate amount determined under clause (ii), yielding a percentage for each transferor entity.

(iv) The total amount of interest earned by the fund from its inception through June 30, 1995, shall be determined.

(v) The percentage determined under clause (iii) for each transferor entity shall be multiplied by the amount determined under clause (iv), yielding the amount of interest that shall be distributed under this subparagraph to each transferor entity.

(C) Regarding any funds returned to a transferor entity under subparagraph (A), or interest amounts distributed to a transferor entity under subparagraph (B), the department shall provide to the transferor entity a written statement that explains the basis for the particular return or distribution of funds and contains the general calculations used by the department in determining the amount of the particular return or distribution of funds.

(i) (1) For the 1991–92 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in eight equal installments. Except as provided below, the first installment shall accrue on July 25, 1991, and all other installments shall accrue on the fifth day of each month thereafter from August through February.

(2) Notwithstanding paragraph (1), no installment shall be payable to the Controller until that date which is 20 days after the department notifies the transferor entity in writing that the payment adjustment program set forth in Section 14105.98 has first gained federal approval as part of the Medi-Cal program. For purposes of this paragraph, federal approval requires both (i) approval by appropriate federal agencies of an amendment to the Medi-Cal State Plan, as referred to in subdivision (o) of Section 14105.98, and (ii) confirmation by appropriate federal agencies regarding the availability of federal financial participation for the payment adjustment program set forth in Section 14105.98 at a level of at least

40 percent of the percentage of federal financial participation that is normally applicable for Medi-Cal expenditures for acute inpatient hospital services.

(3) If any installment that would otherwise be payable under paragraph (1) is not paid because of the provisions of paragraph (2), then subparagraphs (A) and (B) shall be followed when federal approval is gained.

(A) All installments that were deferred based on the provisions of paragraph (2) shall be paid no later than 20 days after the department notifies the transferor entity in writing that federal approval has been gained, in an amount consistent with subparagraph (B).

(B) The installments paid pursuant to subparagraph (A) shall be paid in full, subject to an adjustment in amount pursuant to paragraph (5) of subdivision (f).

(4) All installments for the 1991–92 transfer year that arise in months after federal approval is gained shall be paid by the fifth day of the month or 20 days after the department notifies the transferor entity in writing that federal approval has been gained, whichever is later. These installments shall be subject to an adjustment in amount pursuant to paragraph (5) of subdivision (f).

(5) (A) Except as provided in subparagraphs (B) and (C), for the 1992–93 transfer year and subsequent transfer years, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in eight equal installments. The first installment shall be payable on July 10 of each transfer year. All other installments shall be payable on the fifth day of each month thereafter from August through February.

(B) For the 1994–95 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in five equal installments. The first installment shall be payable on October 5, 1994. The next four installments shall be payable on the fifth day of each month thereafter from November through February.

(C) For the 1995–96 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in five equal installments. The first installment shall be payable on October 5, 1995. The next four installments shall be payable on the fifth day of each month thereafter from November through February.

(D) Except as otherwise specifically provided, subparagraphs (A) to (C), inclusive, shall not apply to increases in transfer amounts described in paragraph (2) of subdivision (h) or to additional transfer amounts described in subdivision (o).

(E) All requests for transfer payments, or adjustments thereto, issued by the department shall be in writing and shall include (i) an explanation of the basis for the particular transfer request or transfer activity, (ii) a summary description of program funding status for the particular transfer year, and (iii) the general calculations used by the

department in connection with the particular transfer request or transfer activity.

(6) A transferor entity may use any of the following funds for purposes of meeting its transfer obligations under this section:

(A) General funds of the transferor entity.

(B) Any other funds permitted by law to be used for these purposes, except that a transferor entity shall not submit to the Controller any federal funds unless those federal funds are authorized by federal law to be used to match other federal funds. In addition, no private donated funds from any health care provider, or from any person or organization affiliated with such a health care provider, shall be channeled through a transferor entity or any other public entity to the fund. The transferor entity shall be responsible for determining that funds transferred meet the requirements of this subparagraph.

(j) (1) If a transferor entity does not submit any transfer amount within the time period specified in this section, the Controller shall offset immediately the amount owed against any funds that otherwise would be payable by the state to the transferor entity. The Controller, however, shall not impose an offset against any particular funds payable to the transferor entity where the offset would violate state or federal law.

(2) Where a withhold or a recoupment occurs pursuant to the provisions of paragraph (2) of subdivision (r) of Section 14105.98, the nonfederal portion of the amount in question shall remain in the fund, or shall be redeposited in the fund by the department, as applicable. The department shall then proceed as follows:

(A) If the withhold or recoupment was imposed with respect to a hospital whose licensee was a transferor entity for the particular state fiscal year to which the withhold or recoupment related, the nonfederal portion of the amount withheld or recouped shall serve as a credit for the particular transferor entity against an equal amount of transfer obligations under this section, to be applied whenever the transfer obligations next arise. Should no such transfer obligation arise within 180 days, the department shall return the funds in question to the particular transferor entity within 30 days thereafter.

(B) For other situations, the withheld or recouped nonfederal portion shall be subject to paragraph (7) of subdivision (h).

(k) All amounts received by the Controller pursuant to subdivision (i), paragraph (2) of subdivision (h), or subdivision (o), or offset by the Controller pursuant to subdivision (j), shall immediately be deposited in the fund.

(*l*) For purposes of this section, the disproportionate share list utilized by the department for a particular transfer year shall be identical to the disproportionate share list utilized by the department for the same state fiscal year for purposes of Section 14105.98. Nothing on a disproportionate share list, once issued by the department, shall be modified for any reason other than mathematical or typographical

errors or omissions on the part of the department or the Office of Statewide Health Planning and Development in preparation of the list.

(m) Neither the intergovernmental transfers required by this section, nor any elective transfer made pursuant to Section 14164, shall create, lead to, or expand the health care funding or service obligations for current or future years for any transferor entity, except as required of the state by this section or as may be required by federal law, in which case the state shall be held harmless by the transferor entities on a pro rata basis.

(n) No amount submitted to the Controller pursuant to subdivision (i), paragraph (2) of subdivision (h), or subdivision (o), or offset by the Controller pursuant to subdivision (j), shall be claimed or recognized as an allowable element of cost in Medi-Cal cost reports submitted to the department.

(o) Whenever additional transfer amounts are required to fund the nonfederal share of payment adjustment amounts under Section 14105.98 that are distributed after the close of the particular payment adjustment year to which the payment adjustment amounts apply, the additional transfer amounts shall be paid by the parties who were the transferor entities for the particular transfer year that was concurrent with the particular payment adjustment year. The additional transfer amounts shall be calculated under the formula that was in effect during the particular transfer year. For transfer years prior to the 1993–94 transfer year, the percentage of the additional transfer amounts available for transfer to the Health Care Deposit Fund under subdivision (d) shall be the percentage that was in effect during the particular transfer year. These additional transfer amounts shall be paid by transferor entities within 20 days after the department notifies the transferor entity in writing of the additional transfer amount to be paid.

(p) (1) Ten million dollars ($10,000,000) of the amount transferred from the Medi-Cal Inpatient Payment Adjustment Fund to the Health Care Deposit Fund due to amounts transferred attributable to years prior to the 1993–94 fiscal year is hereby appropriated without regard to fiscal years to the State Department of Health Services to be used to support the development of managed care programs under the department's plan to expand Medi-Cal managed care.

(2) These funds shall be used by the department for both of the following purposes: (A) distributions to counties or other local entities that contract with the department to receive those funds to offset a portion of the costs of forming the local initiative entity, and (B) distributions to local initiative entities that contract with the department to receive those funds to offset a portion of the costs of developing the local initiative health delivery system in accordance with the department's plan to expand Medi-Cal managed care.

(3) Entities contracting with the department for any portion of the ten million dollars ($10,000,000) shall meet the objectives of the department's plan to expand Medi-Cal managed care with regard to traditional and safety net providers.

(4) Entities contracting with the department for any portion of the ten million dollars ($10,000,000) may be authorized under those contracts to utilize their funds to provide for reimbursement of the costs of local organizations and entities incurred in participating in the development and operation of a local initiative.

(5) To the full extent permitted by state and federal law, these funds shall be distributed by the department for expenditure at the local level in a manner that qualifies for federal financial participation under the medicaid program.

SEC. 482. Section 14503.5 of the Welfare and Institutions Code is amended to read:

14503.5. (a) As used in this section:

(1) "AIDS" means acquired immune deficiency syndrome.

(2) "Human immunodeficiency virus" or "HIV" means the etiologic virus of AIDS.

(3) "HIV test" means "HIV test" as defined in Section 120775 of the Health and Safety Code.

(b) The purpose of this article is to ensure that state-funded family planning programs offer AIDS information and referral services to their client population.

(c) It is the intent of the Legislature that family planning clients learn how to prevent the transmission of HIV, and that they take steps to prevent its transmission.

(d) For purposes of this section, "clients" shall include, but shall not be limited to, all of the following:

(1) New clients to a family planning program.

(2) Clients making annual visits to a family planning program.

(3) Clients seeking pregnancy testing or family planning services.

(4) Clients seeking diagnosis and treatment for sexually transmitted diseases.

(e) Any family planning program that contracts with the Office of Family Planning to provide family planning services shall do all of the following:

(1) Provide brochures or other written materials to family planning clients which describe the high-risk conditions and behaviors for becoming infected with HIV, and ways to prevent the transmission of HIV infection. To the maximum extent possible, the brochure or other written materials provided by any family planning program shall be culturally relevant and appropriate to the client populations served by the programs.

(2) Provide, as needed, family planning clients with information about and referrals to local confidential or anonymous testing and counseling sites, AIDS education programs, and other supportive services.

(f) Brochures and information required pursuant to subdivision (e) may be incorporated into existing information and health education programs provided by a family planning program.

(g) The State Department of Health Services shall make every effort to obtain brochures and other written materials from existing resources. Local family planning programs are encouraged to supplement the brochures with other available resources, to the extent that they deem necessary and appropriate.

SEC. 483. Section 14683 of the Welfare and Institutions Code, as amended by Chapter 190 of the Statutes of 1996, is amended to read:

14683. The State Department of Mental Health shall ensure the following in the development of mental health plans:

(a) That mental health plans include a process for screening, referral, and coordination with other necessary services, including, but not limited to, health, housing, and vocational rehabilitation services. For Medi-Cal eligible children, the mental health plans shall also provide coordination with education programs and any necessary medical or rehabilitative services, including, but not limited to, those provided under the California Children's Services Program (Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code) and the Child Health and Disability Prevention Program (Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code), and those provided by a fee-for-service provider or a Medi-Cal managed care plan. This subdivision shall not be construed to establish any higher level of service from a county than is required under existing law. The county mental health department and the mental health plan, if it is not the county department, shall not be liable for the failure of other agencies responsible for the provision of nonmental health services to provide those services or to participate in coordination efforts.

(b) That mental health plans include a system of outreach to enable beneficiaries and providers to participate in and access mental health services under the plans, consistent with existing law.

(c) That standards for quality and access developed by the department, in consultation with the steering committee established pursuant to Section 14682, are included in mental health plans.

SEC. 484. Section 16604.5 of the Welfare and Institutions Code is amended to read:

16604.5. When preparing their needs assessments and plans to implement the federal Family Preservation and Support Act (Sections 430 to 435, inclusive, of the Social Security Act (Subpart 2 (commencing with Section 629) of Part B of Subchapter 4 of Chapter 7 of Title 42 of the United States Code), as contained in the Omnibus Reconciliation Act of 1993 (Public Law 103-66)), counties shall consider providing an in-home assessment of substance-exposed infants after release from a hospital, as part of the protocols of Section 123605 of the Health and Safety Code. These assessments may be

funded through the Family Preservation and Support program to the extent they are identified in a county's needs assessment and are part of a county's program plan, and federal Family Preservation and Support Act funds are available for this purpose.

SEC. 485. Section 16702 of the Welfare and Institutions Code is amended to read:

16702. The net county costs of health services specified in each county health services plan and budget shall be financed in each county, the City of Berkeley, the City of Long Beach, and the City of Pasadena with assistance from the County Health Services Fund in accordance with the following:

(a) For each county, an annual grant of three dollars ($3) per capita based upon population estimates of the Department of Finance as of January 1 of the previous fiscal year; and

(b) Fifty percent of the amount derived by subtracting paragraph (2) from paragraph (1) below:

(1) The base net costs increased by 16 percent for the 1979–80 fiscal year.

(2) The amount calculated for the county in subdivision (a).

(3) The base net costs for each county shall be the actual net costs for the county for the 1977–78 fiscal year, as reported to the State Director of Health Services pursuant to subdivision (f) of Section 20 of Chapter 292 of the Statutes of 1978 and adjusted as applicable pursuant to this section.

(c) (1) The amount of assistance from the County Health Services Fund for the County of Alameda, as determined in subdivision (b), shall include an amount equal to 25 percent of the net city costs for health services of the City of Berkeley as reported to the State Director of Health Services pursuant to subdivision (f) of Section 20 of Chapter 292 of the Statutes of 1978, increased by 16 percent for the 1979–80 fiscal year.

(2) The amount of assistance from the County Health Services Fund for the City of Berkeley shall be an amount equal to 25 percent of the net city costs for health services of the City of Berkeley as reported to the State Director of Health Services pursuant to subdivision (f) of Section 20 of Chapter 292 of the Statutes of 1978, increased by 16 percent for the 1979–80 fiscal year.

(3) The amount of additional assistance from the County Health Services Fund for public health services in the County of San Joaquin shall be the amount set forth in the Budget Act of 1981 (Chapter 99 of the Statutes of 1981) for the San Joaquin Local Health District for that purpose for the 1981–82 fiscal year.

(4) The amounts of assistance from the County Health Services Fund for the City of Long Beach and the City of Pasadena shall be the average amounts of the Public Health Services Contracts with Los Angeles County, less the average revenue from environmental health permit fees collected in each jurisdiction and retained by the county for three years prior to the initial year of County Health

Services Fund assistance to the City of Long Beach and the City of Pasadena. These amounts shall be adjusted by the average increase in the amount of the contract over the same period. This paragraph shall be operative in the fiscal year following the adoption of a resolution by the governing body pursuant to Section 101380 of the Health and Safety Code.

(5) The base net costs for the County of Los Angeles shall be reduced by the amounts provided to the City of Long Beach and the City of Pasadena as determined by the formula established in paragraph (3).

(6) The amount of assistance for the County of Los Angeles, as determined in subdivision (a), shall be reduced by the amounts provided to the City of Long Beach and the City of Pasadena, as determined in paragraph (3).

(d) The amount of funds transferred at the request of the county pursuant to Section 1157.5 of the Health and Safety Code.

(e) On July 1, 1980, the amounts specified in subdivisions (a), (b), (c), and (d) shall be adjusted to reflect any increases or decreases in the cost of living. On July 1, 1981, the amounts specified in subdivisions (a), (b), (c), and (d) shall be adjusted to reflect the increases, if any, in the appropriations provided for in the Budget Act for the 1981–82 fiscal year and shall be adjusted to reflect the funds transferred pursuant to Section 12 of Chapter 1004 of the Statutes of 1981. On July 1, 1982, the amounts specified in subdivisions (a), (b), (c), and (d) shall be adjusted to reflect the increases, if any, in the appropriations provided for in the Budget Act for the 1981–82 fiscal year and the increases, if any, in the Budget Act for the 1982–83 fiscal year. On July 1, 1983, and each July 1 thereafter, the amounts specified in subdivisions (a), (b), (c), and (d), as adjusted pursuant to this subdivision for the 1982–83 fiscal year, shall be adjusted to reflect any increases or decreases in the cost of living occurring during the 1982 calendar year and each year thereafter. The average of the separate indices of the cost of living for Los Angeles and San Francisco as published by the United States Bureau of Labor Statistics shall be used as the basis for determining the changes in the cost of living. The State Department of Health Services shall compare the average index for the December preceding the July in which the cost-of-living adjustment is effective with the average index for the month of December of the previous year. The percentage increase or decrease in the average index shall then be multiplied by the amounts specified in subdivisions (a), (b), (c), and (d) as previously adjusted pursuant to this subdivision.

(f) The amounts specified in subdivisions (a), (b), (c), and (d) shall not be adjusted for the 1990–91 fiscal year to reflect any increase in the cost of living. Calculations for any cost-of-living adjustment under this section for the 1991–92 fiscal year or any fiscal year thereafter shall not include any adjustment to reflect increases for the cost of living for the 1990–91 fiscal year.

SEC. 486. Section 16702.1 of the Welfare and Institutions Code is amended to read:

16702.1. Notwithstanding any other provision of law, if the City of Long Beach or the City of Pasadena, or both, adopts a resolution pursuant to Section 101375 of the Health and Safety Code and relinquishes responsibility for public health services to Los Angeles County, the provision of this part pertaining to the City of Long Beach or the City of Pasadena, or both, shall no longer apply, and the funds available shall be added back to the allocation for Los Angeles County specified in subdivision (a) of Section 16702, and the county's base net cost shall be adjusted by the same amount the fiscal year following the action of the resolution.

SEC. 487. Section 16800.7 of the Welfare and Institutions Code is amended to read:

16800.7. Agencies responsible for conducting fiscal or program audits or inspections of grants or subventions pursuant to any of the following provisions shall, to the extent practicable and consistent with federal law, endeavor to cooperate and consolidate efforts so as to conduct a single fiscal or compliance audit for any program affected by these provisions, thereby maximizing audit efficiency and minimizing the inconvenience to the program being audited:

(a) The Child Health Disability Prevention Program (Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code).

(b) The Maternal and Child Health program as set forth in subdivision (c) of Section 27 of the Health and Safety Code.

(c) The Tobacco Use Prevention program (Article 1 (commencing with Section 104350) of Chapter 1 of Part 3 of Division 103 of the Health and Safety Code).

(d) AIDS programs (former Part 1 (commencing with Section 100) of Division 1 of the Health and Safety Code).

(e) The County Health Care for Indigents program (Part 4.7 (commencing with Section 16900), including, but not limited to, county health care reporting requirements pursuant to Chapter 2 (commencing with Section 16910) and Chapter 2.5 (commencing with Section 16915) of Part 4.7 (commencing with Section 16900).

SEC. 488. Section 16908.5 of the Welfare and Institutions Code is amended to read:

16908.5. For purposes of paragraph (1) of subdivision (b) of Section 16946 and the funds determined by Section 16932, and distributed pursuant to paragraph (1) of subdivision (b) of Section 16946, and the application of paragraph (3) of subdivision (d) of Section 16946 to these funds, all patients which meet the Office of Statewide Health Planning and Development's definition of charity care as prescribed under subdivision (d) of Section 128740 of the Health and Safety Code qualify for the use of funds under this chapter.

SEC. 489. Section 16920 of the Welfare and Institutions Code is amended to read:

16920. (a) It is the intention of the Legislature to appropriate a portion of the 1988–89 fiscal year one-time revenues from the Hospital Services Account for distribution to each county and noncounty hospital which provides uncompensated care to unsponsored patients, with payments based upon the proportion of each hospital's share of the 1988 calendar year statewide total of uncompensated care rendered to unsponsored patients.

(b) It is the intention of the Legislature to partially and proportionately compensate each hospital that provides care to unsponsored patients and to provide an economic incentive for all hospitals to provide, maintain, and enhance access to care.

(c) For purposes of this section, "uncompensated care charges" means the sum of the charges related to patients falling within charity care and 50 percent of bad debts, as reported quarterly to the office pursuant to Section 128740 of the Health and Safety Code. The office shall use the data as published by the office for each quarter of 1988.

(d) As used in this section, "uncompensated care costs" means that amount calculated by applying an overall hospital cost-to-charge ratio, calculated by dividing gross operating expenses by gross inpatient and outpatient revenue, as reported quarterly to the office, to uncompensated charges.

SEC. 490. Section 16921 of the Welfare and Institutions Code is amended to read:

16921. Funds appropriated for the purposes of this chapter shall be allocated and disbursed to county and noncounty hospitals which meet any of the following requirements:

(a) Operate an emergency room pursuant to Section 1317 of the Health and Safety Code.

(b) Adhere to the emergency care requirements of subdivision (e) of Section 1317 of the Health and Safety Code.

(c) Treat county indigent patients.

(d) Are childrens' hospitals for purposes of this part.

(e) Are small and rural hospitals as defined in Section 124840 of the Health and Safety Code.

SEC. 491. Section 16931.5 of the Welfare and Institutions Code is amended to read:

16931.5. The county may reimburse for emergency services provided by a physician in a standby emergency room in a hospital specified in Section 124840 of the Health and Safety Code.

SEC. 492. Section 16934 of the Welfare and Institutions Code is amended to read:

16934. (a) As a condition of receiving funds under this chapter, a county shall provide, or arrange and pay for, medically necessary followup treatment, including necessary followup dental services and prescription drugs, for any condition detected as part of a child health and disability prevention screen for a child eligible for services

under Section 104395 of the Health and Safety Code, if the child was screened by the county, or upon referral by a child health and disability prevention program provider. This section shall not apply to any child eligible to receive care with no share of cost under the Medi-Cal program or who is covered by another publicly funded program or for whom these services are covered or will be paid by any other responsible party. A county may require that hospitals that contract with the county pursuant to paragraph (2) of subdivision (b) of Section 16946, physicians who contract with the county pursuant to paragraph (3) of subdivision (c) of Section 16933 or dentists or any provider that contracts with the county pursuant to subdivision (b) of Section 16933 and receives funds appropriated for the purposes of this chapter to participate in complying with this section. A county shall not require that hospitals receiving an allocation pursuant to paragraph (1) of subdivision (b) of Section 16946 or physicians who receive payment from a physician services account established pursuant to paragraph (1) of subdivision (c) of Section 16933 participate in complying with this section.

(b) Dental services provided pursuant to this section shall be at least equal in scope and frequency to dental services available to Medi-Cal eligible children of the same age.

(c) Counties shall implement this section in consultation and coordination with their child health and disability prevention programs.

SEC. 494. Section 16953 of the Welfare and Institutions Code is amended to read:

16953. (a) For purposes of this chapter "emergency services" means physician services in one of the following:

(1) A general acute care hospital which provides basic or comprehensive emergency services for emergency medical conditions.

(2) A site which was approved by a county prior to January 1, 1990, as a paramedic receiving station for the treatment of emergency patients, for emergency medical conditions.

(3) Beginning in the 1991–92 fiscal year and each fiscal year thereafter, in a facility which contracted prior to January 1, 1990, with the National Park Service to provide emergency medical services, for emergency medical conditions.

(4) A standby emergency room in a hospital specified in Section 124840 of the Health and Safety Code, for emergency medical conditions.

(b) For purposes of this chapter, "emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, which in the absence of immediate medical attention could reasonably be expected to result in any of the following:

(1) Placing the patient's health in serious jeopardy.

(2) Serious impairment to bodily functions.

(3) Serious dysfunction to any bodily organ or part.

(c) It is the intent of this section to allow reimbursement for all inpatient and outpatient services which are necessary for the treatment of an emergency medical condition as certified by the attending physician or other appropriate provider.

SEC. 495. Section 16961 of the Welfare and Institutions Code is amended to read:

16961. Services provided pursuant to this article include only those health care services specified in Sections 14021 and 14132, and former Division 1 (commencing with Section 100), and the Communicable Disease Prevention and Control Act as set forth in subdivision (a) of Section 27, of the Health and Safety Code, which are provided to patients who cannot afford to pay for those services, and for whom payment will not be made through private coverage or by any program funded in whole or in part by the federal government.

SEC. 496. Section 16970 of the Welfare and Institutions Code is amended to read:

16970. (a) As a condition of receiving funds under this chapter, a county shall provide, or arrange and pay for, medically necessary followup treatment, including necessary followup dental treatment and prescription drugs, for any condition detected as part of a child health and disability prevention screen for any child eligible for services under Section 104395 of the Health and Safety Code if the child was screened by the county or upon referral by a child health and disability prevention program provider, unless the child is eligible to receive care with no share of cost under the Medi-Cal program or is covered under another publicly funded program, or the services are payable under private insurance coverage.

(b) A county may require that hospitals, physicians, dentists, and other providers receiving funds appropriated pursuant to this part participate in complying with this section, provided that:

(1) Hospitals that receive an allocation pursuant to paragraph (1) of subdivision (b) of Section 16946 and physicians who receive payment from the Physician Services Account of the emergency medical services fund established pursuant to Article 3.5 (commencing with Section 16951) shall not be required to participate in complying with subdivision (a) as a condition of receiving those allocations or payments.

(2) Only providers that contract with the county and receive funds disbursed from the Unallocated Account pursuant to Article 4 (commencing with Section 16960) or from the discretionary portion of the Physician Services Account pursuant to subdivision (b) of Section 16950, or from the discretionary portion of the Hospital Services Account pursuant to paragraph (2) of subdivision (b) of Section 16946 may be required to participate in complying with subdivision (a).

(c) Dental services provided pursuant to this section shall be at least equal in scope and frequency to dental services available to Medi-Cal eligible children of the same age.

(d) Counties shall implement this section in consultation and coordination with their child health disability prevention programs.

SEC. 497. Section 16990.9 of the Welfare and Institutions Code, as amended by Chapter 547 of the Statutes of 1995, is amended to read:

16990.9. The level of financial maintenance of effort required of a county that contracts with the department pursuant to Section 101300 of the Health and Safety Code during the 1991–92, 1992–93, 1993–94, 1994–95, and subsequent fiscal years may be reduced by the amount of local public health service funds retained by the county for that fiscal year that are unexpended as a result of vacant contracted positions.

SEC. 498. Section 16996.2 of the Welfare and Institutions Code is amended to read:

16996.2. (a) As a condition of receiving funds under Section 16996.1, a hospital shall provide medically necessary inpatient treatment, including prescription drugs, for any condition detected as part of a child health and disability prevention screen for any child eligible for services under Section 104395 of the Health and Safety Code. Inpatient hospital services shall be provided at no cost upon referral by a child health and disability prevention program provider, whether that provider is a physician, a county, or a primary care clinic, unless the child is eligible to receive care with no share of cost under the Medi-Cal program, is covered under another publicly funded program, or the services are payable under private insurance coverage.

(b) The department shall report to the Legislature on the distribution and use of funds provided to hospitals under Section 16996.1 on an annual basis.

SEC. 499. Section 17602 of the Welfare and Institutions Code is amended to read:

17602. (a) On or before the 27th day of the month, the Controller shall allocate to counties the amounts deposited and remaining unexpended and unreserved on the 15th day of the month in the Social Services Subaccount of the Sales Tax Account of the Local Revenue Fund, pursuant to schedules developed by the Department of Finance in conjunction with the appropriate state departments based on the estimated 1991–92 expenditures as contained in the Budget Act for programs set forth in subdivision (b), the Controller shall make monthly allocations to counties of the funds deposited into the Social Services Subaccount of the Sales Tax Account of the Local Revenue Fund. These allocations shall be made to the Social Services Account of the local health and welfare trust fund.

The programs to be funded in accordance with the schedule are those set forth in Sections 1794, 1904, 10101, 10101.1, 11322, 11322.2, 12306, 15200, 15204.2, and 18906.5 of this code, and Section 123940 of

the Health and Safety Code and the program set forth in Section 1806, as funded in the Governor's proposed budget. The schedule for the 1991–92 fiscal year shall be considered final on October 1, 1991.

(b) (1) For the 1991–92 fiscal year and every fiscal year thereafter, the Controller shall allocate an amount from the Social Services Subaccount to counties that equals the amount those counties receive pursuant to Sections 16265 to 16265.7, inclusive, of the Government Code in the 1990–91 fiscal year.

(2) Notwithstanding any other provision of this chapter, counties may use these funds as authorized by Section 16265.7 of the Government Code.

(c) (1) Pursuant to schedules developed by the Department of Finance, in conjunction with the Department of the Youth Authority, based on the estimated 1991–92 fiscal year expenditures as contained in the 1991–92 proposed Governor's Budget for programs impacted by the realignment and contained in the allocations to counties of the funds deposited into the Social Services Subaccount of the Sales Tax Account in the Local Revenue Fund. The programs set forth in Sections 894, 1794, and 1904 shall be funded in accordance with the schedules adopted pursuant to this subdivision.

(2) (A) Counties that receive allocations pursuant to Article 24.5 (commencing with Section 894) of Chapter 2 of Division 2, Article 5.5 (commencing with Section 1790) of Chapter 1 of Division 2.5 and Article 10 (commencing with Section 1900) of Chapter 1 of Division 2.5 shall receive the same allocation for the 1991–92 fiscal year that they received for the 1990–91 fiscal year.

(B) (i) Of the amount allocated to San Bernardino County under this section for the 1991–92 fiscal year, five hundred thousand dollars ($500,000) shall be designated for the Regional Youth Education Center.

(ii) Of the amount allocated to Los Angeles County under this section for the 1991–92 fiscal year, four hundred eighty-nine thousand four hundred eighty-six dollars ($489,486) shall be designated for the Sugar Ray Robinson Youth Foundation, and one hundred forty thousand eight hundred dollars ($140,800) shall be allocated for the John Rossi Youth Foundation, Inc.

(C) Funding allocated to counties under this section for the 1991–92 fiscal year for programs set forth in Article 2 (commencing with Section 1900) of Chapter 1 of Division 2.5 shall be allocated to previously funded youth services bureaus at the 1990–91 fiscal year level.

(d) Subject to the availability of funds from the 1990–91 fiscal year, the Counties of Butte, Colusa, El Dorado, Humboldt, Lake, Madera, Nevada, Placer, Riverside, Santa Cruz, and Yuba may be reimbursed for underallocated Child Welfare Services' Program costs from unused Child Welfare Services' Program funds to reflect Public Employees' Retirement System contributions credits in the 1991–92 fiscal year.

(e) For the 1992–93 fiscal year and fiscal years thereafter, the allocations by the Controller to each county and city and county shall equal the amounts received in the prior fiscal year by each county and city and county from the Sales Tax Account and the Sales Tax Growth Account for deposit into the social services account of the local health and welfare trust fund.

SEC. 500. Section 17605 of the Welfare and Institutions Code is amended to read:

17605. (a) For the 1992–93 fiscal year, the Controller shall deposit into the Caseload Subaccount of the Sales Tax Growth Account of the Local Revenue Fund, from revenues deposited into the Sales Tax Growth Account, an amount to be determined by the Department of Finance, that represent the sum of the shortfalls between the actual realignment revenues received by each county and each city and county from the Social Services Subaccount of the Local Revenue Fund in the 1991–92 fiscal year and the net costs incurred by each of those counties and cities and counties in the fiscal year for the programs described in Sections 10101, 10101.1, 11322, 11322.2, 12306, subdivisions (a), (b), (c), and (d) of Section 15200, and Sections 15204.2 and 18906.5. The Department of Finance shall provide the Controller with an allocation schedule on or before August 15, 1993, that shall be used by the Controller to allocate funds deposited to the Caseload Subaccount under this subdivision. The Controller shall allocate these funds no later than August 27, 1993.

(b) (1) For the 1993–94 fiscal year and fiscal years thereafter, the Controller shall deposit into the Caseload Subaccount of the Sales Tax Growth Account of the Local Revenue Fund, from revenues deposited into the Sales Tax Growth Account, an amount determined by the Department of Finance, in consultation with the appropriate state departments and the California State Association of Counties, that is sufficient to fund the net cost for the realigned portion of the county or city and county share of growth in social services caseloads, as specified in paragraph (2). The Department of Finance shall provide the Controller with an allocations schedule on or before March 15 of each year. The schedule shall be used by the Controller to allocate funds deposited into the Caseload Subaccount under this subdivision.

(2) For purposes of this subdivision, "growth" means the increase in the actual caseload expenditures for the prior fiscal year over the actual caseload expenditures for the fiscal year preceding the prior fiscal year for the programs described in Section 12306, subdivisions (a), (b), (c), and (d) of Section 15200, and Sections 10101, 15204.2 and 18906.5 of this code, and subdivision (b) of Section 123940 of the Health and Safety Code.

(3) The difference in caseload expenditures between the fiscal years shall be multiplied by the factors that represent the change in county or city and county shares of the realigned programs. These products shall then be added or subtracted, taking into account

whether the county's or city and county's share of costs was increased or decreased as a result of realignment, to yield each county's or city and county's allocation for caseload growth. Allocations for counties or cities and counties with allocations of less than zero shall be set at zero.

(c) On or before the 27th day of each month, the Controller shall allocate, to the local health and welfare trust fund social services account, the amounts deposited and remaining unexpended and unreserved on the 15th day of the month in the Caseload Subaccount, pursuant to the schedule of allocations of caseload growth described in subdivision (b). If there are insufficient funds to fully satisfy all caseload growth obligations, each county's or city and county's allocation for each program specified in subdivision (d) shall be prorated.

(d) Prior to allocating funds pursuant to subdivision (b), to the extent that funds are available from funds deposited in the Caseload Subaccount in the Sales Tax Growth Account in the Local Revenue Fund, the Controller shall allocate money to counties or cities and counties to correct any inequity or inequities in the computation of the child welfare services portion of the schedule required by subdivision (a) of Section 17602.

(e) The Department of Finance shall submit to the Controller, by March 1, 1994, a schedule specifying the amount of the allocations described in subdivision (d). This schedule shall include, but need not be limited to, adjustments resulting from retirement system credits and other anomalies that occurred in the 1989–90 fiscal year and the 1990–91 fiscal year.

SEC. 501. Section 18966 of the Welfare and Institutions Code, as amended by Chapter 880 of the Statutes of 1995, is amended to read:

18966. When a county board of supervisors designates a commission pursuant to Section 18965, the board of supervisors shall establish a county children's trust fund. The children's trust fund shall consist of the fees for birth certificates, collected pursuant to Section 103625 of the Health and Safety Code, grants, gifts, or bequests from private sources to be used for child abuse and neglect prevention and intervention programs, any funds appropriated by local governmental entities to the trust fund, and any funds appropriated to the county for the trust fund by the Legislature. The local registrar or county recorder may, however, retain a percentage, not to exceed 10 percent, of the surcharge collectible pursuant to subdivision (b) of Section 103625 of the Health and Safety Code, in order to defray the costs of collection.

The county treasurer shall transmit moneys collected from birth certificate fees for the county children's trust fund, pursuant to subdivision (b) of Section 103625 of the Health and Safety Code, collected with respect to the birth certificate of a child whose mother was a resident of another county at the time of the birth to the treasurer of the county of the mother's residence at the time of the

birth if the county to receive the funds has established a program pursuant to Article 5 (commencing with Section 18965) of Chapter 11 of Part 6 of Division 9 of the Welfare and Institutions Code and does not have a licensed health facility that provides maternity services within its jurisdiction.

SEC. 502. Section 18966.1 of the Welfare and Institutions Code is amended to read:

18966.1. (a) Any federal funds provided for child abuse prevention challenge grants to provide matching funds to states that have established children's trust funds shall be allocated to the counties' children's trust funds in the following manner:

(1) Counties that receive less than twenty thousand dollars ($20,000) per annum for their county children's trust funds from the fees on birth certificates collected pursuant to Section 103625 of the Health and Safety Code, shall be granted from federal matching funds that amount necessary to bring that income to the trust fund to twenty thousand dollars ($20,000) per year.

If the state's annual federal matching fund allocation is insufficient to provide each county children's trust fund with a minimum total annual funding level of twenty thousand dollars ($20,000), the Office of Child Abuse Prevention shall determine an allocation process for federal matching funds to ensure that each county children's trust fund receives a minimum level of annual funding from all sources.

(2) The remaining funds from the federal challenge grant shall then be distributed equally among all the counties, up to ten thousand dollars ($10,000) per county.

(3) If sufficient federal matching funds exist after each county children's trust fund is provided a total annual children's trust fund allocation of twenty thousand dollars ($20,000) and after each county children's trust fund receives a maximum annual allocation of ten thousand dollars ($10,000) in federal matching funds, the remaining federal matching funds shall be distributed to each county children's trust fund according to population.

(b) (1) Federal challenge grant funds shall be received by the Office of Child Abuse Prevention and allocated in the manner specified in subdivision (a).

(2) Boards of supervisors may establish criteria for determining which programs shall receive funding. Boards of supervisors may accept all program proposals, prioritize those proposals, and make the final decision as to which programs shall receive funds.

(c) Federal matching funds shall be allocated pursuant to subdivision (a) for counties that have not established a local children's trust fund and shall be transferred to that county's existing children's trust fund established by the Office of Child Abuse Prevention in the State Children's Trust Fund. Nothing in this section shall prevent a county that has not established a local children's trust fund from establishing a local children's trust fund.

(d) Receipt by a county of any federal funds available for the purposes set forth in this section shall be contingent upon the provision of assurances that the county will provide to the Office of Child Abuse Prevention all information necessary to meet federal reporting mandates. Those information needs shall be identified by the department at the time federal funds are allocated.

(e) Moneys received by a county children's trust fund from private voluntary contributions shall not be considered in the calculation of federal challenge grant allocations pursuant to subdivision (a).

SEC. 503. Section 18968 of the Welfare and Institutions Code is amended to read:

18968. In any county where the board of supervisors does not designate a commission to carry out the purposes of this article, pursuant to Section 18965, except for a percentage of the receipts necessary for purposes of collection, the amount collected for the surcharge upon birth certificates pursuant to Section 103625 of the Health and Safety Code shall be transferred by the local registrar or county recorder to the Treasurer for deposit in the State Children's Trust Fund.

SEC. 504. Section 18968.5 of the Welfare and Institutions Code is amended to read:

18968.5. Amounts collected for the surcharge upon birth certificates pursuant to Section 103625 of the Health and Safety Code that would have been transferred by the local registrar or county recorder to the Treasurer for deposit in the State Children's Trust Fund shall, instead, revert to the county children's trust fund when the board of supervisors designates a commission to carry out the purposes of this article, pursuant to Section 18965.

SEC. 505. Section 18969 of the Welfare and Institutions Code is amended to read:

18969. (a) There is hereby created in the State Treasury a fund which shall be known as the State Children's Trust Fund. The fund shall consist of funds received from a county pursuant to Section 18968, funds collected by the state and transferred to the fund pursuant to subdivision (b) of Section 103625 of the Health and Safety Code and Article 6 (commencing with Section 18711) of Chapter 17 of Part 10 of Division 2 of the Revenue and Taxation Code, grants, gifts, or bequests made to the state from private sources to be used for innovative and distinctive child abuse and neglect prevention and intervention projects and money appropriated to the fund for this purpose by the Legislature. The State Registrar may retain a percentage of the fees collected pursuant to Section 10605 of the Health and Safety Code, not to exceed 10 percent, in order to defray the costs of collection. The Franchise Tax Board may retain up to 5 percent of the taxpayer contributions to the fund made pursuant to Article 6 (commencing with Section 18711) of Chapter 17 of Part 10

of Division 2 of the Revenue and Taxation Code, to reimburse the board for the costs of administering that article.

(b) Notwithstanding Section 13340 of the Government Code, money in the State Children's Trust Fund is continuously appropriated without regard to fiscal years to the State Department of Social Services for the purpose of funding child abuse and neglect prevention and intervention programs. The department may not supplant any federal, state, or county funds with any funds made available through the State Children's Trust Fund. The department shall use no more than 5 percent of the funds appropriated pursuant to this section for administrative costs.

(c) The department may establish positions as needed for the purpose of implementing and administering child abuse and neglect prevention and intervention programs that are funded by the State Children's Trust Fund. However, the department shall use no more than 5 percent of the funds appropriated pursuant to this section for administrative costs.

(d) No children's trust fund money shall be used to supplant state General Fund money for any purpose.

(e) It is the intent of the Legislature that the State Children's Trust Fund provide for all of the following:

(1) The development of a public-private partnership by encouraging consistent outreach to the private foundation and corporate community.

(2) Funds for large-scale dissemination of information that will promote public awareness regarding the nature and incidence of child abuse and the availability of services for intervention. These public awareness activities shall include, but not be limited to, the production of public service announcements, well designed posters, pamphlets, booklets, videos, and other media tools.

(3) Research and demonstration projects that explore the nature and incidence and the development of long-term solutions to the problem of child abuse.

(4) The development of a mechanism to provide ongoing public awareness through activities that will promote the charitable tax deduction for the trust fund and seek continued contributions. These activities may include convening a philanthropic roundtable, developing literature for use by the State Bar for dissemination, and whatever other activities are deemed necessary and appropriate to promote the trust fund.

SEC. 506. Section 18970 of the Welfare and Institutions Code is amended to read:

18970. (a) The department shall expend funds appropriated to it pursuant to Section 18969 for innovative local child abuse and neglect prevention and intervention programs operated by private nonprofit organizations or public institutions of higher education with recognized expertise in fields related to child welfare. These projects shall be joined to formal evaluation components.

(b) These funds may also be used for evaluation, research, or dissemination of information concerning existing program models for the purpose of replication of successful models.

(c) The Office of Child Abuse Prevention and those local commissions designated by the county boards of supervisors shall collect and publish the following data relevant to the state and local children's trust funds:

(1) Descriptions of the types of programs and services funded by local and state children's trust funds and the target populations benefiting from these programs.

(2) The amount in each portion of the state and local trust fund as of June 30 each year, beginning June 30, 1987, as well as the amount disbursed in the preceding fiscal year.

(e) (1) Funds shall be expended from the moneys appropriated to the State Children's Trust Fund pursuant to Section 18969 of this code and Section 103590 of the Health and Safety Code to enable the Office of Child Abuse Prevention to annually collect and publish the data specified in subdivision (c).

(2) Funds may be expended from local children's trust funds established pursuant to Section 18966 to enable those local commissions designated by the county boards of supervisors in accordance with Section 18966 to annually collect and publish the data specified in subdivision (c).

SEC. 507. The Legislature finds and declares that any substantive changes made by Chapter 415 of the Statutes of 1995 were unintended and contrary to the express provisions of Sections 171 and 172 of Chapter 415 of the Statutes of 1995.

SEC. 508. The Legislature intends both of the following:

(a) When construing the effect of any of the provisions of Chapter 415 of the Statutes of 1995 from January 1, 1996, to the date this measure takes effect, that a court apply the provisions in a manner consistent with the changes to be made by this bill and Sections 171 and 172 of Chapter 415 of the Statutes of 1995.

(b) This bill makes substantive changes to the law solely to ensure that Chapter 415 of the Statutes of 1995 has only technical and nonsubstantive effect and to conform to Sections 171 and 172 of Chapter 415 of the Statutes of 1995.

SEC. 509. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution as a result of costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Moreover, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs because the local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the

program or level of service mandated by this act related to those costs.

Further, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

SEC. 510. Any section of any act, other than the act for the maintenance of the codes, enacted by the Legislature during the 1996 calendar year that takes effect on or before January 1, 1997, and that amends, amends and renumbers, amends and repeals, amends, repeals, and adds, repeals, or repeals and adds a section that is amended, or amended and renumbered, by this act, shall prevail over the amendment, or amendment and renumbering, of that section by this act whether that act is enacted prior to, or subsequent to, the enactment of this act. Section 110597, as proposed to be added to the Health and Safety Code by AB 2653, shall prevail over Section 110597, as proposed to be added to the Health and Safety Code by this act, whether AB 2653 is enacted prior to, or subsequent to, the enactment of this act, if AB 2653 is enacted by the Legislature during the 1996 calendar year, takes effect on or before January 1, 1997, and adds Section 110597 to the Health and Safety Code. Section 117924, as proposed to be added to the Health and Safety Code by SB 1966, shall prevail over Section 117924, as proposed to be added to the Health and Safety Code by this act, whether SB 1966 is enacted prior to, or subsequent to, the enactment of this act, if SB 1966 is enacted by the Legislature during the 1996 calendar year, takes effect on or before January 1, 1997, and adds Section 117924 to the Health and Safety Code.

SEC. 511. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to, as soon as possible, carry out the intent of the Legislature as expressed in Chapter 415 of the Statutes of 1995 to reorganize the public health portion of the Health and Safety Code with only technical and nonsubstantive effect, it is necessary that this act take effect immediately.

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CHAPTER 1024

An act to amend Sections 1363, 1363.5, and 1367.10 of the Health and Safety Code, and to amend Sections 10123.12 and 10604 of the Insurance Code, relating to health insurance.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. The Legislature finds and declares the following:

Many health insurers and managed care plans in California are currently providing coverage for "subacute care" and/or transitional inpatient care provided in acute care hospitals and skilled nursing facilities.

Health care service plan enrollees and those insured under disability insurance policies as well as the providers directly caring for these patients should be able to obtain information regarding the coverage and use of subacute care or transitional inpatient care.

SEC. 2. Section 1363 of the Health and Safety Code is amended to read:

1363. (a) The commissioner shall require the use by each plan of disclosure forms or materials containing information regarding the benefits, services, and terms of the plan contract as the commissioner may require, so as to afford the public, subscribers, and enrollees with a full and fair disclosure of the provisions of the plan in readily understood language and in a clearly organized manner. The commissioner may require that the materials be presented in a reasonably uniform manner so as to facilitate comparisons between plan contracts of the same or other types of plans. Nothing contained in this chapter shall preclude the commissioner from permitting the disclosure form to be included with the evidence of coverage or plan contract.

The disclosure form shall provide for at least the following information, in concise and specific terms, relative to the plan, together with additional information as may be required by the commissioner, in connection with the plan or plan contract:

(1) The principal benefits and coverage of the plan, including coverage for acute care and subacute care.

(2) The exceptions, reductions, and limitations that apply to the plan.

(3) The full premium cost of the plan.

(4) Any copayment, coinsurance, or deductible requirements that may be incurred by the member or the member's family in obtaining coverage under the plan.

(5) The terms under which the plan may be renewed by the plan member, including any reservation by the plan of any right to change premiums.

(6) A statement that the disclosure form is a summary only, and that the plan contract itself should be consulted to determine governing contractual provisions.

(7) A statement as to when benefits shall cease in the event of nonpayment of the prepaid or periodic charge and the effect of nonpayment upon an enrollee who is hospitalized or undergoing treatment for an ongoing condition.

(8) To the extent that the plan permits a free choice of provider to its subscribers and enrollees, the statement shall disclose the nature and extent of choice permitted and the financial liability which is, or may be, incurred by the subscriber, enrollee, or a third party by reason of the exercise of that choice.

(9) A summary of the provisions required by subdivision (g) of Section 1373, if applicable.

(10) If the plan utilizes arbitration to settle disputes, a statement of that fact.

(11) A summary of, and a notice of the availability of, the process the plan uses to authorize or deny health care services under the benefits provided by the plan, pursuant to Section 1363.5.

(12) A description of any limitations on the patient's choice of primary care or specialty care physician based on service area and limitations on the patient's choice of acute care hospital care, subacute or transitional inpatient care, or skilled nursing facility.

(13) General authorization requirements for referral by a primary care physician to a specialty care physician.

(14) Conditions and procedures for disenrollment.

(b) All plans, solicitors, and representatives of a plan shall, when presenting any plan contract for examination or sale to an individual prospective plan member, provide the individual with a properly completed disclosure form, as prescribed by the commissioner pursuant to this section for each plan so examined or sold.

(c) In the case of group contracts, the completed disclosure form and evidence of coverage shall be presented to the contractholder upon delivery of the completed health care service plan agreement.

(d) Group contractholders shall disseminate copies of the completed disclosure form to all persons eligible to be a subscriber under the group contract at the time those persons are offered the plan. Where the individual group members are offered a choice of plans, separate disclosure forms shall be supplied for each plan available. Each group contractholder shall also disseminate or cause to be disseminated copies of the evidence of coverage to all subscribers enrolled under the group contract.

(e) In the case of conflicts between the group contract and the evidence of coverage, the provisions of the evidence of coverage shall be binding upon the plan notwithstanding any provisions in the

group contract which may be less favorable to subscribers or enrollees.

(f) In addition to the other disclosures required by this section, every health care service plan and any agent or employee of the plan shall, when presenting a plan for examination or sale to any individual purchaser or the representative of a group consisting of 25 or fewer individuals, disclose in writing the ratio of premium costs to health services paid for plan contracts with individuals and with groups of the same or similar size for the plan's preceding fiscal year. A plan may report that information by geographic area, provided the plan identifies the geographic area and reports information applicable to that geographic area.

SEC. 3. Section 1363.5 of the Health and Safety Code is amended to read:

1363.5. (a) A plan shall disclose or provide for the disclosure to the commissioner and providers under contract with the plan the process the plan uses to authorize or deny health care services under the benefits provided by the plan, including coverage for subacute care, transitional inpatient care, or care provided in skilled nursing facilities. A plan shall also disclose those processes to enrollees or persons designated by an enrollee upon request. The criteria used by plans to determine whether to authorize or deny health care services shall:

(1) Be developed with involvement from actively practicing health care providers.

(2) Be developed using sound clinical principles and processes.

(3) Be evaluated, and updated if necessary, at least annually.

(4) If used as the basis of a decision to deny services in a specified case under review, be disclosed to the provider or the enrollee, or both, in that specified case, upon request.

(b) Subdivision (a) shall not apply to plans that, prior to January 1, 1995, have entered into a contract with an entity that performs determinations for the authorization of health care services to plan enrollees where the contract prohibits disclosure of utilization guidelines and other procedures used to make those determinations. Plans that have existing contracts of this type prior to January 1, 1995, shall not be subject to subdivision (a) until January 1, 1996.

SEC. 4. Section 1367.10 of the Health and Safety Code is amended to read:

1367.10. Every health care service plan which will affect the choice of physician, hospital, or other health care providers shall include within its disclosure form and within its evidence or certificate of coverage a statement clearly describing how participation in the plan may affect the choice of physician, hospital, or other health care providers, and shall clearly inform prospective enrollees that participation in that plan will affect the person's choice in this regard by placing the following statement in a conspicuous place on all material required to be given to prospective enrollees

including promotional and descriptive material, disclosure forms, and certificates and evidences of coverage:

PLEASE READ THE FOLLOWING INFORMATION SO YOU WILL KNOW FROM WHOM OR WHAT GROUP OF PROVIDERS HEALTH CARE MAY BE OBTAINED

It is not the intent of this section to require that the names of individual health care providers be enumerated to prospective enrollees.

If the health care service plan provides a list of providers to patients or contracting providers, the plan shall include within the provider listing a notification that enrollees may contact the plan in order to obtain a list of the facilities with which the health care service plan is contracting for subacute care and/or transitional inpatient care.

SEC. 4.5. Section 1367.10 of the Health and Safety Code is amended to read:

1367.10. Every health care service plan that will affect the choice of physician, hospital, or other health care providers shall include within its disclosure form and within its evidence or certificate of coverage a statement clearly describing how participation in the plan may affect the choice of physician, hospital, or other health care providers, the basic method of reimbursement, and whether financial bonuses or incentives are used. The plan shall clearly inform prospective enrollees that participation in that plan will affect the person's choice of provider in this regard by placing the following statement in a conspicuous place on all material required to be given to prospective enrollees including promotional and descriptive material, disclosure forms, and certificates and evidences of coverage:

PLEASE READ THE FOLLOWING INFORMATION SO YOU WILL KNOW FROM WHOM OR WHAT GROUP OF PROVIDERS HEALTH CARE MAY BE OBTAINED

It is not the intent of this section to require that the names of individual health care providers be enumerated to prospective enrollees.

If the health care service plan provides a list of providers to patients or contracting providers, the plan shall include within the provider listing a notification that enrollees may contact the plan in order to obtain a list of the facilities with which the health care service plan is contracting for subacute care and/or transitional inpatient care.

SEC. 5. Section 10123.12 of the Insurance Code is amended to read:

10123.12. Every disability insurer, including those insurers which contract for alternative rates of payment pursuant to Section 10133, and every self-insured employee welfare benefit plan, which will

affect the choice of physician, hospital, or other health care providers shall include within its disclosure form and within its evidence or certificate of coverage a statement clearly describing how participation in the policy or plan may affect the choice of physician, hospital, or other health care providers, and shall clearly inform prospective insureds or plan enrollees that participation in the policy or plan will affect the person's choice in this regard by placing the following statement in a conspicuous place on all material required to be given to prospective insureds or plan enrollees including promotional and descriptive material, disclosure forms, and certificates and evidences of coverage:

PLEASE READ THE FOLLOWING INFORMATION SO YOU WILL KNOW FROM WHOM OR WHAT GROUP OF PROVIDERS HEALTH CARE MAY BE OBTAINED

It is not the intent of this section to require that the names of individual health care providers be enumerated to prospective enrollees.

If a disability insurer providing coverage for hospital, medical, or surgical expenses provides a list of facilities to patients or contracting providers, the insurer shall include within the provider listing a notification that enrollees may contact the insurer in order to obtain a list of the facilities with which the disability insurer is contracting for subacute care and/or transitional inpatient care.

SEC. 6. Section 10604 of the Insurance Code is amended to read:

10604. The disclosure form shall include the following information, in concise and specific terms, relative to the disability insurance policy:

(a) The applicable category or categories of coverage provided by the policy, from among the following:

(1) Basic hospital expense coverage.

(2) Basic medical-surgical expense coverage.

(3) Hospital confinement indemnity coverage.

(4) Major medical expense coverage.

(5) Disability income protection coverage.

(6) Accident only coverage.

(7) Specified disease or specified accident coverage.

(8) Such other categories as the commissioner may prescribe.

(b) The principal benefits and coverage of the disability insurance policy.

(c) The exceptions, reductions, and limitations that apply to such policy.

(d) A summary, including a citation of the relevant contractual provisions, of the process used to authorize or deny payments for services under the coverage provided by the policy including coverage for subacute care, transitional inpatient care, or care provided in skilled nursing facilities. This subdivision shall only apply

to policies of disability insurance that cover hospital, medical, or surgical expenses.

(e) The full premium cost of such policy.

(f) Any copayment, coinsurance, or deductible requirements that may be incurred by the insured or his family in obtaining coverage under the policy.

(g) The terms under which the policy may be renewed by the insured, including any reservation by the insurer of any right to change premiums.

(h) A statement that the disclosure form is a summary only, and that the policy itself should be consulted to determine governing contractual provisions.

SEC. 7. Section 4.5 of this bill incorporates amendments to Section 1367.10 of the Health and Safety Code proposed by both this bill and AB 2649. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1367.10 of the Health and Safety Code, and (3) this bill is enacted after AB 2649, in which case Section 4 of this bill shall not become operative.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 1025

An act to amend Section 128735 of the Health and Safety Code, relating to privacy.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

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

(a) All people have an inalienable right to privacy as declared in Section 1 of Article I of the California Constitution.

(b) Advances in technology have made it easier to create, acquire, and analyze detailed personal information about an individual.

(c) Personal information, including information about a person's financial history, shopping habits, medical history, and travel patterns, is continuously being created.

(d) The gathering of information, coupled with advances in technology, can benefit consumers and improve the flow of commerce in the state.

SEC. 2. Section 128735 of the Health and Safety Code is amended to read:

128735. Every organization that operates, conducts, or maintains a health facility and the officers thereof, shall make and file with the office, at the times as the office shall require, all of the following reports on forms specified by the office that shall be in accord where applicable with the systems of accounting and uniform reporting required by this part, except the reports required pursuant to subdivision (g) shall be limited to hospitals:

(a) A balance sheet detailing the assets, liabilities, and net worth of the health facility at the end of its fiscal year.

(b) A statement of income, expenses, and operating surplus or deficit for the annual fiscal period, and a statement of ancillary utilization and patient census.

(c) A statement detailing patient revenue by payer, including, but not limited to, Medicare, Medi-Cal, and other payers, and revenue center except that hospitals authorized to report as a group pursuant to subdivision (d) of Section 128760 are not required to report revenue by revenue center.

(d) A statement of cash-flows, including, but not limited to, ongoing and new capital expenditures and depreciation.

(e) A statement reporting the information required in subdivisions (a), (b), (c), and (d) for each separately licensed health facility operated, conducted, or maintained by the reporting organization, except those hospitals authorized to report as a group pursuant to subdivision (d) of Section 128760.

(f) The office shall consult with the County Hospital Committee of the California Hospital Association, the County Supervisors Association of California, and the California Association of Public Hospitals to improve the accuracy of indigent care revenue reporting and shall present legislative or regulatory recommendations for such improvements by March 30, 1985.

(g) A Hospital Discharge Abstract Data Record that includes all of the following:

(1) Date of birth.

(2) Sex.

(3) Race.

(4) ZIP Code.

(5) Patient social security number, if it is contained in the patient's medical record.

(6) Prehospital care and resuscitation, if any, including all of the following:

(A) "Do not resuscitate" (DNR) order at admission.

(B) "Do not resuscitate" (DNR) order after admission.

(7) Admission date.

(8) Source of admission.

(9) Type of admission.

(10) Discharge date.

(11) Principal diagnosis and whether the condition was present at admission.

(12) Other diagnoses and whether the conditions were present at admission.

(13) External cause of injury.

(14) Principal procedure and date.

(15) Other procedures and dates.

(16) Total charges.

(17) Disposition of patient.

(18) Expected source of payment.

It is the expressed intent of the Legislature that the patient's rights of confidentiality shall not be violated in any manner. Patient social security numbers and any other data elements that the office believes could be used to determine the identity of an individual patient shall be exempt from the disclosure requirements of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(h) No person reporting data pursuant to this section shall be liable for damages in any action based on the use or misuse of patient-identifiable data that has been mailed or otherwise transmitted to the office pursuant to the requirements of subdivision (g).

A hospital or its designee shall semiannually file the Hospital Discharge Abstract Data Record not later than six months after the end of each semiannual period, commencing six months after January 1, 1986. A hospital may submit the Hospital Discharge Abstract Data Record in a computer tape format, and a hospital shall use coding from the International Classification of Diseases in reporting diagnoses and procedures.

SEC. 3. (a) The Joint Task Force on Personal Information and Privacy is hereby created. The mission of the task force shall be to make recommendations as to what changes, if any, to existing laws relating to the use or distribution of personal information about individuals by public and private entities are necessary to ensure the following:

(1) That state law adequately protects the right of privacy guaranteed by Section 1 of Article I of the California Constitution.

(2) That state law adequately addresses the issues raised by the rapidly changing nature of information technology and systems.

(b) The issues addressed by the task force may include, but need not be limited to, the following:

(1) Privacy issues raised by the practices of the direct marketing industry, including the target marketing of consumers who do not wish to have information about them gathered or distributed, or who do not wish to be contacted by direct marketing firms.

(2) Privacy issues raised by the practices of the internet industry, including the gathering of information about individuals' patterns of access to internet sites, archival retrieval of messages posted to newsgroups and message boards, access to electronic mail, and encryption and digital signature technologies.

(3) Privacy issues related to the finance and credit industries, including the gathering and distribution of data related to consumers' credit transactions, "opt-out" mechanisms for consumers, and identity theft.

(4) Privacy issues related to the use of medical records.

(5) Privacy issues related to the use and distribution of public records kept by state and local government agencies, including the sale of computerized public records to private information brokers and others.

(6) Issues related to the mechanisms in place to enforce privacy laws, including the issues raised by the past defunding of the Office of Information Practices.

(c) The task force shall be comprised of six members. Three members shall be Members of the Senate appointed by the Senate Rules Committee, one of whom shall be appointed as the chairperson. Three members shall be Members of the Assembly appointed by the Speaker of the Assembly. The task force shall conduct its work in close consultation with an advisory committee, and any subcommittees of that advisory committee deemed appropriate by the task force. The task force shall appoint the members of the advisory committee. The composition of the membership of the advisory committee shall, to the extent feasible, be balanced, with an equal number of industry and consumer representatives on the committee. The advisory committee shall include at least one representative of each of the following:

(1) The direct marketing industry.
(2) The credit reporting industry.
(3) The banking and finance industry.
(4) The insurance industry.
(5) The telecommunications industry.
(6) The internet industry.
(7) Print and broadcast media.
(8) The retail sales industry.
(9) The private investigation industry.
(10) The health care industry.
(11) Consumer organizations.
(12) Civil rights and privacy rights groups.

(13) Other appropriate public interest groups.
(14) State agencies.
(15) Local agencies.
(16) Law enforcement.
(17) Nonprofit membership organizations.

(d) The Legislative Analyst shall compile the task force findings and recommendations, including any dissenting opinions, into a report on or before March 1, 1998.

(e) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 1999, deletes or extends that date.

CHAPTER 1026

An act to amend Sections 1370, 1370.1, and 11105 of the Penal Code, and to amend Sections 6509 and 7325 of the Welfare and Institutions Code, relating to mentally disordered persons.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 1370 of the Penal Code is amended to read:

1370. (a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent.

(i) In the meantime, the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, or to any other available public or private treatment facility approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified in Section 1600.

(ii) However, if the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of a Section 290 offense. If either determination is made, the prosecutor shall so notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that

the defendant be delivered by the sheriff to a state hospital or other secure treatment facility for the care and treatment of the mentally disordered unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iv) The clerk of the court shall notify the Department of Justice in writing of any finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in his or her state summary criminal history information.

(C) Upon the filing of a certificate of restoration to competence, the court shall order that the defendant be returned to court in accordance with Section 1372. The court shall transmit a copy of its order to the community program director or a designee.

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

(3) When the court orders that the defendant be confined in a state hospital or other public or private treatment facility, the court shall provide copies of the following documents which shall be taken with the defendant to the state hospital or other treatment facility where the defendant is to be confined:

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

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

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

(D) State summary criminal history information.

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

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

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

(H) Records of any finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or any pending Section 1368 proceeding arising out of a charge of a Section 290 offense.

(4) When the defendant is committed to a treatment facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a treatment facility other than a state hospital or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility of any finding of mental incompetence pursuant to this chapter arising out of a charge of a Section 290 offense.

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

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

present evidence bearing on the order of transfer. The court shall use the same standards as are used in conducting probation revocation hearings pursuant to Section 1203.2.

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

(B) If the defendant is initially committed to a state hospital or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to any other facility, copies of the documents specified in paragraph (3) shall be taken with the defendant to each subsequent facility to which the defendant is transferred. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

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

The court shall transmit a copy of its order to the community program director or a designee.

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

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

(c) (1) If, at the end of three years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, whichever is shorter, the defendant has not recovered mental competence, the defendant shall be returned to the committing court. The court shall notify the community program director or a designee of the return and of any resulting court orders.

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

(3) Where the defendant is confined in a treatment facility, a copy of any report to the committing court regarding the defendant's progress toward recovery of mental competence shall be provided by the committing court to the prosecutor and to the defense counsel.

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

(e) If the criminal charge against the defendant is dismissed, the defendant shall be released from any commitment ordered under this section, but without prejudice to the initiation of any proceedings that may be appropriate under the Lanterman-Petris-Short Act, Part

1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

(f) As used in this chapter, "community program director" means the person, agency, or entity designated by the State Department of Mental Health pursuant to Section 1605 of this code and Section 4360 of the Welfare and Institutions Code.

(g) For the purpose of this section, "secure treatment facility" shall not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.

SEC. 1.5. Section 1370 of the Penal Code is amended to read:

1370. (a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent.

(i) In the meantime, the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, or to any other available public or private treatment facility approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified in Section 1600.

(ii) However, if the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of a Section 290 offense. If either determination is made, the prosecutor shall so notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that the defendant be delivered by the sheriff to a state hospital or other secure treatment facility for the care and treatment of the mentally disordered unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and

convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iv) The clerk of the court shall notify the Department of Justice in writing of any finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in his or her state summary criminal history information.

(C) Upon the filing of a certificate of restoration to competence, the court shall order that the defendant be returned to court in accordance with Section 1372. The court shall transmit a copy of its order to the community program director or a designee.

(D) A defendant charged with a violent felony may not be delivered to a state hospital or treatment facility pursuant to this subdivision unless the state hospital or treatment facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.

(E) For purposes of this paragraph, "violent felony" means an offense specified in subdivision (c) of Section 667.5.

(F) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1600, only if the court finds that the placement will not pose a danger to the health or safety of others.

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

(3) When the court orders that the defendant be confined in a state hospital or other public or private treatment facility, the court shall provide copies of the following documents which shall be taken with the defendant to the state hospital or other treatment facility where the defendant is to be confined:

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

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

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

(D) State summary criminal history information.

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

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

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

(H) Records of any finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or any pending Section 1368 proceeding arising out of a charge of a Section 290 offense.

(4) When the defendant is committed to a treatment facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a treatment facility other than a state hospital or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility of any finding of mental incompetence pursuant to this chapter arising out of a charge of a Section 290 offense.

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

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

present evidence bearing on the order of transfer. The court shall use the same standards as are used in conducting probation revocation hearings pursuant to Section 1203.2.

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

(B) If the defendant is initially committed to a state hospital or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to any other facility, copies of the documents specified in paragraph (3) shall be taken with the defendant to each subsequent facility to which the defendant is transferred. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

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

The court shall transmit a copy of its order to the community program director or a designee.

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

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

(4) At each review by the court specified in this subdivision, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination.

(c) (1) At the end of three years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, whichever is shorter, a defendant who has not recovered mental competence shall be returned to the committing court. The court shall notify the community program director or a designee of the return and of any resulting court orders.

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

(3) Where the defendant is confined in a treatment facility, a copy of any report to the committing court regarding the defendant's progress toward recovery of mental competence shall be provided by the committing court to the prosecutor and to the defense counsel.

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

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

(f) As used in this chapter, "community program director" means the person, agency, or entity designated by the State Department of Mental Health pursuant to Section 1605 of this code and Section 4360 of the Welfare and Institutions Code.

(g) For the purpose of this section, "secure treatment facility" shall not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.

SEC. 2. Section 1370.1 of the Penal Code is amended to read:

1370.1. (a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent and is developmentally disabled, the trial or judgment shall be suspended until the defendant becomes mentally competent.

(i) Except as provided in clause (ii) or (iii), the court shall consider a recommendation for placement, which recommendation shall be made to the court by the director of a regional center or designee. In the meantime, the mentally incompetent defendant shall be delivered by the sheriff or other person designated by the court to a state hospital for the care and treatment of the developmentally disabled or any other available residential facility approved by the director of a regional center for the developmentally disabled established under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code as will promote the defendant's speedy attainment of mental competence, or be placed on outpatient status pursuant to the provisions of Section 1370.4 and Title 15 (commencing with Section 1600) of Part 2.

(ii) However, if the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of a Section 290 offense. If either determination is made, the prosecutor shall so notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that

the defendant be delivered by the sheriff to a state hospital or other secure treatment facility for the care and treatment of the developmentally disabled unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a state hospital for the care and treatment of the developmentally disabled unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iv) The clerk of the court shall notify the Department of Justice in writing of any finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in his or her state summary criminal history information.

(C) Upon becoming competent, the court shall order that the defendant be returned to the committing court pursuant to the procedures set forth in paragraph (2) of subdivision (a) of Section 1372 or by another person designated by the court.

(D) The court shall transmit a copy of its order to the regional center director or designee and to the Director of Developmental Services.

(E) As used in this section, "developmental disability" means a disability that originates before an individual attains age 18, continues, or can be expected to continue, indefinitely and constitutes a substantial handicap for the individual, and shall not include other handicapping conditions that are solely physical in nature. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

(2) Prior to making the order directing the defendant be confined in a state hospital or other residential facility or be placed on outpatient status, the court shall order the regional center director or designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to

whether the defendant should be committed to a state hospital or to any other available residential facility approved by the regional center director. No person shall be admitted to a state hospital or other residential facility or accepted for outpatient status under Section 1370.4 without having been evaluated by the regional center director or designee.

(3) When the court orders that the defendant be confined in a state hospital or other secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1), the court shall provide copies of the following documents which shall be taken with the defendant to the state hospital or other secure treatment facility where the defendant is to be confined:

(A) State summary criminal history information.

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

(C) Records of any finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or any pending Section 1368 proceeding arising out of a charge of a Section 290 offense.

(4) When the defendant is committed to a residential facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a facility other than a state hospital or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility of any finding of mental incompetence pursuant to this chapter arising out of a charge of a Section 290 offense.

(5) (A) If the defendant is committed or transferred to a state hospital pursuant to this section, the court may, upon receiving the written recommendation of the medical director of the state hospital and the regional center director that the defendant be transferred to a residential facility approved by the regional center director, order the defendant transferred to that facility. If the defendant is committed or transferred to a residential facility approved by the regional center director, the court may, upon receiving the written recommendation of the regional center director, transfer the defendant to a state hospital or to another residential facility approved by the regional center director.

In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code.

The defendant or prosecuting attorney may contest either kind of order of transfer by filing a petition with the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as used in conducting probation revocation hearings pursuant to Section 1203.2.

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

(B) If the defendant is committed to a state hospital or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to any other facility, copies of the documents specified in paragraph (3) shall be taken with the defendant to the new facility. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

(b) (1) Within 60 days of a commitment made pursuant to subdivision (a), the medical director of the state hospital or other facility to which the defendant is committed or the outpatient supervisor where the defendant is placed on outpatient status shall make a written report to the committing court and the regional center director or a designee concerning the defendant's progress toward becoming mentally competent. If the defendant has not become mentally competent, but the report discloses a substantial likelihood the defendant will become mentally competent within the next 90 days, the court may order that the defendant shall remain in the state hospital or other facility or on outpatient status for that period of time. Within 150 days of a commitment made pursuant to subdivision (a) or if the defendant becomes mentally competent, the medical director of the hospital or person in charge of the facility or the outpatient supervisor shall report to the court and the regional center director or his or her designee regarding the defendant's progress toward becoming mentally competent. The court shall provide to the prosecutor and defense counsel copies of all reports under this section. If the report indicates that there is no substantial likelihood that the defendant has become mentally competent, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c). The court shall transmit a copy of its order to the regional center director or designee and to the Director of Developmental Services.

(2) Any defendant who has been committed or has been on outpatient status for six months, and is still hospitalized or on outpatient status shall be returned to the committing court where a hearing shall be held pursuant to the procedures set forth in Section

1369. The court shall transmit a copy of its order to the regional center director or designee and the Director of Developmental Services.

(3) If it is determined by the court that no treatment for the defendant's mental impairment is being conducted, the defendant shall be returned to the committing court. A copy of this order shall be sent to the regional center director or designee and to the Director of Developmental Services.

(c) (1) (A) Any defendant committed after the effective date of the chapter adding this subparagraph who has not become mentally competent shall be returned to the committing court at the end of six months from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, whichever is shorter. Any defendant committed prior to the effective date of the chapter adding this subparagraph who has not become mentally competent shall be returned to the committing court at the end of six months from the effective date of the chapter adding this subparagraph; at the end of three years from the date of commitment; or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint; whichever is shorter.

(B) The court shall notify the regional center director or designee and the Director of Developmental Services of that return and of any resulting court orders.

(2) In the event of dismissal of the criminal charges before the defendant becomes mentally competent, the defendant shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), or to commitment and detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code. If it is found that the person is not subject to commitment or detention pursuant to the applicable provision of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code, the individual shall not be subject to further confinement pursuant to this article and the criminal action remains subject to dismissal pursuant to Section 1385. The court shall notify the regional center director and the Director of Developmental Services of any dismissal.

(d) Notwithstanding any other provision of this section, the criminal action remains subject to dismissal pursuant to Section 1385. If at any time prior to the maximum period of time allowed for proceedings under this article, the regional center director concludes that the behavior of the defendant related to the defendant's criminal offense has been eliminated during time spent in court-ordered programs, the court may, upon recommendation of the regional

center director, dismiss the criminal charges. The court shall transmit a copy of any order of dismissal to the regional center director and to the Director of Developmental Services.

(e) For the purpose of this section, "secure treatment facility" shall not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.

SEC. 2.5. Section 1370.1 of the Penal Code is amended to read:

1370.1. (a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent and is developmentally disabled, the trial or judgment shall be suspended until the defendant becomes mentally competent.

(i) Except as provided in clause (ii) or (iii), the court shall consider a recommendation for placement, which recommendation shall be made to the court by the director of a regional center or designee. In the meantime, the court shall order that the mentally incompetent defendant be delivered by the sheriff or other person designated by the court to a state hospital or developmental center for the care and treatment of the developmentally disabled or any other available residential facility approved by the director of a regional center for the developmentally disabled established under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code as will promote the defendant's speedy attainment of mental competence, or be placed on outpatient status pursuant to the provisions of Section 1370.4 and Title 15 (commencing with Section 1600) of Part 2.

(ii) However, if the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of a Section 290 offense. If either determination is made, the prosecutor shall so notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that the defendant be delivered by the sheriff to a state hospital or other secure treatment facility for the care and treatment of the developmentally disabled unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a state hospital for the care and treatment of the developmentally disabled unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iv) The clerk of the court shall notify the Department of Justice in writing of any finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in his or her state summary criminal history information.

(C) Upon becoming competent, the court shall order that the defendant be returned to the committing court pursuant to the procedures set forth in paragraph (2) of subdivision (a) of Section 1372 or by another person designated by the court. The court shall further determine conditions under which the person may be absent from the placement for medical treatment, social visits, and other similar activities. Required levels of supervision and security for these activities shall be specified.

(D) The court shall transmit a copy of its order to the regional center director or designee and to the Director of Developmental Services.

(E) A defendant charged with a violent felony may not be placed in a facility or delivered to a state hospital, developmental center, or residential facility pursuant to this subdivision unless the facility, state hospital, developmental center, or residential facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.

(F) For purposes of this paragraph, "violent felony" means an offense specified in subdivision (c) of Section 667.5.

(G) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1370.4 or 1600, only if the court finds that the placement will not pose a danger to the health or safety of others.

(H) As used in this section, "developmental disability" means a disability that originates before an individual attains age 18, continues, or can be expected to continue, indefinitely and constitutes a substantial handicap for the individual, and shall not include other handicapping conditions that are solely physical in nature. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism.

This term shall also include handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

(2) Prior to making the order directing the defendant be confined in a state hospital, developmental center, or other residential facility or be placed on outpatient status, the court shall order the regional center director or designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be committed to a state hospital or developmental center or to any other available residential facility approved by the regional center director. No person shall be admitted to a state hospital, developmental center, or other residential facility or accepted for outpatient status under Section 1370.4 without having been evaluated by the regional center director or designee.

(3) When the court orders that the defendant be confined in a state hospital or other secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1), the court shall provide copies of the following documents which shall be taken with the defendant to the state hospital or other secure treatment facility where the defendant is to be confined:

(A) State summary criminal history information.

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

(C) Records of any finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or any pending Section 1368 proceeding arising out of a charge of a Section 290 offense.

(4) When the defendant is committed to a residential facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a facility other than a state hospital or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility of any finding of mental incompetence pursuant to this chapter arising out of a charge of a Section 290 offense.

(5) (A) If the defendant is committed or transferred to a state hospital or developmental center pursuant to this section, the court may, upon receiving the written recommendation of the executive director of the state hospital or developmental center and the regional center director that the defendant be transferred to a residential facility approved by the regional center director, order the defendant transferred to that facility. If the defendant is committed or transferred to a residential facility approved by the

regional center director, the court may, upon receiving the written recommendation of the regional center director, transfer the defendant to a state hospital or developmental center or to another residential facility approved by the regional center director.

In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code.

The defendant or prosecuting attorney may contest either kind of order of transfer by filing a petition with the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as used in conducting probation revocation hearings pursuant to Section 1203.2.

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

(B) If the defendant is committed to a state hospital or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to any other facility, copies of the documents specified in paragraph (3) shall be taken with the defendant to the new facility. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

(b) (1) Within 90 days of admission of a person committed pursuant to subdivision (a), the executive director or designee of the state hospital, developmental center, or other facility to which the defendant is committed or the outpatient supervisor where the defendant is placed on outpatient status shall make a written report to the committing court and the regional center director or a designee concerning the defendant's progress toward becoming mentally competent. If the defendant has not become mentally competent, but the report discloses a substantial likelihood the defendant will become mentally competent within the next 90 days, the court may order that the defendant shall remain in the state hospital, developmental center, or other facility or on outpatient status for that period of time. Within 150 days of an admission made pursuant to subdivision (a) or if the defendant becomes mentally competent, the executive director or designee of the hospital or developmental center or person in charge of the facility or the outpatient supervisor shall report to the court and the regional center

director or his or her designee regarding the defendant's progress toward becoming mentally competent. The court shall provide to the prosecutor and defense counsel copies of all reports under this section. If the report indicates that there is no substantial likelihood that the defendant has become mentally competent, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c). The court shall transmit a copy of its order to the regional center director or designee and to the executive director of the developmental center.

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

(3) If it is determined by the court that no treatment for the defendant's mental impairment is being conducted, the defendant shall be returned to the committing court. A copy of this order shall be sent to the regional center director or designee and to the executive director of the developmental center.

(4) At each review by the court specified in this subdivision, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination.

(c) (1) (A) At the end of three years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, whichever is shorter, any defendant who has not become mentally competent shall be returned to the committing court.

(B) The court shall notify the regional center director or designee and the executive director of the developmental center of that return and of any resulting court orders.

(2) In the event of dismissal of the criminal charges before the defendant becomes mentally competent, the defendant shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), or to commitment and detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code. If it is found that the person is not subject to commitment or detention pursuant to the applicable provision of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code, the individual shall not be subject to further confinement pursuant to this article and the criminal action remains subject to dismissal pursuant to Section 1385.

The court shall notify the regional center director and the executive director of the developmental center of any dismissal.

(d) Notwithstanding any other provision of this section, the criminal action remains subject to dismissal pursuant to Section 1385. If at any time prior to the maximum period of time allowed for proceedings under this article, the regional center director concludes that the behavior of the defendant related to the defendant's criminal offense has been eliminated during time spent in court-ordered programs, the court may, upon recommendation of the regional center director, dismiss the criminal charges. The court shall transmit a copy of any order of dismissal to the regional center director and to the executive director of the developmental center.

(e) For the purpose of this section, "secure treatment facility" shall not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.

SEC. 3. Section 11105 of the Penal Code is amended to read:

11105. (a) (1) The Department of Justice shall maintain state summary criminal history information.

(2) As used in this section:

(i) "State summary criminal history information" means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, fingerprints, photographs, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about the person.

(ii) "State summary criminal history information" does not refer to records and data compiled by criminal justice agencies other than the Attorney General, nor does it refer to records of complaints to or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice.

(b) The Attorney General shall furnish state summary criminal history information to any of the following, if needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) The courts of the state.

(2) Peace officers of the state as defined in Section 830.1, subdivisions (a), (b), and (f) of Section 830.2, subdivision (a) of Section 830.3, subdivisions (a) and (b) of Section 830.5, and subdivision (a) of Section 830.31.

(3) District attorneys of the state.

(4) Prosecuting city attorneys of any city within the state.
(5) Probation officers of the state.
(6) Parole officers of the state.
(7) A public defender or attorney of record when representing a person in proceedings upon a petition for a certificate of rehabilitation and pardon pursuant to Section 4852.08.
(8) A public defender or attorney of record when representing a person in a criminal case and if authorized access by statutory or decisional law.
(9) Any agency, officer, or official of the state if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.
(10) Any city or county, or city and county, or district, or any officer, or official thereof if access is needed in order to assist that agency, officer, or official in fulfilling employment, certification, or licensing duties, and if the access is specifically authorized by the city council, board of supervisors, or governing board of the city, county, or district if the criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.
(11) The subject of the state summary criminal history information under procedures established under Article 5 (commencing with Section 11120), Chapter 1, Title 1 of Part 4.
(12) Any person or entity when access is expressly authorized by statute if the criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon that specified criminal conduct.
(13) Health officers of a city, county, or city and county, or district, when in the performance of their official duties enforcing Section 3110 of the Health and Safety Code.
(14) Any managing or supervising correctional officer of a county jail or other county correctional facility.
(15) Any humane society, or society for the prevention of cruelty to animals, for the specific purpose of complying with Section 607f of the Civil Code for the appointment of level 1 humane officers.
(c) The Attorney General may furnish state summary criminal history information upon a showing of a compelling need to any of the following, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public

utility, or any entity, in fulfilling employment, certification, or licensing duties, Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

(1) Any public utility as defined in Section 216 of the Public Utilities Code that operates a nuclear energy facility when access is needed in order to assist in employing persons to work at the facility, provided that, if the Attorney General supplies the data, he or she shall furnish a copy of the data to the person to whom the data relates.

(2) To a peace officer of the state other than those included in subdivision (b).

(3) To a peace officer of another country.

(4) To public officers (other than peace officers) of the United States, other states, or possessions or territories of the United States, provided that access to records similar to state summary criminal history information is expressly authorized by a statute of the United States, other states, or possessions or territories of the United States if the information is needed for the performance of their official duties.

(5) To any person when disclosure is requested by a probation, parole, or peace officer with the consent of the subject of the state summary criminal history information and for purposes of furthering the rehabilitation of the subject.

(6) The courts of the United States, other states or territories or possessions of the United States.

(7) Peace officers of the United States, other states, or territories or possessions of the United States.

(8) To any individual who is the subject of the record requested if needed in conjunction with an application to enter the United States or any foreign nation.

(9) Any public utility as defined in Section 216 of the Public Utilities Code, if access is needed in order to assist in employing current or prospective employees who in the course of their employment may be seeking entrance to private residences. The information provided shall be limited to the record of convictions and any arrest for which the person is released on bail or on his or her own recognizance pending trial.

If the Attorney General supplies the data pursuant to this paragraph, the Attorney General shall furnish a copy of the data to the current or prospective employee to whom the data relates.

Any information obtained from the state summary criminal history is confidential and the receiving public utility shall not disclose its contents, other than for the purpose for which it was acquired. The state summary criminal history information in the possession of the public utility and all copies made from it shall be destroyed not more than 30 days after employment or promotion or transfer is denied or granted, except for those cases where a current or prospective employee is out on bail or on his or her own recognizance pending trial, in which case the state summary criminal history information

and all copies shall be destroyed not more than 30 days after the case is resolved.

A violation of this paragraph is a misdemeanor, and shall give the current or prospective employee who is injured by the violation a cause of action against the public utility to recover damages proximately caused by the violations. Any public utility's request for state summary criminal history information for purposes of employing current or prospective employees who may be seeking entrance to private residences in the course of their employment shall be deemed a "compelling need" as required to be shown in this subdivision.

Nothing in this section shall be construed as imposing any duty upon public utilities to request state summary criminal history information on any current or prospective employees.

(10) To any campus of the California State University or the University of California, or any four-year college or university accredited by a regional accreditation organization approved by the United States Department of Education, if needed in conjunction with an application for admission by a convicted felon to any special education program for convicted felons, including, but not limited to, university alternatives and halfway houses. Only conviction information shall be furnished. The college or university may require the convicted felon to be fingerprinted, and any inquiry to the department under this section shall include the convicted felon's fingerprints and any other information specified by the department.

(d) Whenever an authorized request for state summary criminal history information pertains to a person whose fingerprints are on file with the Department of Justice and the department has no criminal history of that person, and the information is to be used for employment, licensing, or certification purposes, the fingerprint card accompanying the request for information, if any, may be stamped "no criminal record" and returned to the person or entity making the request.

(e) Whenever state summary criminal history information is furnished as the result of an application and is to be used for employment, licensing, or certification purposes, the Department of Justice may charge the person or entity making the request a fee that it determines to be sufficient to reimburse the department for the cost of furnishing the information. In addition, the Department of Justice may add a surcharge to the fee to fund maintenance and improvements to the systems from which the information is obtained. Notwithstanding any other law, any person or entity required to pay a fee to the department for information received under this section may charge the applicant a fee sufficient to reimburse the person or entity for this expense. All moneys received by the department pursuant to this section, Sections 11105.3 and 12054 of the Penal Code, and Section 13588 of the Education Code shall be deposited in a special account in the General Fund to be

available for expenditure by the department to offset costs incurred pursuant to those sections and for maintenance and improvements to the systems from which the information is obtained upon appropriation by the Legislature.

(f) Whenever there is a conflict, the processing of criminal fingerprints and fingerprints of applicants for security guard or alarm agent registrations or firearms qualification permits submitted pursuant to Section 7514 of the Business and Professions Code shall take priority over the processing of applicant fingerprints.

(g) It is not a violation of this section to disseminate statistical or research information obtained from a record, provided that the identity of the subject of the record is not disclosed.

(h) It is not a violation of this section to include information obtained from a record in (1) a transcript or record of a judicial or administrative proceeding or (2) any other public record if the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(i) Notwithstanding any other law, the Department of Justice or any state or local law enforcement agency may require the submission of fingerprints for the purpose of conducting summary criminal history information checks that are authorized by law.

(j) The state summary criminal history information shall include any finding of mental incompetence pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 arising out of a complaint charging a felony offense specified in Section 290.

SEC. 4. Section 6509 of the Welfare and Institutions Code is amended to read:

6509. (a) If the court finds that the person is mentally retarded, and that he or she is a danger to himself or herself or to others, the court may make an order that the person be committed to the State Department of Developmental Services for suitable treatment and habilitation services. Suitable treatment and habilitation services is defined as the least restrictive residential placement necessary to achieve the purposes of treatment. Care and treatment of a person committed to the State Department of Developmental Services may include placement in any state hospital, any licensed community care facility as defined in Section 1504, or any health facility as defined in Section 1250. The court shall hold a hearing as to the available placement alternatives and consider the report of the regional center director or designee submitted pursuant to Section 6504.5. After hearing all the evidence the court shall order that the person be committed to that placement which the court finds to be the most appropriate alternative. The court, however, may commit a mentally retarded person who is not a resident of this state under Section 4460 for the purpose of transportation of the person to the state of his or her legal residence pursuant to Section 4461. The State Department of Developmental Services shall receive the person committed to it and shall place the person in the placement ordered by the court.

(b) If the person has at any time been found mentally incompetent pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code arising out of a complaint charging a felony offense specified in Section 290 of the Penal Code, the court shall order the State Department of Developmental Services to give notice of that finding to the designated placement facility and the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility.

(c) If the Department of Developmental Services decides that a change in placement is necessary, it shall notify in writing the court of commitment, the district attorney, the attorney of record for the person, and the regional center of the decision at least 15 days in advance of the proposed change in placement. The court may hold a hearing and (1) approve or disapprove of the change, or (2) take no action in which case the change shall be deemed approved. At the request of the district attorney or of the attorney for the person, a hearing shall be held.

SEC. 4.5. Section 6509 of the Welfare and Institutions Code is amended to read:

6509. (a) If the court finds that the person is mentally retarded, and that he or she is a danger to himself, herself, or to others, the court may make an order that the person be committed to the State Department of Developmental Services for suitable treatment and habilitation services. Suitable treatment and habilitation services is defined as the least restrictive residential placement necessary to achieve the purposes of treatment. Care and treatment of a person committed to the State Department of Developmental Services may include placement in any state hospital, developmental center, any licensed community care facility, as defined in Section 1504, or any health facility, as defined in Section 1250, or any other appropriate placement permitted by law. The court shall hold a hearing as to the available placement alternatives and consider the reports of the regional center director or designee and the developmental center director or designee submitted pursuant to Section 6504.5. After hearing all the evidence, the court shall order that the person be committed to that placement that the court finds to be the most appropriate alternative. If the court finds that release of the person can be made subject to conditions that the court deems proper and adequate for the protection and safety of others and the welfare of the person, the person shall be released subject to those conditions.

The court, however, may commit a mentally retarded person who is not a resident of this state under Section 4460 for the purpose of transportation of the person to the state of his or her legal residence pursuant to Section 4461. The State Department of Developmental Services shall receive the person committed to it and shall place the person in the placement ordered by the court.

(b) If the person has at any time been found mentally incompetent pursuant to Chapter 6 (commencing with Section 1367)

of Title 10 of Part 2 of the Penal Code arising out of a complaint charging a felony offense specified in Section 290 of the Penal Code, the court shall order the State Department of Developmental Services to give notice of that finding to the designated placement facility and the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility.

(c) If the Department of Developmental Services decides that a change in placement is necessary, it shall notify in writing the court of commitment, the district attorney, and the attorney of record for the person and the regional center of its decision at least 15 days in advance of the proposed change in placement. The court may hold a hearing and (1) approve or disapprove of the change, or (2) take no action in which case the change shall be deemed approved. At the request of the district attorney or of the attorney for the person, a hearing shall be held.

SEC. 5. Section 7325 of the Welfare and Institutions Code is amended to read:

7325. (a) When any patient committed by a court to a state hospital or other institution on or before June 30, 1969, or when any patient who is judicially committed on or after July 1, 1969, or when any patient who is involuntarily detained pursuant to Part 1 (commencing with Section 5000) of Division 5 escapes from any state hospital, any hospital or facility operated by or under the Veterans' Administration of the United States government, or any facility designated by a county pursuant to Part 1 (commencing with Section 5000) of Division 5, or any facility into which the patient has been placed by his or her conservator appointed pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5, or when a judicially committed patient's return from leave of absence has been authorized or ordered by the State Department of Mental Health, or the State Department of Developmental Services, or the facility of the Veterans' Administration, any peace officer, upon written request of the state hospital, veterans' facility, or the facility designated by a county, or the patient's conservator appointed pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5, shall without the necessity of a warrant or court order, or any officer or employee of the State Department of Mental Health, or of the State Department of Developmental Services, designated to perform these duties may, apprehend, take into custody, and deliver him or her to the state hospital or to a facility of the Veterans' Administration, or the facility designated by a county, or to any person or place authorized by the State Department of Mental Health, or by the State Department of Developmental Services, or by the Veterans' Administration, or the local director of the county mental health program of the county in which is located the facility designated by the county, or the patient's conservator appointed pursuant to Chapter 3 (commencing with Section 5350) Part 1 of Division 5 as the case may be, to receive him or her. Every officer or

employee of the State Department of Mental Health, or of the State Department of Developmental Services, designated to apprehend or return those patients shall have the powers and privileges of peace officers so far as necessary to enforce this section.

(b) As used in this section, "any peace officer" means the persons specified in Section 830.1 of the Penal Code.

(c) Any officer or employee of a state hospital, hospital or facility operated by or under the Veterans' Administration, or any facility designated by a county pursuant to Part 1 (commencing with Section 5000) of Division 5 shall provide any peace officer with any information concerning any patient who escapes from the hospital or facility that is necessary to assist in the apprehension and return of the patient. The written notification of the escape required by this section shall include the name and physical description of the patient, his or her home address, the degree of dangerousness of the patient, including specific information about the patient if he or she is deemed likely to cause harm to himself or herself or to others, and any additional information which is necessary to apprehend and return the patient. If the escapee has been charged with any crime involving physical harm to children, the notice shall be provided by the law enforcement agency to school districts in the vicinity of the hospital or other facility in which the escapee was being held, in the area the escapee is known or is likely to frequent, and in the area where the escapee resided immediately prior to confinement.

(d) The person in charge of the hospital or facility, or his or her designee, may provide telephonic notification of the escape to the law enforcement agency of the county or city in which the hospital or facility is located. If that notification is given, the time and date of notification, the person notified, and the person making the notification shall be noted in the written notification required by this section.

(e) Photocopying shall not be required in order to satisfy the requirements of this section.

(f) No public or private entity or public or private employee shall be liable for damages caused, or alleged to be caused, by the release of information or the failure to release information pursuant to this section.

SEC. 6. Section 1.5 of this bill incorporates amendments to Section 1370 of the Penal Code proposed by both this bill and SB 1391. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1370 of the Penal Code, and (3) this bill is enacted after SB 1391, in which case Section 1 of this bill shall not become operative.

SEC. 7. Section 2.5 of this bill incorporates amendments to Section 1370.1 of the Penal Code proposed by both this bill and SB 1391. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends

Section 1370.1 of the Penal Code, and (3) this bill is enacted after SB 1391, in which case Section 2 of this bill shall not become operative.

SEC. 8. Section 4.5 of this bill incorporates amendments to Section 6509 of the Welfare and Institutions Code proposed by both this bill and SB 1391. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 6509 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 1391, in which case Section 4 of this bill shall not become operative.

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

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

CHAPTER 1027

An act to add Sections 11758.41, 11758.42, 11758.44, 11758.46, and 11758.47 to the Health and Safety Code, relating to drug programs.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 11758.41 is added to the Health and Safety Code, to read:

11758.41. (a) It is the intent of the Legislature that the department, in consultation with narcotic treatment program providers, county alcohol and drug program administrators, and organizations advocating on behalf of Medi-Cal beneficiaries, no later than March 1, 1997, complete a review of existing state regulations for consistency and necessity to eliminate unnecessary costs for administration of narcotic treatment programs.

(b) Based on the review, described pursuant to subdivision (a), the department and the State Department of Health Services shall commence rulemaking proceedings, in order to adopt, amend, or repeal regulations, as needed.

SEC. 2. Section 11758.42 is added to the Health and Safety Code, to read:

11758.42. (a) For purposes of this chapter, "LAAM" means levoalphacetylmethadol.

(b) (1) The department shall establish a narcotic replacement therapy dosing fee for methadone and LAAM.

(2) In addition to the narcotic replacement therapy dosing fee provided for pursuant to paragraph (1), narcotic treatment programs shall be reimbursed for the ingredient costs of methadone or LAAM dispensed to Medi-Cal beneficiaries. These costs may be determined on an average daily dose of methadone or LAAM, as set forth by the department, in consultation with the State Department of Health Services.

(c) Reimbursement for narcotic replacement therapy dosing and ancillary services provided by narcotic treatment programs shall be based on a per capita uniform statewide monthly reimbursement rate for each individual patient, as established by the department, in consultation with the State Department of Health Services. The uniform statewide monthly reimbursement rate for ancillary services shall be based upon, where available and appropriate, and shall not exceed, for individual services or in the aggregate, the outpatient rates for the same or similar services under the fee-for-service Medi-Cal program. In establishing the uniform statewide monthly rate, the department shall also utilize the rate studies completed pursuant to Section 54 of Assembly Bill 3483 of the 1995–96 Regular Session of the Legislature. The uniform statewide monthly reimbursement rate shall be established after consultation with narcotic treatment program providers and county alcohol and drug program administrators.

(d) Reimbursement for narcotic treatment program services shall be limited to those services specified in state law and state and federal regulations governing the licensing and administration of narcotic treatment programs. These services shall include, but are not limited to, all of the following:

(1) Admission, physical evaluation, and diagnosis.

(2) Drug screening.

(3) Pregnancy tests.

(4) Narcotic replacement therapy dosing.

(5) Intake assessment, treatment planning, and counseling services. Frequency of counseling or medical psychotherapy, outcomes, and rates shall be addressed through regulations adopted by the department. For purposes of this paragraph, these services include, but are not limited to, substance abuse services to pregnant and postpartum Medi-Cal beneficiaries.

(e) Reimbursement under this section shall be limited to claims for narcotic treatment program services at the uniform statewide monthly reimbursement rate for these services. These rates shall be exempt from the requirements of Section 14021.6 of the Welfare and Institutions Code.

(f) Reimbursement to narcotic treatment program providers shall be limited to the lower of either the uniform statewide monthly reimbursement rate, pursuant to subdivision (c), or the provider's usual and customary charge to the general public for the same or similar service.

(g) Reimbursement for narcotic treatment program services provided by narcotic treatment program providers shall, if the patient receives less than a full month of services, be prorated to the daily cost per patient, based on the annual cost per patient and a 365-day year. No program shall be reimbursed for services not rendered to or received by a patient of a narcotic treatment program.

(h) Reimbursement for narcotic treatment program services provided to substance abusers shall be administered by the department and counties electing to participate in the program. Utilization and payment for these services shall be subject to federal medicaid and state utilization and audit requirements.

SEC. 3. Section 11758.44 is added to the Health and Safety Code, to read:

11758.44. (a) In addition to narcotic treatment program services, a narcotic treatment program provider who is also enrolled as a Medi-Cal provider, may provide medically necessary medical treatment of concurrent diseases, within the scope of the provider's practice, to Medi-Cal beneficiaries who are not enrolled in managed care plans. Medi-Cal beneficiaries enrolled in managed care plans shall be referred to those plans for receipt of medically necessary medical treatment of concurrent diseases.

(b) Diagnosis and treatment of concurrent diseases of Medi-Cal beneficiaries not enrolled in managed care plans by a narcotic treatment program provider may be provided within the Medi-Cal coverage limits. When the services are not part of the substance abuse treatment reimbursed pursuant to Section 11758.42, services shall be reimbursed at Medi-Cal program outpatient rates. Services reimbursable under this section shall include, but are not limited to, all of the following:

(1) Medical treatment visits.

(2) Diagnostic blood, urine, and X-rays.

(3) Psychological and psychiatric tests and services.

(4) Quantitative blood and urine toxicology assays.

(5) Medical supplies.

(c) A narcotics treatment program provider, who is enrolled as a Medi-Cal fee-for-service provider, shall not seek reimbursement from a beneficiary for substance abuse treatment services, if services for treatment of concurrent diseases are billed to the Medi-Cal fee-for-service program.

SEC. 4. Section 11758.46 is added to the Health and Safety Code, to read:

11758.46. (a) For purposes of this section, "drug-Medi-Cal services" means all of the following services, administered by the department, and to the extent consistent with state and federal law:

(1) Narcotic treatment program services, as set forth in Section 11758.42.

(2) Day care habilitative services.

(3) Perinatal residential services for pregnant women and women in the postpartum period.

(4) Naltrexone services.

(5) Outpatient drug-free services.

(b) (1) By July 1, 1997, and annually thereafter, the department shall publish procedures for contracting for drug-Medi-Cal services with certified providers and for claiming payments, including procedures and specifications for electronic data submission for services rendered.

(2) By July 1, 1997, the department, county alcohol and drug program administrators, and alcohol and drug service providers shall automate the claiming process and the process for the submission of specific data required in connection with reimbursement for drug-Medi-Cal services, except that this requirement shall be applicable only if funding is available from sources other than those made available for treatment or other services.

(c) A county or a contractor for the provision of drug-Medi-Cal services shall notify the department, within 30 days of the receipt of the county allocation, of its intent to contract, as a component of the single state-county contract, for and provide certified services pursuant to Section 11758.42 for the proposed budget year. Included in this notification shall be an accurate and complete proposal budget, the structure of which shall be mutually agreed to by county alcohol and drug program administrators and the department, in the format provided by the department, for specific services, for a specific time period, estimated units of service, estimated rate per unit consistent with law and regulations, and total estimated cost for appropriate services.

(d) (1) Within 30 days of receipt of the proposal described in subdivision (c), the department shall provide to counties and contractors proposing to provide drug-Medi-Cal services in the proposed budget year, a proposed multiple-year contract, as a component of the single state-county contract, for these services, a current utilization control plan, and appropriate administrative procedures.

(2) A county contracting for alcohol and drug services shall receive a single state-county contract for net negotiated amount and drug-Medi-Cal services.

(3) Contractors contracting for drug-Medi-Cal services shall receive a drug-Medi-Cal contract.

(e) (1) Upon receipt of a contract proposal pursuant to subdivision (c), a county and a contractor seeking to provide

reimbursable drug-Medi-Cal services and the department, may begin negotiations and the process for contract approval.

(2) If a county does not approve a contract by July 1, of the appropriate fiscal year, in accordance with subdivisions (b) to (d), inclusive, the county shall have 30 additional days in which to approve a contract. If the county has not approved the contract by the end of that 30-day period, the department shall contract directly for services within 30 days.

(3) Counties shall negotiate contracts only with providers certified to provide reimbursable drug-Medi-Cal services and who elect to participate in this program. Upon contract approval by the department, a county shall establish approved contracts with certified providers within 30 days following enactment of the annual Budget Act. A county may establish contract provisions to ensure interim funding pending the execution of final contracts, multiple-year contracts pending final annual approval by the department, and, to the extent allowable under the annual Budget Act, other procedures to ensure timely payment for services.

(f) (1) For counties and contractors providing drug-Medi-Cal services, pursuant to approved contracts, and that have accurate and complete claims, reimbursement for services from state General Fund moneys shall commence no later than 45 days following the enactment of the annual Budget Act for the appropriate state fiscal year.

(2) For counties and contractors providing drug-Medi-Cal services, pursuant to approved contracts, and that have accurate and complete claims, reimbursement for services from federal medicaid funds shall commence no later than 45 days following the enactment of the annual Budget Act for the appropriate state fiscal year.

(3) By July 1, 1997, the State Department of Health Services and the department shall develop methods to ensure timely payment of drug-Medi-Cal claims.

(4) The State Department of Health Services, in cooperation with the department, shall take steps necessary to streamline the billing system for reimbursable drug-Medi-Cal services, to assist the department in meeting the billing provisions set forth in this subdivision.

(g) The department shall submit a proposed interagency agreement to the State Department of Health Services by May 1 for the following fiscal year. Review and interim approval of all contractual and programmatic requirements, except final fiscal estimates, shall be completed by the State Department of Health Services by July 1. The interagency agreement shall not take effect until the annual Budget Act is enacted and fiscal estimates are approved by the State Department of Health Services. Final approval shall be completed within 45 days of enactment of the Budget Act.

(h) (1) A county or a provider certified to provide reimbursable drug-Medi-Cal services, who is contracting with the department, shall estimate the cost of those services by April 1 of the fiscal year covered by the contract, and shall amend current contracts, as necessary, by the following July 1.

(2) A county or a provider, except for a provider to whom subdivision (i) applies, shall submit accurate and complete cost reports for the previous state fiscal year by November 1, following the end of the state fiscal year. The department may settle cost for drug-Medi-Cal services, based on the cost report as the final amendment to the approved single state-county contract.

(i) Certified narcotic treatment program providers, who are exclusively billing the state or the county for services under Section 11758.42, shall submit accurate and complete performance reports for the previous state fiscal year, by November 1, following the end of that state fiscal year. A provider to whom this subdivision applies shall estimate its budgets using the uniform state monthly reimbursement rate. The format and content of the performance reports shall be mutually agreed to by the department, the County Alcohol and Drug Program Administrators Association of California, and representatives of the narcotic treatment providers.

SEC. 5. Section 11758.47 is added to the Health and Safety Code, to read:

11758.47. Service providers may assist Medi-Cal beneficiaries, upon request, to file a fair hearing request in accordance with Chapter 7 (commencing with Section 10950) of Part 2 of Division 9 of the Welfare and Institutions Code, or may inform Medi-Cal beneficiaries about the Department of Corporations' toll-free telephone number for health care service plan members or the State Department of Health Services' ombudsman for Medi-Cal beneficiaries enrolled in Medi-Cal managed care plans.

SEC. 6. The State Department of Alcohol and Drug Programs may adopt regulations to implement this act in accordance with the Administrative Procedure Act, provided for pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The initial adoption of any emergency regulations implementing this act shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Emergency regulations adopted pursuant to this section shall remain in effect for no more than 180 days.

CHAPTER 1028

An act to amend Sections 366.21 and 366.22 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 366.21 of the Welfare and Institutions Code, as amended by Section 2 of Chapter 540 of the Statutes of 1995, is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing, of their right to be present and represented by counsel.

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the probation officer to the same persons as in the original proceeding, to the minor's parent or guardian, to the foster parents, community care facility, or foster family agency having physical custody of the minor in the case of a minor removed from the physical custody of his or her parent or guardian, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the minor being recommended by the supervising agency. The notice to the foster parent shall indicate that the foster parent may attend all hearings or may submit any information he or she deems relevant to the court in writing.

(c) At least 10 calendar days prior to the hearing the probation officer shall file a supplemental report with the court regarding the services provided or offered to the parent or guardian to enable them to assume custody, the progress made, and, where relevant, the prognosis for return of the minor to the physical custody of his or her parent or guardian, and make his or her recommendation for disposition. If the recommendation is not to return the minor to a parent or guardian, the report shall specify why the return of the minor would be detrimental to the minor. The probation officer shall provide the parent or guardian with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a minor removed from the physical custody of his or her parent or guardian, the probation officer shall provide a summary of his or her recommendation for disposition to the counsel for the minor, any court-appointed child advocate, foster

parents, community care facility, or foster family agency having the physical custody of the minor at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a minor in the physical custody of a community care facility or foster family agency that may result in the return of the minor to the physical custody of his or her parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to such a hearing involving a minor in the physical custody of a foster parent, the foster parent may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the minor to the physical custody of his or her parents or guardians unless, by a preponderance of the evidence, it finds that the return of the child would create a substantial risk of detriment to the physical or emotional well-being of the minor. The probation department shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in any court-ordered treatment programs shall constitute prima facie evidence that return would be detrimental. In making its determination, the court shall review the probation officer's report, shall review and consider the report and recommendations of any child advocate appointed pursuant to Section 356.5, and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she cooperated and availed himself or herself of services provided; shall make appropriate findings pursuant to subdivision (a) of Section 366; and where relevant, shall order any additional services reasonably believed to facilitate the return of the minor to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the minor cannot be returned home by the next review hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the minor was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the minor had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court

shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (a) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or guardian, provided that the court may modify the terms and conditions of those services. If the child is not returned to his or her parent or guardian, the court shall determine whether reasonable services have been provided or offered to the parent or guardian which were designed to aid the parent or guardian in overcoming the problems which led to the initial removal and the continued custody of the minor. Evidence that the minor has been placed with a foster family that is eligible to adopt a minor, or has been placed in a preadoptive home, in and of itself, shall not be deemed a failure to provide or offer reasonable services. The court shall order that those services be initiated or continued.

(f) At the review hearing held 12 months after the initial dispositional hearing, the court shall order the return of the minor to the physical custody of his or her parent or guardian unless, by a preponderance of the evidence, it finds that return of the child would create a substantial risk of detriment to the physical or emotional well-being of the minor. The probation department shall have the burden of establishing that detriment. The court shall also determine whether reasonable services have been provided or offered to the parent or guardian which were designed to aid the parent or guardian to overcome the problems which led to the initial removal and continued custody of the minor. The failure of the parent or guardian to participate regularly in any court-ordered treatment programs shall constitute prima facie evidence that the return would be detrimental. In making its determination, the court shall review the probation officer's report and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she cooperated and availed himself or herself of services provided. If the minor is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If a minor is not returned to the custody of a parent or guardian at the hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for another review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or guardian. The court shall continue the case only if it finds that there is a substantial probability that the minor will be returned to the physical custody of his or her parent or guardian within six months or that reasonable services have not been provided

to the parent or guardian. The court shall inform the parent or guardian that if the minor cannot be returned home by the next review hearing, a permanent plan shall be developed at that hearing. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or guardian.

(2) Order that the minor remain in long-term foster care, if the court finds by clear and convincing evidence, based upon the evidence already presented to it, that the minor is not a proper subject for adoption and has no one willing to accept legal guardianship.

(3) Order that a hearing be held within 120 days, pursuant to Section 366.26, if there is clear and convincing evidence that reasonable services have been provided or offered to the parents. Evidence that the minor has been placed with a foster family that is eligible to adopt a minor, or has been placed in a preadoptive home, in and of itself, shall not be deemed a failure to provide or offer reasonable services.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent. The court shall continue to permit the parent to visit the minor pending the hearing unless it finds that visitation would be detrimental to the minor.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment regarding the likelihood that the minor will be adopted if parental rights are terminated. The assessment shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the minor and his or her parents since the time of placement.

(3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status and an analysis of whether any of the minor's characteristics would make it difficult to find a person willing to adopt the minor.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the minor concerning placement and the

adoption or guardianship, unless the minor's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(j) This section shall apply to minors made dependents of the court pursuant to subdivision (c) of Section 360 on or after January 1, 1989.

(k) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1999, deletes or extends that date.

SEC. 2. Section 366.21 of the Welfare and Institutions Code, as added by Section 3 of Chapter 540 of the Statutes of 1995, is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing, of their right to be present and represented by counsel.

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the probation officer to the same persons as in the original proceeding, to the minor's parent or guardian, to the foster parents, community care facility, or foster family agency having physical custody of the minor in the case of a minor removed from the physical custody of his or her parent or guardian, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the minor being recommended by the supervising agency. The notice to the foster parent shall indicate that the foster parent may attend all hearings or may submit any information he or she deems relevant to the court in writing.

(c) At least 10 calendar days prior to the hearing the probation officer shall file a supplemental report with the court regarding the services provided or offered to the parent or guardian to enable them to assume custody, the progress made, and, where relevant, the prognosis for return of the minor to the physical custody of his or her parent or guardian, and make his or her recommendation for disposition. If the recommendation is not to return the minor to a parent or guardian, the report shall specify why the return of the minor would be detrimental to the minor. The probation officer shall provide the parent or guardian with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days

prior to the hearing. In the case of a minor removed from the physical custody of his or her parent or guardian, the probation officer shall provide a summary of his or her recommendation for disposition to the counsel for the minor, any court-appointed child advocate, foster parents, community care facility, or foster family agency having the physical custody of the minor at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a minor in the physical custody of a community care facility or foster family agency that may result in the return of the minor to the physical custody of his or her parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to such a hearing involving a minor in the physical custody of a foster parent, the foster parent may file with the court a report containing its recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the minor to the physical custody of his or her parents or guardians unless, by a preponderance of the evidence, it finds that the return of the child would create a substantial risk of detriment to the physical or emotional well-being of the minor. The probation department shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in any court-ordered treatment programs shall constitute prima facie evidence that return would be detrimental. In making its determination, the court shall review the probation officer's report, shall review and consider the report and recommendations of any child advocate appointed pursuant to Section 356.5, and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she cooperated and availed himself or herself of services provided; shall make appropriate findings pursuant to subdivision (a) of Section 366; and where relevant, shall order any additional services reasonably believed to facilitate the return of the minor to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the minor cannot be returned home by the next review hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the minor was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a

felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the minor had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (a) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or guardian, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or guardian, the court shall determine whether reasonable services have been provided or offered to the parent or guardian which were designed to aid the parent or guardian in overcoming the problems which led to the initial removal and the continued custody of the minor. Evidence that the minor has been placed with a foster family that is eligible to adopt a minor, or has been placed in a preadoptive home, in and of itself, shall not be deemed a failure to provide or offer reasonable services. The court shall order that those services be initiated or continued.

(f) At the review hearing held 12 months after the initial dispositional hearing, the court shall order the return of the minor to the physical custody of his or her parent or guardian unless, by a preponderance of the evidence, it finds that return of the child would create a substantial risk of detriment to the physical or emotional well-being of the minor. The probation department shall have the burden of establishing that detriment. The court shall also determine whether reasonable services have been provided or offered to the parent or guardian which were designed to aid the parent or guardian to overcome the problems which led to the initial removal and continued custody of the minor. The failure of the parent or guardian to participate regularly in any court-ordered treatment programs shall constitute prima facie evidence that the return would be detrimental. In making its determination, the court shall review the probation officer's report and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she cooperated and availed himself or herself of services provided. If the minor is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If a minor is not returned to the custody of a parent or guardian at the hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for another review hearing, provided that the hearing shall occur within 18 months of

the date the child was originally taken from the physical custody of his or her parent or guardian. The court shall continue the case only if it finds that there is a substantial probability that the minor will be returned to the physical custody of his or her parent or guardian within six months or that reasonable services have not been provided to the parent or guardian. The court shall inform the parent or guardian that if the minor cannot be returned home by the next review hearing, a permanent plan shall be developed at that hearing. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or guardian.

(2) Order that the minor remain in long-term foster care, if the court finds by clear and convincing evidence, based upon the evidence already presented to it, that the minor is not a proper subject for adoption and has no one willing to accept legal guardianship.

(3) Order that a hearing be held within 120 days, pursuant to Section 366.26, if there is clear and convincing evidence that reasonable services have been provided or offered to the parents. Evidence that the minor has been placed with a foster family that is eligible to adopt a minor, or has been placed in a preadoptive home, in and of itself, shall not be deemed a failure to provide or offer reasonable services.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent. The court shall continue to permit the parent to visit the minor pending the hearing unless it finds that visitation would be detrimental to the minor.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment which shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the minor and his or her parents since the time of placement.

(3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the

relationship, the motivation for seeking adoption or guardianship, and a statement from the minor concerning placement and the adoption or guardianship, unless the minor's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the minor will be adopted if parental rights are terminated.

(j) This section shall apply to minors made dependents of the court pursuant to subdivision (c) of Section 360 on or after January 1, 1989.

(k) This section shall become operative January 1, 1999.

SEC. 3. Section 366.22 of the Welfare and Institutions Code, as amended by Section 4 of Chapter 540 of the Statutes of 1995, is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the court, at the 18-month hearing, shall order the return of the minor to the physical custody of his or her parent or guardian unless, by a preponderance of the evidence, it finds that return of the child would create a substantial risk of detriment to the physical or emotional well-being of the minor. The probation department shall have the burden of establishing the detriment. The failure of the parent or guardian to participate regularly in any court-ordered treatment programs shall constitute prima facie evidence that return would be detrimental. In making its determination, the court shall review the probation officer's report and shall review and consider the report and recommendations of any child advocate appointed pursuant to Section 356.6 and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she cooperated and availed himself or herself of services provided. If the minor is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

If the minor is not returned to a parent or guardian at the 18-month hearing, the court shall develop a permanent plan. The court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the minor. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it that the minor is not a proper subject for adoption and has no one willing to accept legal guardianship, the court may order that the minor remain in long-term foster care. The hearing shall be held no later than 120 days from the date of the 18-month hearing. The court shall also order termination of reunification services to the parent. The court shall continue to permit the parent to visit the minor unless it finds that visitation would be detrimental to the minor. The court shall determine whether reasonable services have been offered or provided to the parent or guardian. Evidence that

the minor has been placed with a foster family that is eligible to adopt a minor, or has been placed in a preadoptive home, in and of itself, shall not be deemed a failure to provide or offer reasonable services.

(b) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment regarding the likelihood that the minor will be adopted if parental rights are terminated. The assessment shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the minor and his or her parents or other members of his or her extended family since the time of placement. Although the extended family of each minor shall be reviewed on a case-by-case basis, "extended family" for the purposes of this paragraph shall include, but not be limited to, the minor's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status and an analysis of whether any of the minor's characteristics would make it difficult to find a person willing to adopt the minor.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the minor concerning placement and the adoption or guardianship, unless the minor's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(c) This section shall remain in effect only until January 1, 1999, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 1999, deletes or extends that date.

SEC. 4. Section 366.22 of the Welfare and Institutions Code, as amended by Section 5 of Chapter 540 of the Statutes of 1995, is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the court, at the 18-month hearing, shall order the return of the minor to the physical custody of his or her parent or guardian unless, by a preponderance of the evidence, it finds that return of the child would create a substantial risk of detriment to the physical or emotional well-being

of the minor. The probation department shall have the burden of establishing the detriment. The failure of the parent or guardian to participate regularly in any court-ordered treatment programs shall constitute prima facie evidence that return would be detrimental. In making its determination, the court shall review the probation officer's report and shall review and consider the report and recommendations of any child advocate appointed pursuant to Section 356.6 and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she cooperated and availed himself or herself of services provided. If the minor is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

If the minor is not returned to a parent or guardian at the 18-month hearing, the court shall develop a permanent plan. The court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the minor. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it that the minor is not a proper subject for adoption and has no one willing to accept legal guardianship, the court may order that the minor remain in long-term foster care. The hearing shall be held no later than 120 days from the date of the 18-month hearing. The court shall also order termination of reunification services to the parent. The court shall continue to permit the parent to visit the minor unless it finds that visitation would be detrimental to the minor. The court shall determine whether reasonable services have been offered or provided to the parent or guardian. Evidence that the minor has been placed with a foster family that is eligible to adopt a minor, or has been placed in a preadoptive home, in and of itself, shall not be deemed a failure to provide or offer reasonable services.

(b) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment which shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the minor and his or her parents or other members of his or her extended family since the time of placement. Although the extended family of each minor shall be reviewed on a case-by-case basis, "extended family" for the purposes of this paragraph shall include, but not be limited to, the minor's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the minor concerning placement and the adoption or guardianship, unless the minor's age or physical, emotional, or other condition precludes his or her meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the minor will be adopted if parental rights are terminated.

(c) This section shall become operative January 1, 1999.

CHAPTER 1029

An act to amend Sections 1206, 1206.5, and 1209 of the Business and Professions Code, relating to clinical laboratories.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 1206 of the Business and Professions Code is amended to read:

1206. (a) For the purposes of this chapter the following definitions are applicable:

(1) "Biological specimen" means any material that is derived from the human body.

(2) "Blood electrolyte analysis" means the measurement of electrolytes in a blood specimen by means of ion selective electrodes on instruments specifically designed and manufactured for blood gas and acid-base analysis.

(3) "Blood gas analysis" means a clinical laboratory test or examination that deals with the uptake, transport, and metabolism of oxygen and carbon dioxide in the human body.

(4) "Clinical laboratory test or examination" means the detection, identification, measurement, evaluation, correlation, monitoring, and reporting of any particular analyte, entity, or substance within a biological specimen for the purpose of obtaining scientific data which may be used as an aid to ascertain the presence, progress, and source of a disease or physiological condition in a human being, or

used as an aid in the prevention, prognosis, monitoring, or treatment of a physiological or pathological condition in a human being, or for the performance of nondiagnostic tests for assessing the health of an individual.

(5) "Clinical laboratory science" means any of the sciences or scientific disciplines used to perform a clinical laboratory test or examination.

(6) "Clinical laboratory practice" means the application of clinical laboratory sciences or the use of any means that applies the clinical laboratory sciences within or outside of a licensed or registered clinical laboratory. Clinical laboratory practice includes consultation, advisory, and other activities inherent to the profession.

(7) "Clinical laboratory" means any place used, or any establishment or institution organized or operated, for the performance of clinical laboratory tests or examinations or the practical application of the clinical laboratory sciences. That application may include any means that applies the clinical laboratory sciences.

(8) "Direct and constant supervision" means personal observation and critical evaluation of the activity of unlicensed laboratory personnel by a physician and surgeon, or by a person licensed under this chapter other than a trainee, during the entire time that the unlicensed laboratory personnel are engaged in the duties specified in Section 1269.

(9) "Location" means either a street and city address, or a site or place within a street and city address, where any of the clinical laboratory sciences or scientific disciplines are practiced or applied, or where any clinical laboratory tests or examinations are performed.

(10) "Physician office laboratory" means a clinical laboratory that is licensed or registered under Section 1265, and that is either: (A) a clinical laboratory that is owned and operated by a partnership or professional corporation that performs clinical laboratory tests or examinations only for patients of five or fewer physicians and surgeons or podiatrists who are shareholders, partners, or employees of the partnership or professional corporation that owns and operates the clinical laboratory; or (B) a clinical laboratory that is owned and operated by an individual licensed physician and surgeon or a podiatrist, and that performs clinical laboratory tests or examinations only for patients of the physician and surgeon or podiatrist who owns and operates the clinical laboratory.

(11) "Public health laboratory" means a laboratory that is operated by a city or county in conformity with Chapter 7 (commencing with Section 1000) of Part 2 of Division 1 of the Health and Safety Code and the regulations adopted thereunder.

(12) "Specialty" means histocompatibility, microbiology, diagnostic immunology, chemistry, hematology, immunohematology, pathology, genetics, or other specialty specified by regulation adopted by the department.

(13) "Subspecialty" for purposes of microbiology, means bacteriology, mycobacteriology, mycology, parasitology, virology, molecular biology, and serology for diagnosis of infectious diseases, or other subspecialty specified by regulation adopted by the department; for purposes of diagnostic immunology, means syphilis serology, general immunology, or other subspecialty specified by regulation adopted by the department; for purposes of chemistry, means routine chemistry, clinical microscopy, endocrinology, toxicology, or other subspecialty specified by regulation adopted by the department; for purposes of immunohematology, means ABO/Rh Type and Group, antibody detection for transfusion, antibody detection nontransfusion, antibody identification, compatibility, or other subspecialty specified by regulation adopted by the department; for pathology, means tissue pathology, oral pathology, diagnostic cytology, or other subspecialty specified by regulation adopted by the department; for purposes of genetics, means molecular biology related to the diagnosis of human genetic abnormalities, cytogenetics, or other subspecialty specified by regulation adopted by the department.

(14) "Direct and responsible supervision" means both of the following:

(A) Personal observation and critical evaluation of the activity of a trainee by a physician and surgeon, or by a person licensed under this chapter other than a trainee, during the entire time that the trainee is performing clinical laboratory tests or examinations.

(B) Personal review by the physician and surgeon or the licensed person of all results of clinical laboratory testing or examination performed by the trainee for accuracy, reliability, and validity before the results are reported from the laboratory.

(15) "Licensed laboratory" means a clinical laboratory licensed pursuant to paragraph (1) of subdivision (a) of Section 1265.

(16) "Registered laboratory" means a clinical laboratory registered pursuant to paragraph (2) of subdivision (a) of Section 1265.

(17) "Point-of-care laboratory testing device" means a portable laboratory testing instrument to which the following applies:

(A) It is used within the proximity of the patient for whom the test or examination is being conducted.

(B) It is used in accordance with the patient test management system, the quality control program, and the comprehensive quality assurance program established and maintained by the laboratory pursuant to paragraph (2) of subdivision (d) of Section 1220.

(C) It meets the following criteria:

(i) Performs clinical laboratory tests or examinations classified as waived or of moderate complexity under CLIA.

(ii) Performs clinical laboratory tests or examinations on biological specimens that require no preparation after collection.

(iii) Provides clinical laboratory tests or examination results without calculation or discretionary intervention by the testing personnel.

(iv) Performs clinical laboratory tests or examinations without the necessity for testing personnel to perform calibration or maintenance, except resetting pursuant to the manufacturer's instructions or basic cleaning.

(18) "Analyte" means the substance or constituent being measured including, but not limited to, glucose, sodium, or theophyline, or any substance or property whose presence or absence, concentration, activity, intensity, or other characteristics are to be determined.

(b) Nothing in this chapter shall restrict, limit, or prevent any person licensed to provide health care services under the laws of this state, including, but not limited to, licensed physicians and surgeons, and registered nurses, from practicing the profession or occupation for which he or she is licensed.

(c) Nothing in this chapter shall authorize any person to perform or order health care services, or utilize the results of the clinical laboratory test or examination, unless the person is otherwise authorized to provide that care or utilize the results. The inclusion of a person in Section 1206.5 for purposes of performing a clinical laboratory test or examination shall not be interpreted to authorize a person, who is not otherwise authorized, to perform venipuncture, arterial puncture, or skin puncture.

SEC. 2. Section 1206.5 of the Business and Professions Code is amended to read:

1206.5. (a) Notwithstanding subdivision (b) of Section 1206, no person shall perform a clinical laboratory test or examination classified as waived under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory director, as described in Section 1209, including, but not limited to, documentation by the laboratory director of the adequacy of the qualifications and competency of the personnel, and the test is performed by any of the following persons:

(1) A licensed physician and surgeon holding a M.D. or D.O. degree.

(2) A licensed podiatrist or a licensed dentist when the results of the tests can be lawfully utilized within his or her practice.

(3) A person licensed under this chapter to engage in clinical laboratory practice or to direct a clinical laboratory.

(4) A person authorized to perform tests pursuant to a certificate issued under Chapter 7 (commencing with Section 1000) of Part 2 of Division 1 of the Health and Safety Code.

(5) A licensed physician assistant when authorized by a supervising physician and surgeon in accordance with Section 3502 or Section 3535.

(6) A person licensed under Chapter 6 (commencing with Section 2700).

(7) A person licensed under Chapter 6.5 (commencing with Section 2840).

(8) A perfusionist when authorized by and performed in compliance with Section 2590.

(9) A respiratory care practitioner when authorized by and performed in compliance with Chapter 8.3 (commencing with Section 3700).

(10) A medical assistant, as defined in Section 2069, when the waived test is performed pursuant to a specific authorization meeting the requirements of Section 2069.

(11) A pharmacist, when ordering drug therapy-related laboratory tests in compliance with subparagraph (B) of paragraph (4) of, or clause (ii) of subparagraph (A) of paragraph (5) of, subdivision (c) of Section 4046.

(12) Other health care personnel providing direct patient care.

(b) Notwithstanding subdivision (b) of Section 1206, no person shall perform clinical laboratory tests or examinations classified as of moderate complexity under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory director, as described in Section 1209, including, but not limited to, documentation by the laboratory director of the adequacy of the qualifications and competency of the personnel, and the test is performed by any of the following persons:

(1) A licensed physician and surgeon holding a M.D. or D.O degree.

(2) A licensed podiatrist or a licensed dentist when the results of the tests can be lawfully utilized within his or her practice.

(3) A person licensed under this chapter to engage in clinical laboratory practice or to direct a clinical laboratory.

(4) A person authorized to perform tests pursuant to a certificate issued under Chapter 7 (commencing with Section 1000) of Part 2 of Division 1 of the Health and Safety Code.

(5) A licensed physician assistant when authorized by a supervising physician and surgeon in accordance with Section 3502 or Section 3535.

(6) A person licensed under Chapter 6 (commencing with Section 2700).

(7) A perfusionist when authorized by and performed in compliance with Section 2590.

(8) A respiratory care practitioner when authorized by and performed in compliance with Chapter 8.3 (commencing with Section 3700).

(9) A person performing nuclear medicine technology when authorized by and performed in compliance with Chapter 7.2 (commencing with Section 25625) of Division 20 of the Health and Safety Code.

(10) Any person when performing blood gas analysis in compliance with Section 1245.

(11) (A) A person certified as an "Emergency Medical Technician II" or paramedic pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code while providing prehospital medical care, a person licensed as a psychiatric technician under Chapter 10 (commencing with Section 4500) of Division 2, as a vocational nurse pursuant to Chapter 6.5 (commencing with Section 2840) of Division 2, or as a midwife licensed pursuant to Article 24 (commencing with Section 2505) of Chapter 5 of Division 2, or certified by the department pursuant to Division 5 (commencing with Section 70001) of Title 22 of the California Code of Regulations as a nurse assistant or a home health aide, who provides direct patient care, so long as the person is performing the test as an adjunct to the provision of direct patient care by the person, is utilizing a point-of-care laboratory testing device at a site for which a laboratory license or registration has been issued, meets the minimum clinical laboratory education, training, and experience requirements set forth in regulations adopted by the department, and has demonstrated to the satisfaction of the laboratory director that he or she is competent in the operation of the point-of-care laboratory testing device for each analyte to be reported.

(B) Prior to being authorized by the laboratory director to perform laboratory tests or examinations, testing personnel identified in subparagraph (A) shall participate in a preceptor program until they are able to perform the clinical laboratory tests or examinations authorized in this section with results that are deemed accurate and skills that are deemed competent by the preceptor. For the purposes of this section, a "preceptor program" means an organized system that meets regulatory requirements in which a preceptor provides and documents personal observation and critical evaluation, including review of accuracy, reliability, and validity, of laboratory testing performed.

(12) Any other person within a physician office laboratory when the test is performed under the supervision of the patient's physician and surgeon or podiatrist who shall be accessible to the laboratory to provide onsite, telephone, or electronic consultation as needed, and shall: (A) ensure that the person is performing test methods as required for accurate and reliable tests; and (B) have personal knowledge of the results of the clinical laboratory testing or examination performed by that person before the test results are reported from the laboratory.

(13) A pharmacist, when ordering drug therapy-related laboratory tests in compliance with subparagraph (B) of paragraph (4) of, or clause (ii) of subparagraph (A) of paragraph (5) of, subdivision (c) of Section 4046.

(c) Notwithstanding subdivision (b) of Section 1206, no person shall perform clinical laboratory tests or examinations classified as of high complexity under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory director, as described in Section 1209, including, but not limited to, documentation by the laboratory director of the adequacy of the qualifications and competency of the personnel, and the test is performed by any of the following persons:

(1) A licensed physician and surgeon holding a M.D. or D.O. degree.

(2) A licensed podiatrist or a licensed dentist when the results of the tests can be lawfully utilized within his or her practice.

(3) A person licensed under this chapter to engage in clinical laboratory practice or to direct a clinical laboratory when the test or examination is within a specialty or subspecialty authorized by the person's licensure.

(4) A person authorized to perform tests pursuant to a certificate issued under Chapter 7 (commencing with Section 1000) of Part 2 of Division 1 of the Health and Safety Code when the test or examination is within a specialty or subspecialty authorized by the person's certification.

(5) A licensed physician assistant when authorized by a supervising physician and surgeon in accordance with Section 3502 or Section 3535.

(6) A perfusionist when authorized by and performed in compliance with Section 2590.

(7) A respiratory care practitioner when authorized by and performed in compliance with Chapter 8.3 (commencing with Section 3700).

(8) A person performing nuclear medicine technology when authorized by and performed in compliance with Chapter 7.2 (commencing with Section 25625) of Division 20 of the Health and Safety Code.

(9) Any person when performing blood gas analysis in compliance with Section 1245.

(10) Any other person within a physician office laboratory when the test is performed under the onsite supervision of the patient's physician and surgeon or podiatrist who shall: (A) ensure that the person is performing test methods as required for accurate and reliable tests; and (B) have personal knowledge of the results of clinical laboratory testing or examination performed by that person before the test results are reported from the laboratory.

(d) Clinical laboratory examinations classified as physician-performed microscopy under CLIA may be performed by a licensed physician and surgeon holding a M.D. or D.O. degree.

SEC. 3. Section 1209 of the Business and Professions Code is amended to read:

1209. (a) As used in this chapter, "laboratory director" means any person who is a duly licensed physician and surgeon, or is licensed to direct a clinical laboratory under this chapter and who substantially meets the laboratory director qualifications under CLIA for the type and complexity of tests being offered by the laboratory. The laboratory director, if qualified under CLIA, may perform the duties of the technical consultant, technical supervisor, clinical consultant, general supervisor, and testing personnel, or delegate these responsibilities to persons qualified under CLIA. If the laboratory director reapportions performance of those responsibilities or duties, he or she shall remain responsible for ensuring that all those duties and responsibilities are properly performed.

(b) (1) The laboratory director is responsible for the overall operation and administration of the clinical laboratory, including administering the technical and scientific operation of a clinical laboratory, the selection and supervision of procedures, the reporting of results, and active participation in its operations to the extent necessary to assure compliance with this act and CLIA. He or she shall be responsible for the proper performance of all laboratory work of all subordinates and shall employ a sufficient number of laboratory personnel with the appropriate education and either experience or training to provide appropriate consultation, properly supervise and accurately perform tests, and report test results in accordance with the personnel qualifications, duties, and responsibilities described in CLIA and this chapter.

(2) Where a point-of-care laboratory testing device is utilized and provides results for more than one analyte, the testing personnel may perform and report the results of all tests ordered for each analyte for which he or she has been found by the laboratory director to be competent to perform and report.

(c) As part of the overall operation and administration, the laboratory director of a registered laboratory shall document the adequacy of the qualifications (educational background, training, and experience) of the personnel directing and supervising the laboratory and performing the laboratory test procedures and examinations. In determining the adequacy of qualifications, the laboratory director shall comply with any regulations adopted by the department that specify the minimum qualifications for personnel, in addition to any CLIA requirements relative to the education or training of personnel.

(d) As part of the overall operation and administration, the laboratory director of a licensed laboratory shall do all of the following:

(1) Ensure that all personnel, prior to testing biological specimens, have the appropriate education and experience, receive the appropriate training for the type and complexity of the services offered, and have demonstrated that they can perform all testing

operations reliably to provide and report accurate results. In determining the adequacy of qualifications, the laboratory director shall comply with any regulations adopted by the department that specify the minimum qualifications for, and the type of procedures that may be performed by, personnel in addition to any CLIA requirements relative to the education or training of personnel. Any regulations adopted pursuant to this section that specify the type of procedure that may be performed by testing personnel shall be based on the skills, knowledge, and tasks required to perform the type of procedure in question.

(2) Ensure that policies and procedures are established for monitoring individuals who conduct preanalytical, analytical, and postanalytical phases of testing to assure that they are competent and maintain their competency to process biological specimens, perform test procedures, and report test results promptly and proficiently, and, whenever necessary, identify needs for remedial training or continuing education to improve skills.

(3) Specify in writing the responsibilities and duties of each individual engaged in the performance of the preanalytic, analytic, and postanalytic phases of clinical laboratory tests or examinations, including which clinical laboratory tests or examinations the individual is authorized to perform, whether supervision is required for the individual to perform specimen processing, test performance, or results reporting, and whether consultant, supervisor, or director review is required prior to the individual reporting patient test results.

(e) The competency and performance of staff of a licensed laboratory shall be evaluated and documented by the laboratory director, or by a person who qualifies as a technical consultant or a technical supervisor under CLIA depending on the type and complexity of tests being offered by the laboratory.

(1) The procedures for evaluating the competency of the staff shall include, but are not limited to, all of the following:

(A) Direct observations of routine patient test performance, including patient preparation, if applicable, and specimen handling, processing, and testing.

(B) Monitoring the recording and reporting of test results.

(C) Review of intermediate test results or worksheets, quality control records, proficiency testing results, and preventive maintenance records.

(D) Direct observation of performance of instrument maintenance and function checks.

(E) Assessment of test performance through testing previously analyzed specimens, internal blind testing samples, or external proficiency testing samples.

(F) Assessment of problem solving skills.

(2) Evaluation and documentation of staff competency and performance shall occur at least semiannually during the first year an

individual tests biological specimens. Thereafter, evaluations shall be performed at least annually unless test methodology or instrumentation changes, in which case, prior to reporting patient test results, the individual's performance shall be reevaluated to include the use of the new test methodology or instrumentation.

(f) The laboratory director of each clinical laboratory of an acute care hospital shall be a physician and surgeon who is a qualified pathologist, except as follows:

(1) If a qualified pathologist is not available, a physician and surgeon or a clinical laboratory bioanalyst qualified as a laboratory director under subdivision (a) may direct the laboratory. However, a qualified pathologist shall be available for consultation at suitable intervals to ensure high quality service.

(2) If there are two or more clinical laboratories of an acute care hospital, those additional clinical laboratories that are limited to the performance of blood gas analysis, blood electrolyte analysis, or both may be directed by a physician and surgeon qualified as a laboratory director under subdivision (a), irrespective of whether a pathologist is available.

As used in this subdivision, a qualified pathologist is a physician and surgeon certified or eligible for certification in clinical or anatomical pathology by the American Board of Pathology or the American Osteopathic Board of Pathology.

(g) Subdivision (f) does not apply to any director of a clinical laboratory of an acute care hospital acting in that capacity on or before January 1, 1988.

CHAPTER 1030

An act to add Section 2077 to the Business and Professions Code, relating to physician assistants.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 2077 is added to the Business and Professions Code, to read:

2077. (a) Notwithstanding any other provision of law, a physician and surgeon may delegate various orthopaedic medical tasks to individuals who have completed training as orthopaedic physician assistants and who are working under the supervision and direction of a physician and surgeon. Those assistants who perform only those tasks which may under existing law be so delegated shall not be required to be licensed as physician assistants under Chapter 7.7 (commencing with Section 3500).

(b) As used in this section, "orthopaedic physician assistant" means an individual who meets all of the following requirements:

(1) Successful completion of training as an orthopaedic physician assistant from an approved California orthopaedic physician assistant's program in any year between 1971 and 1974, inclusive. As used in this section, "approved California orthopaedic physician assistant's program" means an orthopaedic physician assistant's course of training that has been accredited by the American Medical Association Council on Medical Education.

(2) Continuous experience as an orthopaedic physician assistant upon completion of the program described in paragraph (1), which may include experience in the United States Armed Services.

(3) Successful fulfillment of the certification requirements of the National Board for Certification of Orthopaedic Physician Assistants.

(c) Nothing in this section shall authorize any individual to hold himself or herself out as a licensed physician assistant in violation of Section 3503.

CHAPTER 1031

An act to amend Section 1954.53 of the Civil Code, relating to real property.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 1954.53 of the Civil Code is amended to read:

1954.53. (a) Notwithstanding any other provision of law, an owner of residential real property may establish the initial rental rate for a dwelling or unit, except where any of the following applies:

(1) The previous tenancy has been terminated by the owner by notice pursuant to Section 1946 or has been terminated upon a change in the terms of the tenancy noticed pursuant to Section 827, except a change permitted by law in the amount of rent or fees.

(2) The owner has otherwise agreed by contract with a public entity in consideration for a direct financial contribution or any other forms of assistance specified in Chapter 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.

(3) The initial rental rate for a dwelling or unit whose initial rental rate is controlled by an ordinance or charter provision in effect on January 1, 1995, shall not until January 1, 1999, exceed the amount calculated pursuant to subdivision (c).

(b) Subdivision (a) applies to, and includes, renewal of the initial hiring by the same tenant, lessee, authorized subtenant, or

authorized sublessee for the entire period of his or her occupancy at the rental rate established for the initial hiring.

(c) The rental rate of a dwelling or unit whose initial rental rate is controlled by ordinance or charter provision in effect on January 1, 1995, shall, until January 1, 1999, be established in accordance with this subdivision. Where the previous tenant has voluntarily vacated, abandoned, or been evicted pursuant to paragraph (2) of Section 1161 of Code of Civil Procedure, an owner of residential real property may, no more than twice, establish the initial rental rate for a dwelling or unit in an amount that is no greater than 15 percent more than the rental rate in effect for the immediately preceding tenancy or in an amount that is 70 percent of the prevailing market rent for comparable units, whichever amount is greater.

The initial rental rate established pursuant to this subdivision shall not be deemed to substitute for or replace increases in rental rates otherwise authorized pursuant to law.

(d) Nothing in this section or any other provision of law shall be construed to preclude express establishment in a lease or rental agreement of the rental rates to be applicable in the event the rental unit subject thereto is sublet, and nothing in this section shall be construed to impair the obligations of contracts entered into prior to January 1, 1996.

Where the original occupant or occupants who took possession of the dwelling or unit pursuant to the rental agreement with the owner no longer permanently reside there, an owner may increase the rent by any amount allowed by this section to a lawful sublessee or assignee who did not reside at the dwelling or unit prior to January 1, 1996.

This subdivision shall not apply to partial changes in occupancy of a dwelling or unit where one or more of the occupants of the premises, pursuant to the agreement with the owner provided for above, remains an occupant in lawful possession of the dwelling or unit, or where a lawful sublessee or assignee who resided at the dwelling or unit prior to January 1, 1996, remains in possession of the dwelling or unit. Nothing contained in this section shall be construed to enlarge or diminish an owner's right to withhold consent to a sublease or assignment.

Acceptance of rent by the owner shall not operate as a waiver or otherwise prevent enforcement of a covenant prohibiting sublease or assignment or as a waiver of an owner's rights to establish the initial rental rate unless the owner has received written notice from the tenant that is party to the agreement and thereafter accepted rent.

(e) Nothing in this section shall be construed to affect any authority of a public entity that may otherwise exist to regulate or monitor the grounds for eviction.

(f) This section shall not apply to any dwelling or unit which contains serious health, safety, fire, or building code violations, excluding those caused by disasters, for which a citation has been

issued by the appropriate governmental agency and which has remained unabated for six months or longer preceding the vacancy.

SEC. 2. No reimbursement shall be made from the State Mandates Claims Fund pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code for costs mandated by the state pursuant to this act. It is recognized, however, that a local agency or school district may pursue any remedies to obtain reimbursement available to it under Part 7 (commencing with Section 17500) and any other provisions of law.

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

CHAPTER 1032

An act to add Sections 14669.16 and 15817.5 to the Government Code, relating to state property.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 14669.16 is added to the Government Code, to read:

14669.16. (a) The Director of General Services, as agent for the Health and Welfare Agency Data Center, may acquire the facilities currently leased and occupied by the Health and Welfare Agency Data Center at 3301 S Street and 1651 Alhambra Boulevard in the City of Sacramento, together with any other equipment, improvements, betterments, and facilities related to those facilities.

(b) The Director of General Services may enter into option, purchase, lease-purchase, or lease with an option to purchase agreements upon the terms and conditions that are necessary and determined by the director to be in the best interest of the state in connection with the acquisition.

(c) The Director of General Services may enter into any other agreements, including, without limitation, indentures, trust agreements, continuing disclosure agreements, official or public disclosure documents, or other documents necessary for the financing of the acquisition by, without limitation, a joint powers authority or agency, a local or other governmental entity, private nonprofit business entity, or other business entity whether through the issuance of tax exempt lease revenue bonds, certificates of participation, negotiable notes, or other forms of indebtedness lawfully issued within the power of the agency or entity.

(d) In connection with the acquisition authorized in subdivision (a), the Treasurer shall be the agent for the sale of any financing involving the issuance of bonds, certificates of participation, or other form of indebtedness that are payable from payments made in connection with any lease.

(e) The facilities to be acquired by the Director of General Services, as agent for the Health and Welfare Agency Data Center, shall be and remain under the jurisdiction and control of, and be maintained and operated by, the Health and Welfare Agency Data Center during the term of any lease executed as security for bonds or other evidence of indebtedness. Upon payment in full of any bonds used to finance the acquisition, title to the facilities shall be transferred to the Director of the Health and Welfare Agency Data Center.

(f) Director of General Services shall, not later than 45 days prior to entering into any agreement to acquire facilities at 3301 S Street and 1651 Alhambra Boulevard in the City of Sacramento, notify the Chairperson of the Joint Legislative Budget Committee of the pending agreement, including the information on current and future costs. It is the intent of the Legislature that the Joint Legislative Budget Committee hold a hearing on the pending agreement.

SEC. 2. Section 15817.5 is added to the Government Code, to read:

15817.5. (a) Revenue bonds, negotiable notes, including, without limitation, commercial paper and negotiable bond anticipation notes, may be issued by the State Public Works Board pursuant to the State Building Construction Act of 1955, as that act has been, or may in the future be, amended (Part 10b (commencing with Section 15800)) to finance the acquisition of the facilities and any other equipment, improvements, betterments, and facilities related to the acquisition for the use and occupancy of the Health and Welfare Agency Data Center as described in subdivision (a) of Section 14669.16.

(b) (1) The amount of revenue bonds, negotiable notes, commercial paper, and negotiable bond anticipation notes to be sold shall equal the cost of acquisition, including the amount necessary to pay financing costs, interest during construction, and a reasonable reserve. Acquisition costs shall not exceed twenty-four million dollars ($24,000,000).

(2) Notwithstanding Section 13332.11, the State Public Works Board may authorize the augmentation of the amount authorized pursuant to this subdivision by up to 10 percent of the amount specifically authorized.

(c) The net present value of the cost to acquire and operate the facilities authorized by subdivision (a) may not exceed the net present value of the cost to lease and operate an equivalent amount of comparable office space, including the present facilities, over the same time period. The Department of General Services shall

perform this analysis, and shall obtain interest rates, discount rates, and Consumer Price Index figures from the Treasurer.

(d) The State Public Works Board may borrow funds for project costs from the Pooled Money Investment Account pursuant to Sections 16312 and 16313. In the event the bonds authorized for the project are not sold, the Health and Welfare Agency Data Center shall commit a sufficient amount of its budget to repay any loans made for the project from the Pooled Money Investment Account.

CHAPTER 1033

An act to amend Section 22511.55 of, and to add Section 22511.58 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 22511.55 of the Vehicle Code is amended to read:

22511.55. (a) (1) Any disabled person or disabled veteran may apply to the department for the issuance of a distinguishing placard. The placard may be used in lieu of the special identification license plate or plates issued under Section 5007 for parking purposes described in Section 22511.5 when suspended from the rear view mirror or, if there is no rear view mirror, when displayed on the dashboard of a vehicle. It is the intent of the Legislature to encourage the use of these distinguishing placards because they provide law enforcement officers with a more readily recognizable symbol for distinguishing vehicles qualified for the parking privilege. The placard shall be the size and color determined by the department, shall bear the International Symbol of Access adopted pursuant to Section 3 of Public Law 100-641, commonly known as the "wheelchair symbol." The department shall incorporate instructions for the lawful use of a placard, and a summary of the penalties for the unlawful use of a placard, into the identification card issued to the placard owner.

(2) (A) The department may establish procedures for the issuance and renewal of the placards. The placards shall have a fixed expiration date of June 30 every two years. Whenever any application for a placard is submitted to the department on or after January 1 of the year of expiration, the fee shall be for the current and subsequent renewal period.

(B) As used in this section, "year" means the period between the inclusive dates of July 1 through June 30.

(C) Prior to the end of each year, the department shall, for the most current three years available, compare its record of disability placards issued against the records of the Bureau of Vital Statistics of the State Department of Health Services, or its successor, and withhold any renewal notices that otherwise would have been sent, for any placard holders identified as deceased.

(3) The fee for an original application or renewal application is six dollars ($6).

(4) Except as provided in paragraph (5), no person is eligible for more than one placard at any time.

(5) Organizations and agencies involved in the transportation of disabled persons or disabled veterans may apply for a placard for each vehicle used for the purpose of transporting disabled persons or disabled veterans.

(b) Prior to issuing any disabled person or disabled veteran an original distinguishing placard, the department shall require the applicant to submit a certificate signed by the physician or surgeon substantiating the disability, unless the applicant's disability is readily observable and uncontested. The disability of any person who has lost, or has lost use of, one or more lower extremities or both hands, or who has significant limitation in the use of lower extremities, may also be certified by a licensed chiropractor. The blindness of any applicant shall be certified by a licensed physician or surgeon who specializes in diseases of the eye or a licensed optometrist. The physician or person certifying the qualifying disability shall provide a full description of the illness or disability on the form submitted to the department.

The department shall maintain in its records all information on an applicant's certification of permanent disability and shall make such information available to eligible law enforcement or parking control agencies upon a request pursuant to Section 22511.58.

(c) (1) Any person who has been issued a distinguishing placard pursuant to subdivision (a) may apply to the department for a substitute placard without recertification of eligibility, if that placard has been lost or stolen.

(2) The fee for a substitute placard issued pursuant to paragraph (1) is six dollars ($6).

(d) The distinguishing placard shall be returned to the department not later than 60 days after the death of the disabled person or disabled veteran to whom the placard was issued.

SEC. 2. Section 22511.58 is added to the Vehicle Code, to read:

22511.58. (a) Upon a request to the department by a local public law enforcement agency or local agency responsible for the administration or enforcement of parking regulations, the department shall make available to the requesting agency any information contained in a physician's certificate submitted to the department as part of the application for a disabled person's parking privileges, substantiating the disability of a person applying for or

who has been issued a parking placard pursuant to Section 22511.55. The department shall not provide the information specified in this subdivision to any private or other third-party parking citation processing agency.

(b) Local authorities may establish a review board or panel, which shall include a qualified physician or medical authority, for purposes of reviewing information contained in the applications for special parking privileges and the certification of qualifying disabilities for persons residing within the jurisdiction of the local authority. Any findings or determinations by a review board or panel under this section indicating that an application or certification is fraudulent or lacks proper certification may be transmitted to the department or other appropriate authorities for further review and investigation.

CHAPTER 1034

An act to amend Section 1765.1 of the Insurance Code, relating to insurance.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 1765.1 of the Insurance Code is amended to read:

1765.1. No surplus line broker shall place any coverage with a nonadmitted insurer unless the insurer is domiciled in the Republic of Mexico and the placement covers only liability arising out of the ownership, maintenance, or use of a motor vehicle, aircraft, or boat in the Republic of Mexico, or, at the time of placement, the nonadmitted insurer:

(a) (1) Has established its financial stability, reputation, and integrity, for the class of insurance the broker proposes to place, by satisfactory evidence submitted to the commissioner through a surplus line broker.

(2) (A) Has capital and surplus that together total at least fifteen million dollars ($15,000,000). "Capital" shall be as defined in Section 36. "Surplus" shall be defined as assets exceeding the sum of liabilities for losses reported, expenses, taxes, and all other indebtedness and reinsurance of outstanding risks as provided by law and paid-in capital in the case of an insurer issuing or having outstanding shares of capital stock. The type of assets to be used in calculating capital and surplus shall be as follows: at least fifteen million dollars ($15,000,000) shall be in the form of cash, or securities of the same character and quality as specified in Sections 1170 to 1182, inclusive, or in readily marketable securities listed on regulated United States' national or

principal regional securities exchanges. The remaining assets shall be in the form just described, or in the form of investments of substantially the same character and quality as described in Sections 1190 to 1202, inclusive. In calculating capital and surplus under this section, the term "same character and quality" shall permit, but not require, the commissioner to approve assets maintained in accordance with the laws of another state or country. The commissioner shall be guided by any limitations, restrictions, or other requirements of this code or the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual in determining whether assets substantially similar to those described in Sections 1190 to 1202, inclusive, qualify. The commissioner shall retain the discretion to disapprove or disallow any asset that is not of a sound quality, or that he or she deems to create an unacceptable risk of loss to the insurer or to policyholders. Securities specifically valued by the National Association of Insurance Commissioners Securities Valuation Office shall be presumed readily marketable absent evidence to the contrary. Letters of credit will not qualify as assets in the calculation of surplus. If less than fifteen million dollars ($15,000,000), the commissioner has affirmatively found that the capital and surplus is adequate to protect California policyholders. The commissioner shall consider, on determining whether to make this finding, factors such as quality of management, the capital and surplus of any parent company, the underwriting profit and investment income trends, and the record of claims payment and claims handling practices of the nonadmitted insurer, or

(B) In the case of an "Insurance Exchange" created and authorized under the laws of individual states, maintains capital and surplus of not less than fifty million dollars ($50,000,000) in the aggregate. "Capital" shall be as defined in Section 36. "Surplus" shall be defined as assets exceeding the sum of liabilities for losses reported, expenses, taxes, and all other indebtedness and reinsurance of outstanding risks as provided by law and paid-in capital in the case of an insurer issuing or having outstanding shares of capital stock. The type of assets to be used in calculating capital and surplus shall be as follows: at least fifteen million dollars ($15,000,000) shall be in the form of cash, or securities of the same character and quality as specified in Sections 1170 to 1182, inclusive, or in readily marketable securities listed on regulated United States' national or principal regional securities exchanges. The remaining assets shall be in the form just described, or in the form of investments of substantially the same character and quality as described in Sections 1190 to 1202, inclusive. In calculating capital and surplus under this section, the term "same character and quality" shall permit, but not require, the commissioner to approve assets maintained in accordance with the laws of another state or country. The commissioner shall be guided by any limitations, restrictions, or other requirements of this code or the National Association of Insurance Commissioners' Accounting

Practices and Procedures Manual in determining whether assets substantially similar to those described in Sections 1190 to 1202, inclusive, qualify. The commissioner shall retain the discretion to disapprove or disallow any asset that is not of a sound quality, or that he or she deems to create an unacceptable risk of loss to the insurer or to policyholders. Securities specifically valued by the National Association of Insurance Commissioners Securities Valuation Office shall be presumed readily marketable absent evidence to the contrary. Letters of credit will not qualify as assets in the calculation of surplus. In the case of an Insurance Exchange which maintains funds for the protection of all Insurance Exchange policyholders, each individual syndicate seeking to accept surplus line placements of risks resident, located or to be performed in this state shall maintain minimum capital and surplus of not less than six million four hundred thousand dollars ($6,400,000). Each individual syndicate shall increase the capital and surplus required by this paragraph by one million dollars ($1,000,000) each year until it attains a capital and surplus of fifteen million dollars ($15,000,000). In the case of Insurance Exchanges which do not maintain funds for the protection of all Insurance Exchange policyholders, each individual syndicate seeking to accept surplus line placement of risks resident, located or to be performed in this state shall meet the capital and surplus requirements of subparagraph (A) of this paragraph.

(C) In the case of a syndicate that is part of a group consisting of incorporated individual insurers, or a combination of both incorporated and unincorporated insurers, that at all times maintains a trust fund of not less than one hundred million dollars ($100,000,000) in a qualified United States financial institution as security to the full amount thereof for the United States surplus line policyholders and beneficiaries of direct policies of the group, including all policyholders and beneficiaries of direct policies of the syndicate, and the full balance in the trust fund is available to satisfy the liabilities of each member of the group of those syndicates, incorporated individual insurers or other unincorporated insurers, without regard to their individual contributions to that trust fund, and the trust complies with the terms of and conditions specified in paragraph (1) of subdivision (b), the syndicate is excepted from the capital and surplus requirements of subparagraph (A) of paragraph (2). The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members.

(b) (1) In addition, to be eligible as a surplus line insurer, an insurer not domiciled in one of the United States or its territories shall have in force in the United States an irrevocable trust account in a qualified United States financial institution, for the protection of United States policyholders, of not less than five million four hundred

thousand dollars ($5,400,000) and consisting of cash, securities acceptable to the commissioner which are authorized pursuant to Sections 1170 to 1182, inclusive, readily marketable securities acceptable to the commissioner which are listed on a regulated United States national or principal regional security exchange, or clean and irrevocable letters of credit acceptable to the commissioner and issued by a qualified United States financial institution. The trust agreement shall be in a form acceptable to the commissioner. The funds in the trust account may be included in any calculation of capital and surplus, except letters of credit, which shall not be included in any calculation.

(2) In the case of a syndicate seeking eligibility under subparagraph (C) of paragraph (2) of subdivision (a), the syndicate shall, in addition to the requirements of that subparagraph, at a minimum, maintain in the United States a trust account in an amount satisfactory to the commissioner that is not less than the amount required by the domiciliary state of the syndicate's trust. The trust account shall comply with the terms and conditions specified in paragraph (1) of subdivision (b).

(3) In the case of a group of incorporated insurers under common administration that maintains a trust fund of not less than one hundred million dollars ($100,000,000) in a qualified United States financial institution for the payment of claims of its United States policyholders, their assigns, or successors in interest and that complies with the terms and conditions of paragraph (1) that has continuously transacted an insurance business outside the United States for at least three years, that is in good standing with its domiciliary regulator, whose individual insurer members maintain standards and financial condition reasonably comparable to admitted insurers, that submits to this state's authority to examine its books and bears the expense of examination, and that has an aggregate policyholder surplus of ten billion dollars ($10,000,000,000), the group is excepted from the capital and surplus requirements of subdivision (a).

(c) Has caused to be provided to the commissioner the following documents:

(1) The financial documents as specified below, each showing the insurer's condition as of a date not more than 12 months prior to submission:

(A) A copy of an annual statement, prepared in the form prescribed by the NAIC. For an alien insurer, in lieu of an annual statement, a licensee may submit a form as set forth by regulation and as prepared by the insurer, and, if listed by the IID, a copy of the complete information as required in the application for listing by the IID.

(B) A copy of an audited financial report on the insurer's condition that meets the standards of paragraph (D) for foreign insurers or paragraph (E) for alien insurers.

(C) If the insurer is an alien:

(i) A certified copy of the trust agreement referenced in subdivision (b).

(ii) A verified copy of the most recent quarterly statement or list of the assets in the trust.

(D) Financial reports filed pursuant to this section by foreign insurers shall conform to the following standards:

(i) Financial documents shall be certified.

(ii) An audited financial report shall constitute a supplement to the insurer's annual statement, as required by the annual statement instructions issued by the NAIC.

(iii) An audited financial report shall be prepared by an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states where licensed to practice; and be prepared in conformity with statutory accounting practices prescribed, or otherwise permitted, by the insurance regulator of the insurer's domiciliary jurisdiction.

(iv) An audited financial report shall include information on the insurer's financial position as of the end of the most recent calendar year, and the results of its operations, cash-flows, and changes in capital and surplus for the year then ended.

(v) An audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the insurer's annual statement filed with its domiciliary jurisdiction, and presenting comparatively the amounts as of December 31 of the most recent calendar year and the amounts as of December 31 of the preceding year.

(E) Financial reports filed pursuant to this section by alien insurers shall conform to the following standards:

(i) Except as provided in clause (ii) of subparagraph (C), financial documents should be certified, if certification of a financial document is not available, the document shall be verified.

(ii) Financial documents should be expressed in United States dollars, but may be expressed in another currency, if the exchange rate for the other currency as of the date of the document is also provided.

(iii) The responses provided pursuant to subparagraph (A) of paragraph (1) on the form submitted in lieu of an annual statement should follow the most recent ISI Guide to Alien Reporting Format, "Standard Definitions of Accounting Items." Responses that do not agree with a standard definition shall be fully explained in the form.

(iv) An audited financial report shall be prepared by an independent auditor licensed as such in the insurer's domiciliary jurisdiction or in any state.

(v) An audited financial report shall be prepared in accord with either (I) Generally Accepted Auditing Standards that prescribe Generally Accepted Accounting Principles, or (II) International

Accounting Standards as published and revised from time to time by the International Auditing Guidelines published by the International Auditing Practice Committee of the International Federation of Accountants; and shall include financial statement notes and a summary of significant accounting practices.

(F) The commissioner may accept, in lieu of a document described above, any certified or verified financial or regulatory document, statement, or report if the commissioner finds that it possesses reliability and financial detail substantially equal to or greater than the document for which it is proposed to be a substitute.

(G) If one of the financial documents required to be submitted under subparagraphs (A) and (B) is dated within 12 months of submission, but the other document is not so dated, the licensee may use the outdated document if it is accompanied by a supplement. The supplement must meet the same requirements which apply to the supplemented document, and must update the outdated document to a date within the prescribed time period, preferably to the same date as the nonsupplemented document.

(2) A certified copy of the insurer's license issued by its domiciliary jurisdiction, plus a certification of good standing, certificate of compliance, or other equivalent certificate, from either that jurisdiction or, if the jurisdiction issues no such certificates, from any state where it is licensed.

(3) Information on the insurer's agent in California for service of process, including the agent's full name and address. The agent's address must include a street address where the agent can be reached during normal business hours.

(4) The complete street address, mailing address, and telephone number of the insurer's principal place of business.

(5) A certified or verified explanation, report, or other statement, from the insurance regulatory office or official of the insurer's domiciliary jurisdiction, concerning the insurer's record regarding market conduct and consumer complaints; or, if such information cannot be obtained from that jurisdiction, then such other information as the licensee can procure to demonstrate a good reputation for payment of claims and treatment of policyholders.

(6) A verified statement, from the insurer or licensee, on whether the insurer or any affiliated entity is currently known to be the subject of any order or proceeding regarding conservation, liquidation, or other receivership; or regarding revocation or suspension of a license to transact insurance in any jurisdiction; or otherwise seeking to stop the insurer from transacting insurance in any jurisdiction. The statement shall identify any such proceeding by date, jurisdiction, and relief or sanction sought; and shall attach a copy of any such order.

(7) A certified copy of the most recent report of examination or an explanation if the report is not available.

(d) (1) Has provided any additional information or documentation required by the commissioner which is relevant to the financial stability, reputation, and integrity of the nonadmitted insurer. In making a determination concerning financial stability, reputation, and integrity of the nonadmitted insurer, the commissioner shall consider any analysis, findings, or conclusion made by the National Association of Insurance Commissioners (NAIC) in its review of the insurer for purposes of inclusion on or exclusion from the list of authorized nonadmitted insurers maintained by the NAIC. The commissioner may, but shall not be required to, rely on, adopt, or otherwise accept any analyses, findings, or conclusions of the NAIC, as the commissioner deems appropriate. In the case of a syndicate seeking eligibility under subparagraph (C) of paragraph (2) of subdivision (a), the commissioner may, but shall not be required to, rely on, adopt, or otherwise accept any analyses, findings, or conclusions of any state, as the commissioner deems appropriate, as long as that state, in its method of regulation and review, meets the requirements of paragraph (2).

(2) The regulatory body of the state shall regularly receive and review the following: (A) an audited financial statement of the syndicate, prepared by a certified or chartered public accountant; (B) an opinion of a qualified actuary with regard to the syndicate's aggregate reserves for payment of losses or claims and payment of expenses of adjustment or settlement of losses or claims; (C) a certification from the qualified United States financial institution that acts as the syndicate's trustee, respecting the existence and value of the syndicate's trust fund; and (D) information concerning the syndicate's or its manager's operating history, business plan, ownership and control, experience and ability, together with any other pertinent factors, and any information indicating that the syndicate or its manager make reasonably prompt payment of claims in this state or elsewhere. The regulatory body of the state shall have the authority, either by law or through the operation of a valid and enforceable agreement, to review the syndicate's assets and liabilities and audit the syndicate's trust account, and shall exercise that authority with a frequency and in a manner satisfactory to the commissioner.

(e) Has established that:

(1) All documents required by subdivisions (c) and (d) have been filed. Each of the documents appear after review to be complete, clear, comprehensible, unambiguous, accurate, and consistent.

(2) The documents affirm that the insurer is not subject in any jurisdiction to an order or proceeding that:

(A) Seeks to stop it from transacting insurance.

(B) Relates to conservation, liquidation, or other receivership.

(C) Relates to revocation or suspension of its license.

(3) The documents affirm that the insurer has actively transacted insurance for the three years immediately preceding the filing made

under this section, unless an exemption is granted. As used in this paragraph, "insurer" does not include a syndicate of underwriting entities. The commissioner may grant an exemption if the licensee has applied for exemption and demonstrates either of the following:

(A) The insurer meets the condition for any exception set forth in subdivision (a), (b), or (c) of Section 716.

(B) If the insurer has been actively transacting insurance for at least 12 months, and the licensee demonstrates that the exemption is warranted because the insurer's current financial strength, operating history, business plan, ownership and control, management experience, and ability, together with any other pertinent factors, make three years of active insurance transaction unnecessary to establish sufficient reputation.

(4) The documents confirm that the insurer holds a license to issue insurance policies (other than reinsurance) to residents of the jurisdiction that granted the license unless an exemption is granted. The commissioner may grant an exemption if the licensee has applied for an exemption and demonstrates that the exemption is warranted because the insurer proposes to issue in California only commercial coverage, and is wholly owned and actually controlled by substantial and knowledgeable business enterprises that are its policyholders and that effectively govern the insurer's destiny in furtherance of their own business objectives.

(5) The information filed pursuant to paragraph (5) of subdivision (c) or otherwise filed with or available to the commissioner, including reports received from California policyholders, shall indicate that the insurer makes reasonably prompt payment of claims in this state or elsewhere.

(6) The information available to the commissioner shall not indicate that the insurer offers in California a licensee products or rates that violate any provision of this code.

(f) Has been placed on the list of eligible surplus line insurers by the commissioner. The commissioner shall establish a list of all surplus line insurers that have met the requirements of subdivisions (a) to (e), inclusive, and shall publish a master list at least semiannually. Any insurer receiving approval as an eligible surplus line insurer shall be added by addendum to the list at the time of approval, and shall be incorporated into the master list at the next date of publication. If an insurer appears on the most recent list, it shall be presumed that the insurer is an eligible surplus line insurer, unless the commissioner or his or her designee has mailed or causes to be mailed notice to all surplus line brokers and special lines' surplus line brokers that the commissioner has withdrawn the insurer's eligibility. Upon receipt of notice, the surplus line broker or special lines' surplus line broker shall make no further placements with the insurer. Nothing in this subdivision shall limit the commissioner's discretion to withdraw an insurer's eligibility.

(g) (1) Except as provided by paragraph (2), whenever the commissioner has reasonable cause to believe, and determines after a public hearing, that any insurer on the list established pursuant to subdivision (f), (A) is in an unsound financial condition, (B) does not meet the eligibility requirements under subdivisions (a) to (e), inclusive, (C) has violated the laws of this state, or (D) without justification, or with a frequency so as to indicate a general business practice, delays the payment of just claims, the commissioner may issue an order removing the insurer from the list. Notice of hearing shall be served upon the insurer or its agent for service of process stating the time and place of the hearing and the conduct, condition, or ground upon which the commissioner would make his or her order. The hearing shall occur not less than 20 days, nor more than 30 days after notice is served upon the insurer or its agent for service of process.

(2) If the commissioner determines that an insurer's immediate removal from the list is necessary to protect the public or an insured or prospective insured of the insurer, or, in the case of an application by an insurer to be placed on the list which is being denied by the commissioner, the commissioner may issue an order pursuant to paragraph (1) without prior notice and hearing. At the time an order is served pursuant to this paragraph to an insurer on the list, the commissioner shall also issue and serve upon the insurer a statement of the reasons that immediate removal is necessary. Any order issued pursuant to this paragraph shall include a notice stating the time and place of a hearing on the order, which shall be not less than 20 days, nor more than 30 days after the notice is served.

(3) Notwithstanding paragraphs (1) and (2), in any case where the commissioner is basing a decision to remove an insurer from the list, or deny an application to be placed on the list, on the failure of the insurer or applicant to comply with, meet or maintain any of the objective criteria established by this section, or by regulation adopted pursuant to this section, the commissioner may so specify this fact in the order, and no hearing shall be required to be held on the order.

(4) Notwithstanding paragraphs (1) and (2), the commissioner may, without prior notice or hearing, remove from the list established pursuant to subdivision (f) any insurer which has failed or refused to timely provide documents required by this section, or any regulations adopted to implement this section. In the case of removal pursuant to this paragraph, the commissioner shall notify all surplus line brokers and special lines' surplus line brokers of the action.

(h) In addition to any other statements or reports required by this chapter, the commissioner may also address to any licensee a written request for full and complete information respecting the financial stability, reputation and integrity of any nonadmitted insurer with whom such licensee has dealt or proposes to deal in the transaction of insurance business. The licensee so addressed shall promptly furnish in written or printed form so much of the information

requested as he or she can produce together with a signed statement identifying the same and giving reasons for omissions, if any. After due examination of the information and accompanying statement, the commissioner may, if he or she believes it to be in the public interest, order the licensee in writing to place no further insurance business on property located or operations conducted within or on the lives of persons who are residents of this state with the nonadmitted insurer on behalf of any person. Any placement in the nonadmitted insurer made by a licensee after receipt of such order is a violation of this chapter. The commissioner may issue an order when documents submitted pursuant to subdivisions (c) and (d) do not meet the criteria of subdivisions (a) to (e), inclusive, or when the commissioner obtains documents on an insurer and the insurer does not meet the criteria of subdivisions (a) to (e), inclusive.

(i) The commissioner shall require, at least annually, the submission of records and statements as are reasonably necessary to ensure that the requirements of this section are maintained.

(j) The commissioner shall establish by regulation a schedule of fees to cover costs of administering and enforcing this chapter.

(k) (1) Insurance may be placed on a limited basis with insurers not on the list established pursuant to this section if all of the following conditions are met:

(A) The use of multiple insurers is necessary to obtain coverage for 100 percent of the risk.

(B) At least 80 percent of the risk is placed with admitted insurers or insurers that appear on the list of eligible nonadmitted insurers.

(C) The placing surplus line broker submits to the commissioner, or his or her designee, copies of all documentation relied upon by the surplus line broker to make the broker's determination that the financial stability, reputation, and integrity of the unlisted insurer or insurers, are adequate to safeguard the interest of the insured under the policy. This documentation, and any other documentation regarding the unlisted insurer requested by the commissioner, shall be submitted no more than 30 days after the insurance is placed with the unlisted insurer for the initial placement by that broker with the particular unlisted insurer, and annually thereafter for as long as the broker continues to make placements with the unlisted insurer pursuant to this paragraph.

(D) The insured has aggregate annual premiums for all risks other than workers' compensation or health coverage totaling no less than one hundred thousand dollars ($100,000).

(2) Insurance may not be placed pursuant to paragraph (1) if any of the following applies:

(A) The unlisted insurer has for any reason been objected to by the commissioner pursuant to Section 1765.1, removed from the list, or denied placement on the list.

(B) The insurance includes coverage for employer-sponsored medical, surgical, hospital, or other health or medical expense benefits payable to the employee by the insurer.

(C) The insurance is mandatory under the laws of the federal government, this state, or any political subdivision thereof, and includes any portion of limits of coverage mandated by those laws.

(D) The insured is a multiple employer welfare arrangement, as defined in Section 1002(40)(A) of Title 29 of the United States Code, or any other arrangement among two or more employers that are not under common ownership or control, which is established or maintained for the primary purpose of providing insurance benefits to the employees of two or more employers.

(E) Unlisted insurers represent a disproportionate portion of the lower layers of the coverage.

(3) Nothing in this section is intended to alter any duties of a surplus line broker pursuant to subdivision (b) of Section 1765 or other laws of this state to safeguard the interests of the insured under the policy in recommending or placing insurance with a nonadmitted insurer.

(4) Placements authorized by this subdivision are intended to provide sophisticated insurance purchasers with a means to obtain necessary commercial insurance coverage from nonadmitted insurers not listed by the commissioner in situations where it is not commercially possible to fully obtain that coverage from either admitted or listed insurers. This subdivision shall not be deemed to permit surplus line brokers to place with nonadmitted insurers common commercial or personal line coverages for insureds that can be placed with insurers that are admitted or listed pursuant to this section, whether the insured is an individual insured, or a group created primarily for the purpose of purchasing insurance.

(*l*) As used in this section:

(1) "Certified" means an originally signed or sealed statement, dated not more than 60 days before submission, made by a public official or other person, attached to a copy of a document, that attests that the copy is a true copy of the original, and that the original is in the custody of the person making the statement.

(2) "Domiciliary jurisdiction" means the state, nation, or subdivision thereof under the laws of which an insurer is incorporated or otherwise organized.

(3) "Domiciliary state of the syndicate's trust" means the state in which the syndicate's trust fund is principally maintained and administered for the benefit of the syndicate's policyholders in the United States.

(4) "IID" means the International Insurers Department.

(5) "Insurer" means (unless the context indicates otherwise) "nonadmitted" insurers that are either "foreign" or "alien" insurers, as those terms are defined in Sections 25, 27, and 1580, and syndicates whose members consist of individual incorporated insurers who are

not engaged in any business other than underwriting as a member of the group and individual unincorporated insurers, provided all the members are subject to the same level of solvency regulation and control by the group's domiciliary regulator. The term "insurer" includes all nonadmitted insurers selling insurance to or through purchasing groups as defined in the Liability Risk Retention Act of 1986 (15 U.S.C. Sec. 3901 et seq.) and the California Risk Retention Act of 1990 (Chapter 1.5 (commencing with Section 125) of Part 1 of Division 1), except insurers that are risk retention groups as defined by those acts.

(6) "ISI" means Insurance Solvency International.

(7) "Licensee" includes both surplus line brokers and special lines' surplus line brokers licensed pursuant to subdivision (b) of Section 1760.5 and Sections 1765, 1765.2, 1765.3, and 1765.4.

(8) "NAIC" means the National Association of Insurance Commissioners or its successor organization.

(9) "NAIIO" means the Nonadmitted Alien Insurer Information Office of the NAIC or its successor office.

(10) "State" means any state of the United States; the District of Columbia; a commonwealth, or a territory.

(11) "Verified" means a document or copy accompanied by an originally signed statement, dated not more than 60 days before submission, from a responsible executive or official who has authority to provide the statement and knowledge whereof he or she speaks, attesting either under oath before a notary public, or under penalty of perjury under California law, that the assertions made in the document are true.

(m) With respect to a nonadmitted insurer that is listed as an authorized surplus line insurer as of December 31, 1994, pursuant to Sections 2174.1 to 2174.14, inclusive, of Title 10 of the California Code of Regulations, this section shall not be effective until the subsequent expiration of the listing of that insurer. Nothing in the bill that amended this section during the 1994 portion of the 1993–94 Regular Session is intended to repeal or imply there is not authority to adopt, or to have adopted, or to continue in force, any regulation, or part thereof, with respect to surplus line insurance which is not clearly inconsistent with it.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative

on the same date that the act takes effect pursuant to the California Constitution.

CHAPTER 1035

An act to amend Section 655.5 of the Business and Professions Code, relating to clinical laboratory services.

[Approved by Governor September 27, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 655.5 of the Business and Professions Code is amended to read:

655.5. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division, or any clinical laboratory, or any health facility when billing for a clinical laboratory of the facility, to charge, bill, or otherwise solicit payment from any patient, client, or customer for any clinical laboratory service not actually rendered by the person or clinical laboratory or under his, her or its direct supervision unless the patient, client, or customer is apprised at the first time of the charge, billing, or solicitation of the name, address, and charges of the clinical laboratory performing the service. The first such written charge, bill, or other solicitation of payment shall separately set forth the name, address, and charges of the clinical laboratory concerned and shall clearly show whether or not the charge is included in the total of the account, bill, or charge. This subdivision shall be satisfied if the required disclosures are made to the third-party payer of the patient, client, or customer. If the patient is responsible for submitting the bill for the charges to the third-party payer, the bill provided to the patient for that purpose shall include the disclosures required by this section. This subdivision shall not apply to a clinical laboratory of a health facility or a health facility when billing for a clinical laboratory of the facility nor to a person licensed under this division or under any initiative act referred to in this division if the standardized billing form used by the facility or person requires a summary entry for all clinical laboratory charges. For purposes of this subdivision, "health facility" has the same meaning as defined in Section 1250 of the Health and Safety Code.

(b) Commencing July 1, 1994, a clinical laboratory shall provide to each of its referring providers, upon request, a schedule of fees for services provided to patients of the referring provider. The schedule shall be provided within two working days after the clinical laboratory receives the request. For the purposes of this subdivision, a "referring provider" means any provider who has referred a

patient to the clinical laboratory in the preceding six-month period. Commencing July 1, 1994, a clinical laboratory that provides a list of laboratory services to a referring provider or to a potential referring provider shall include a schedule of fees for the laboratory services listed.

(c) It is also unlawful for any person licensed under this division or under any initiative act referred to in this division to charge additional charges for any clinical laboratory service that is not actually rendered by the licensee to the patient and itemized in the charge, bill, or other solicitation of payment. This section shall not be construed to prohibit any of the following:

(1) Any itemized charge for any service actually rendered to the patient by the licensee.

(2) Any summary charge for services actually rendered to a patient by a health facility, as defined in Section 1250 of the Health and Safety Code, or by a person licensed under this division or under any initiative act referred to in this division if the standardized billing form used by the facility or person requires a summary entry for all clinical laboratory charges.

(d) This section shall not apply to any person or clinical laboratory who or which contracts directly with a health care service plan licensed pursuant to Section 1349 of the Health and Safety Code, if the services are to be provided to members of the plan on a prepaid basis and without additional charge or liability on account thereof.

(e) A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in the county jail for not more than one year, or by imprisonment in the state prison, or by a fine not exceeding ten thousand dollars ($10,000), or by both that imprisonment and fine. A second or subsequent conviction is punishable by imprisonment in the state prison.

(f) (1) Notwithstanding subdivision (e), a violation of this section by a physician and surgeon for a first offense shall be subject to the exclusive remedy of reprimand by the Medical Board of California if the transaction that is the subject of the violation involves a charge for a clinical laboratory service that is less than the charge would have been if the clinical laboratory providing the service billed a patient, client, or customer directly for the clinical laboratory service, and if that clinical laboratory charge is less than the charge listed in the clinical laboratory's schedule of fees pursuant to subdivision (b).

(2) Nothing in this subdivision shall be construed to permit a physician and surgeon to charge more than he or she was charged for the laboratory service by the clinical laboratory providing the service unless the additional charge is for service actually rendered by the physician and surgeon to the patient.

CHAPTER 1036

An act to amend Sections 1126 and 1127 of the Harbors and Navigation Code, relating to pilots.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 1126 of the Harbors and Navigation Code is amended to read:

1126. (a) Every person who does not hold a license as a pilot or as an inland pilot issued pursuant to this division, and who pilots any vessel into or out of any harbor or port of the Bay of San Francisco, San Pablo, or Suisun, or who acts as a pilot for ship movements or special operations upon the waters of any of those bays, is guilty of a misdemeanor. In addition to the fines or other penalties provided by law, the court may order that person to pay to the pilot who is entitled to pilot the vessel the amount of pilotage fees collected. No fees shall be paid for pilotage if a state-licensed pilot refuses to join the vessel under paragraph (6) of subdivision (c).

(b) Any person may also be enjoined from engaging in the pilotage prescribed by subdivision (a) by a court of competent jurisdiction.

(c) This section does not apply to any of the following persons:

(1) The master of a vessel who has relieved the pilot to ensure the safe operation of the vessel.

(2) Persons piloting vessels pursuant to the valid regulatory authority of the Port of Sacramento or the Port of Stockton.

(3) Persons piloting vessels when a pilot is not available or is unable to reach the vessel.

(4) Persons piloting vessels sailing under an enrollment, as specified in Section 1127.

(5) Persons piloting vessels pursuant to Section 1179.

(6) Persons piloting vessels when a state-licensed pilot is prevented from joining or refuses to join the vessel. However, a vessel may not hire a pilot not licensed by the state until a representative of the vessel notifies the port agent or his or her designee that the vessel will hire a pilot not licensed by the state unless a state-licensed pilot offers to join the vessel immediately. The port agent or his or her designee shall notify the executive director of the board or his or her designee that this paragraph applies.

SEC. 2. Section 1127 of the Harbors and Navigation Code is amended to read:

1127. (a) The Legislature finds and declares that it is the policy of the state to ensure the safety of persons, property, and vessels using the waters of the Bays of San Francisco, San Pablo, and Suisun and

to avoid damage to those waters and surrounding ecosystems as a result of vessel collision or damage by providing competent, efficient, and regulated pilotage for vessels required by this division to secure pilotage services.

(b) Nothing in this section shall supersede, modify, or otherwise alter pilot practices that are not safety related, including, but not limited to, the determination of rates charged for pilot services or employer-employee relationships for individuals, agencies, or organizations involved in providing pilotage services between any port of the Bays of San Francisco, San Pablo, and Suisun and any other port of the United States that is in existence on December 31, 1995, or otherwise abridge the authority of local port or harbor districts relating to pilotage in effect on December 31, 1995.

(c) The board shall continue to regulate pilotage on waters of the state as provided in this division.

(d) Every vessel sailing under a coastwise license or appropriately endorsed registry and engaged in the coasting trade between any port of the Bays of San Francisco, San Pablo, and Suisun and any other port of the United States is exempt from all pilotage charges unless a pilot or inland pilot is actually employed. Every foreign vessel and every vessel bound between a foreign port and any port of the Bays of San Francisco, San Pablo, and Suisun, and every vessel sailing under a register between any port of the Bays of San Francisco, San Pablo, and Suisun and any other port of the United States, shall use a pilot or inland pilot holding a license issued pursuant to this division, except as otherwise provided by law.

(e) Subdivision (d) does not apply to a vessel that is less than 300 gross tons and is manufactured and used for private recreation.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 1037

An act to amend Sections 1080, 3526, 4124, and 5005.1 of the Public Utilities Code, relating to public utilities.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 1080 of the Public Utilities Code is amended to read:

1080. If any provision contained in the Public Utilities Act (Part 1 (commencing with Section 201) of Division 1) applicable to highway common carriers or cement carriers, or the application thereof to any person or circumstance, is invalid for any reason, including federal preemption, the remainder of the Public Utilities Act, or the application of these provisions to other persons or circumstances, shall not be affected thereby.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 2. Section 3526 of the Public Utilities Code is amended to read:

3526. If any provision contained in this chapter, or the application thereof to any person or circumstance, is invalid for any reason, including federal preemption, the remainder of the chapter, or the application of these provisions to other persons or circumstances, shall not be affected thereby.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 3. Section 4124 of the Public Utilities Code is amended to read:

4124. If any provision contained in this chapter, or the application thereof to any person or circumstance, is invalid for any reason, including federal preemption, the remainder of the chapter, or the application of these provisions to other persons or circumstances, shall not be affected by that invalidity.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 4. Section 5005.1 of the Public Utilities Code is amended to read:

5005.1. (a) All moneys paid into the Transportation Rate Fund by highway common carriers, cement carriers, and highway permit carriers, except for moneys paid by household goods carriers, shall be used by the commission solely for the purposes of: regulating the safety and financial responsibility of carriers; licensing those carriers subject to Section 601 of Public Law 103-305; and establishing and implementing the state standard transportation practices specifically permitted by Section 601 of Public Law 103-305. This dedication of fees shall be effective for all fees paid after December 31, 1994, except

it shall not include quarterly fees based on revenues from transportation operations before January 1, 1995.

(b) Except as provided in subdivision (c), this section shall remain operative only so long as Section 601 of Public Law 103-305 is operative, and shall become inoperative on the date when Section 601 becomes inoperative or is repealed.

This section shall remain in effect only until January 1, 1998, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1998, deletes or extends that date.

SEC. 5. This act shall not become operative if Assembly Bill No. 1683 of the 1995–96 Regular Session is enacted.

CHAPTER 1038

An act to amend Section 12159 of the Public Contract Code, and to amend Sections 40000, 40706, 41802, 41820, 41821, 41822, 42000, 42244, 42414, 42415, 42443, 42520, 42601, 42603, 42650, 43030, 43601, 44002, 48027, 48657, 48676, 50000, and 50001 of, to add Sections 40063 and 41821.1 to, to repeal Sections 41770.5, 42008, 42247, 42373, 42512, 42563, 42623, 42884, 43221, and 48022 of, to repeal Article 3 (commencing with Section 42380) of Chapter 6 of Part 3 of, and Article 7 (commencing with Section 42859) of Chapter 16 of Part 3 of, Division 30 of, and to repeal and add Sections 40507 and 41821 of, the Public Resources Code, relating to solid waste, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 12159 of the Public Contract Code is amended to read:

12159. (a) If a recycled product, as defined in subdivision (a) of Section 12200, costs more than the same product made with virgin material, the state agency shall, if feasible, purchase fewer of those more costly products or apply the cost savings, if any, gained from buying other recycled products towards the purchase of those more costly products to meet the solid waste diversion goals of Section 41780.

(b) All state agencies shall, if feasible, establish purchasing practices which ensure the purchase of materials, goods, and supplies that may be recycled or reused. Each state agency shall initiate activities for the collection, separation, and recycling of recyclable materials and may appoint a recycling coordinator to assist in implementing this section.

SEC. 2. Section 40000 of the Public Resources Code is amended to read:

40000. The Legislature hereby finds and declares all of the following:

(a) In 1988, Californians disposed of over 38 million tons of solid waste, an amount which is expected to grow if existing solid waste policies are continued. This amounts to more than 1,500 pounds of waste per person living in the state, more than any other state in the country and over twice the per-capita rate of most other industrialized counties.

(b) Over 90 percent of California's solid waste currently is disposed of in landfills, some of which pose a threat to groundwater, air quality, and public health.

(c) While California will exhaust most of its remaining landfill space by the mid-1990's, there presently is no coherent state policy to ensure that the state's solid waste is managed in an effective and environmentally sound manner for the remainder of the 20th century and beyond.

(d) The amount of solid waste generated in the state coupled with diminishing landfill space and potential adverse environmental impacts from landfilling constitutes an urgent need for state and local agencies to enact and implement an aggressive new integrated waste management program.

(e) The reduction, recycling, or reuse of solid waste generated in the state will, in addition to preserving landfill capacity in California, serve to conserve water, energy, and other natural resources within this state, and to protect the state's environment.

SEC. 3. Section 40063 is added to the Public Resources Code, to read:

40063. At the request of a county with a population of less than 250,000, the board and the state water board may meet with the county to prioritize, through development and joint adoption of a five-year plan, state environmental concerns with regard to solid waste management in relation to the fiscal and staffing constraints on the county.

SEC. 4. Section 40507 of the Public Resources Code is repealed.

SEC. 5. Section 40507 is added to the Public Resources Code, to read:

40507. (a) On or before March 1 of each year, the board shall file an annual report with the Legislature highlighting significant programs or actions undertaken by the board to implement programs pursuant to this division during the prior calendar year. The report shall include, but is not limited to, the information described in subdivision (b).

(b) Commencing January 1, 1997, the board shall file annual progress reports with the Legislature covering the activities and actions undertaken by the board in the prior fiscal year. The board

shall prepare the progress reports throughout the calendar year, as determined by the board, on the following programs:

(1) The local enforcement agency program.

(2) The research and development program.

(3) The public education program.

(4) The market development program.

(5) The used oil program.

(6) The planning and local assistance program.

(7) The site cleanup program.

(c) The progress report shall specifically include, but is not limited to, all of the following information:

(1) Pursuant to paragraph (1) of subdivision (b), the status of the certification and evaluation of local enforcement agencies pursuant to Chapter 2 (commencing with Section 43200) of Part 4.

(2) Pursuant to paragraph (2) of subdivision (b), all of the following information:

(A) The results of the research and development programs established pursuant to Chapter 13 (commencing with Section 42650) of Part 3.

(B) A report on information and activities associated with the establishment of the Plastics Recycling Information Clearinghouse, pursuant to Section 42520.

(C) A report on the progress in implementing the monitoring and control program for the subsurface migration of landfill gas established pursuant to Section 43030, including recommendations, as needed, to improve the program.

(D) A report on the comparative costs and benefits of the recycling or conversion processes for waste tires funded pursuant to Chapter 17 (commencing with Section 42860) of Part 3.

(3) Pursuant to paragraph (3) of subdivision (b), all of the following information:

(A) A review of actions taken by the board to educate and inform individuals and public and private sector entities who generate solid waste on the importance of source reduction, recycling, and composting of solid waste, and recommendations for administrative or legislative actions which will inform and educate these parties.

(B) A report on the effectiveness of the public information program required to be implemented pursuant to Chapter 12 (commencing with Section 42600) of Part 3, including recommendations on administrative and legislative changes to improve the program.

(C) A report on the status and effectiveness of school district source reduction and recycling programs implemented pursuant to Chapter 12.5 (commencing with Section 42620) of Part 3, including recommendations on administrative and legislative changes to improve the program's effectiveness.

(D) A report on the effectiveness of the integrated waste management educational program and teacher training plan

implemented pursuant to Section 42603, including recommendations on administrative and legislative changes which will improve the program.

(E) A summary of available and wanted materials, a profile of the participants, and the amount of waste diverted from disposal sites as a result of the California Materials Exchange Program established pursuant to subdivision (a) of Section 42600.

(4) Pursuant to paragraph (4) of subdivision (b), all of the following information:

(A) A review of market development strategies undertaken by the board pursuant to this division to ensure that markets exist for materials diverted from solid waste facilities, including recommendations for administrative and legislative actions which will promote expansion of those markets. The recommendations shall include, but not be limited to, all of the following:

(i) Recommendations for actions to develop more direct liaisons with private manufacturing industries in the state to promote increased utilization of recycled feedstock in manufacturing processes.

(ii) Recommendations for actions which can be taken to assist local governments in the inclusion of recycling activities in county overall economic development plans.

(iii) Recommendations for actions to utilize available financial resources for expansion of recycling industry capacity.

(iv) Recommendations to improve state, local, and private industry product and material procurement practices.

(B) Development and implementation of a program to assist local agencies in the identification of markets for materials that are diverted from disposal facilities through source reduction, recycling, and composting pursuant to Section 40913.

(C) A report on the Recycling Market Development Zone Loan Program provided for in subdivision (c) of Section 42010), pursuant to subdivision (f) of Section 42010.

(D) A report on implementation of the Compost Market Program pursuant to Chapter 5 (commencing with Section 42230) of Part 3.

(E) A report on the progress in developing and implementing the comprehensive Market Development Plan, pursuant to Article 2 of Chapter 1 (commencing with Section 42005) of Part 3.

(F) The number of retreaded tires purchased by the Department of General Services during the prior fiscal year pursuant to Section 42414.

(G) The results of the study performed in consultation with the Department of General Services pursuant to Section 42416 to determine if tire retreads, procured by the department, have met all quality and performance criteria of a new tire, including any recommendations to expand, revise, or curtail the program.

(H) The number of recycled lead-acid batteries purchased during the prior fiscal year by the Department of General Services pursuant to Section 42443.

(I) A list of established price preferences for recycled paper products for the prior fiscal year pursuant to paragraph (1) of subdivision (c) of the Public Contract Code.

(J) A report on the implementation of the white office paper recovery program pursuant to Chapter 10 (commencing with Section 42560) of Part 3.

(5) Pursuant to paragraph (5) of subdivision (b), both of the following information:

(A) A report on the annual audit of the used oil recycling program established pursuant to Chapter 4 (commencing with Section 48600) of Part 7.

(B) A summary of industrial and lubricating oil sales and recycling rates, the results of programs funded pursuant to Chapter 4 (commencing with Section 48600) of Part 7, recommendations, if any, for statutory changes to the program, including changes in the amounts of the payment required by Section 48650 and the recycling incentive, and plans for present and future programs to be conducted over the next two years.

(6) Pursuant to paragraph (6) of subdivision (b), all of the following information:

(A) The development by the board of the model countywide or regional siting element and model countywide or regional agency integrated waste management plan pursuant to Section 40912, including its effectiveness in assisting local agencies.

(B) The adoption by the board of a program to provide assistance to cities, counties, or regional agencies in the development and implementation of source reduction programs pursuant to subdivision (b) of Section 40912.

(C) The development by the board of model programs and materials to assist rural counties and cities in preparing city and county source reduction and recycling elements pursuant to Section 40914.

(D) A report on the number of tires that are recycled or otherwise diverted from disposal in landfills or stockpiles.

(E) A report on the development and implementation of recommendations, with proposed implementing regulations, for providing technical assistance to counties and cities that meet criteria specified in Section 41782, so that those counties and cities will be able to meet the objectives of this division. The recommendations shall, among other things, address both of the following matters:

(i) Assistance in developing methods of raising revenue at the local level to fund rural integrated waste management programs.

(ii) Assistance in developing alternative methods of source reduction, recycling, and composting of solid waste suitable for rural local governments.

(F) A report on the status and implementation of the "Buy Recycled" program established pursuant to subdivision (d) of Section 42600, including the waste collection and recycling programs established pursuant to Sections 12164.5 and 12165 of the Public Contract Code.

(7) Pursuant to paragraph (7) of subdivision (b), a description of sites cleaned up under the Solid Waste Disposal and Codisposal Site Cleanup Program established pursuant to Article 2.5 (commencing with Section 48020) of Chapter 2 of Part 7, a description of remaining sites where there is no responsible party or the responsible party is unable or unwilling to pay for cleanup, and recommendations for any needed legislative changes.

SEC. 6. Section 40706 of the Public Resources Code is amended to read:

40706. (a) On or before January 13, 1992, the Governor, the Senate Committee on Rules, and the Speaker of the Assembly shall appoint the members of the advisory committee who shall reflect the diversity of solid waste problems that local governments face throughout the state. The appointments shall also reflect the ethnic and cultural diversity of the state.

(b) After January 1, 1995, the appointments shall also reflect the demographic diversity of the state relative to urban, suburban, and rural areas.

(c) (1) The appointments may be selected from recommendations provided by the County Supervisors Association of California, the League of California Cities, the Regional Council of Rural Counties Environmental Services Joint Powers Authority, and the Solid Waste Association of North America.

(2) A representative of the Regional Council of Rural Counties Environmental Services Joint Powers Authority may be appointed to serve as a county representative pursuant to Section 40707.

(d) Each member shall serve a two-year term, except that the first members appointed shall classify themselves by lot so that one-half serve an initial term of one year and one-half serve an initial term of two years. recommendations for any needed legislative changes.

SEC. 7. Section 41770.5 of the Public Resources Code is repealed.

SEC. 8. Section 41802 of the Public Resources Code is amended to read:

41802. (a) Within 120 days from the date of receipt of a household hazardous waste element, the board shall approve or disapprove the element.

(b) The board shall not disapprove a household hazardous waste element if the local agency preparing the element demonstrates to the board that, in implementing the household hazardous waste element, the local agency will comply with all of the following requirements:

(1) The local agency will use feasible methods to properly reduce, collect, recycle, treat, and dispose of household hazardous waste generated within its jurisdiction.

(2) The local agency will devote reasonable expenditures to the safe reduction, collection, recycling, treatment, and disposal of household hazardous waste, relative to the other expenditures required by this division, and relative to the expenditures for household hazardous waste programs which were awarded grants of funds pursuant to Section 46401 as it read on January 1, 1993.

(3) The local agency will make all reasonable efforts to inform the public of, and to encourage public participation in, the household hazardous waste program.

(4) Regardless of the number of household hazardous waste collection events held each year by a local agency, or the actual number of households served, the collection program is available for use by all households within the jurisdiction of the local agency, and provides a safe alternative for all residents within the jurisdiction of the local agency to properly and safely dispose of household hazardous waste.

(c) (1) In determining whether a local agency meets the conditions for approval of a household hazardous waste element set forth in subdivision (b), the board shall consider the geographic size and population of the city or county and the quantity of household hazardous waste generated within the jurisdiction of the city or county.

(2) The board may provide an exemption from the requirements of subdivision (b) if a city, county, or a regional agency demonstrates, and the board concurs, that compliance with those requirements is not feasible due to the small geographic size of the city, county, or regional agency and the small quantity of solid waste generated within the city, county, or regional agency. The board may establish alternative, but less comprehensive, requirements for those cities, counties, or regional agencies to ensure compliance with this division.

SEC. 9. Section 41820 of the Public Resources Code is amended to read:

41820. The board may grant a one-year time extension from the requirements of Section 41780 to any city, county, or regional agency if the following conditions are met:

(a) The board adopts written findings, based upon substantial evidence in the record, that adverse market conditions beyond the control of city or county prevent the city, county, or regional agency from meeting the requirements of Section 41780.

(b) The city, county, or regional agency submits a plan of correction which demonstrates how the city, county, or regional agency will meet the requirements of Section 41780 before the time extension expires, which includes the source reduction, recycling, or

composting steps the city, county, or regional agency will implement, and which states how these programs will be funded.

(c) The city, county, or regional agency demonstrates that it is achieving the maximum feasible amount of source reduction, recycling, and composting of solid waste within its jurisdiction.

SEC. 10. Section 41821 of the Public Resources Code is repealed.

SEC. 11. Section 41821 is added to the Public Resources Code, to read:

41821. (a) Each year following the board's approval of a city, county, or regional agency's source reduction and recycling element, household hazardous waste element, and nondisposal facility element, the city, county, or regional agency shall submit a report to the board summarizing its progress in reducing solid waste as required by Section 41780. The annual report shall be due on or before August 1 of the year following board approval of the source reduction and recycling element, the household hazardous waste element, and the nondisposal facility element, and on or before August 1 in each subsequent year. The information in this report shall encompass the previous calendar year, January 1 to December 31, inclusive.

(b) Each jurisdiction's annual report to the board shall, at a minimum, include the following:

(1) Calculations of annual disposal reduction.

(2) Information on the changes in waste generated or disposed of due to increases or decreases in population, economics, or other factors complying with subdivision (c) of Section 41780.1.

(3) A summary of progress made in implementing the source reduction and recycling element and the household hazardous waste element.

(4) Other information relevant to compliance with Section 41780.

(c) The board shall, by January 31, 1997, prepare an optional model annual report to assist jurisdictions in submitting the required annual reporting information and provide the model to each jurisdiction for their consideration.

(d) The board shall use, but is not limited to the use of, the annual report in the determination of whether the jurisdiction's source reduction and recycling element needs to be revised.

SEC. 12. Section 41821.1 is added to the Public Resources Code, to read:

41821.1. Each year following the board's approval of a county or regional agency's siting element and summary plan, the county or regional agency shall submit a report to the board summarizing the adequacy of the siting element and summary plan. The report on the siting element shall discuss any changes in disposal capacity, disposal facilities, or any other relevant issues. The annual report shall be due on or before August 1 of the year following board approval of a county or regional agency's siting element and summary plan, and on or before August 1 in each subsequent year. The information in this

report shall encompass the previous calendar year, January 1 to December 31, inclusive.

SEC. 13. Section 41822 of the Public Resources Code is amended to read:

41822. Each city, county, or regional agency shall review its source reduction and recycling element or the countywide integrated waste management plan at least once every five years to correct any deficiencies in the element or plan, to comply with the source reduction and recycling requirements established under Section 41780, and to revise the documents, as necessary, to comply with this part. Any revision made to an element or plan pursuant to this section shall be submitted to the board for review and approval or disapproval pursuant to the schedule established under this chapter.

SEC. 14. Section 42000 of the Public Resources Code is amended to read:

42000. The Legislature hereby finds and declares as follows:

(a) This division requires cities and counties to divert 25 percent of all solid waste from landfills and transformation facilities by 1995 and 50 percent by 2000. As of 1990, the overall diversion rate in the state was 12 percent.

(b) California's recycling and composting efforts need to increase greatly if local jurisdictions are to meet the 25 percent and the 50 percent diversion requirements.

(c) Market development is the key to increased, cost-effective recycling. Market development includes activities that strengthen demand by manufacturers and end-use consumers for recyclable materials collected by municipalities, nonprofit organizations, and private entities.

(d) Developing markets for recyclable materials creates opportunities that will reindustrialize California. The board estimates that the development of markets for recyclable materials may create over 20,000 jobs in California's manufacturing sector, an additional 25,000 jobs in the sorting and processing fields, and an unestimated number of jobs in other fields that may develop through full implementation of this division.

(e) The board is authorized to conduct individual market development activities, but is not presently required to implement a comprehensive plan that addresses the full range of market development needs.

SEC. 15. Section 42008 of the Public Resources Code is repealed.

SEC. 16. Section 42244 of the Public Resources Code is amended to read:

42244. The board shall evaluate compost, cocompost, and chemically fixed sewage sludge for use as solid waste landfill cover materials or for use as extenders for currently used cover material. Compost, cocompost, and chemically fixed sewage sludge products, when used as a substitute for or mixed with currently approved cover

material, shall possess all the physical characteristics required in the definition of a cover material.

SEC. 17. Section 42247 of the Public Resources Code is repealed.

SEC. 18. Section 42373 of the Public Resources Code is repealed.

SEC. 19. Article 3 (commencing with Section 42380) of Chapter 6 of Part 3 of Division 30 of the Public Resources Code is repealed.

SEC. 20. Section 42414 of the Public Resources Code is amended to read:

42414. The number of retreaded tires purchased annually by the Department of General Services during each fiscal year shall be tabulated and forwarded to the board by August 31 every year.

SEC. 21. Section 42415 of the Public Resources Code is amended to read:

42415. The board, in consultation with the Department of General Services, shall perform a study to determine if the retreads, procured by the Department of General Services, have met all quality and performance criteria of a new tire.

SEC. 22. Section 42443 of the Public Resources Code is amended to read:

42443. The number of recycled lead-acid batteries purchased each year by the Department of General Services shall be tabulated and forwarded to the board on or before March 31 of each year.

SEC. 23. Section 42512 of the Public Resources Code is repealed.

SEC. 24. Section 42520 of the Public Resources Code is amended to read:

42520. The board shall establish a Plastics Recycling Information Clearinghouse. This clearinghouse shall provide information to postconsumer plastics collectors, reprocessors, and recyclers about programs collecting postconsumer plastics, availability of postconsumer plastics, and recent advances in postconsumer plastics recycling technology.

SEC. 25. Section 42563 of the Public Resources Code is repealed.

SEC. 26. Section 42601 of the Public Resources Code is amended to read:

42601. The board shall measure public information program effectiveness through research which establishes program benchmarks and tracks results. The results of that measurement shall serve as the basis for program modification.

SEC. 27. Section 42603 of the Public Resources Code is amended to read:

42603. (a) The board, in cooperation with the State Department of Education, shall develop and implement an integrated waste management educational program to teach the concepts of source reduction, recycling, composting, and integrated waste management in California schools.

(b) The State Department of Education, in cooperation with the board, shall develop and implement a teacher training and implementation plan, to guide the implementation of the integrated

waste management educational program, for the education of students, faculty, and administrators on the importance of source reduction, recycling, composting, and integrated waste management in the schools. The plan shall project the phased implementation of elementary, middle, and high school programs. The board shall use the plan and consult with the State Department of Education in developing its annual public information and education budget, and shall include sufficient funds for successful implementation.

SEC. 28. Section 42623 of the Public Resources Code is repealed.

SEC. 29. Section 42650 of the Public Resources Code is amended to read:

42650. The board may establish a research and development program, based on priorities that are consistent with Section 40051, and designed to identify, develop, and refine processes and technologies that will assist state and local governments and private industries to implement innovative resource management and waste reduction programs. The board may conduct research and development programs, upon appropriation therefor by the Legislature, that include, but are not limited to, all of the following:

(a) Establishing, in coordination with the Department of Conservation, a recycling extension service within the board to serve as a central clearinghouse for recycling research information.

(b) Establishing cooperative research and development facilities at universities and colleges in the state.

(c) Developing a research program to study the feasibility of using disposal site mining technology to extend the life of existing disposal sites, recover valuable resources, and to reuse the reclaimed disposal site in an environmentally sound manner.

(d) Establishing a research program to identify educational and promotional methods that can effect environmentally positive changes in human behavior.

(e) Conducting studies into hazards posed by special wastes and by ash and air emissions from the incineration of waste.

(f) Conducting research to develop statistical tools to establish computer-based data bases on waste characteristics, special waste volumes, and county and regional waste capacities.

(g) Analyzing disposal site encroachment problems and assisting local agencies in the development of effective public policy tools to discourage disposal site encroachment.

SEC. 30. Article 7 (commencing with Section 42859) of Chapter 16 of Part 3 of Division 30 of the Public Resources Code is repealed.

SEC. 31. Section 42884 of the Public Resources Code is repealed.

SEC. 32. Section 43030 of the Public Resources Code is amended to read:

43030. (a) The board shall adopt regulations that are consistent with Section 40055 governing the monitoring and control of the subsurface migration of landfill gas.

(b) The board shall consult with the state water board, the State Air Resources Board, and the California Air Pollution Control Officers Association to ensure that the regulations do not conflict with any regulations adopted by the state water board and the State Air Resources Board or air pollution control districts and air quality management districts.

(c) The regulations adopted by the board pursuant to subdivision (a) shall establish monitoring and control standards, based on the potential of the waste to generate landfill gas, as determined by the board, and shall require owners and operators of disposal sites or disposal facilities to report monitoring data and to perform, or cause to be performed, site inventories and evaluations of disposal sites or disposal facilities for the subsurface migration of landfill gas.

(d) If an owner or operator of a disposal site or disposal facility is in compliance with requirements of the air pollution control district or the air quality management district within whose jurisdiction the disposal site or disposal facility is located, the owner or operator shall be deemed to be in compliance with this section and with any regulations adopted by the board pursuant to this section. However, owners or operators of disposal sites and disposal facilities shall be required to comply with regulations adopted by the board pursuant to this section, which impose requirements not addressed by the requirements of the air pollution control district or the air quality management district within whose jurisdiction the disposal site or disposal facility is located.

SEC. 33. Section 43221 of the Public Resources Code is repealed.

SEC. 34. Section 43601 of the Public Resources Code is amended to read:

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

(b) The owner or operator of a solid waste landfill shall provide evidence of financial ability through the use of any of the mechanisms set forth in Part 258 (commencing with Section 258.1) of Title 40 of the Code of Federal Regulations or through the use of any other mechanisms approved by the board. However, the board may adopt regulations which reasonably condition the use of one or more of those mechanisms to ensure adequate protection of public health and safety and the environment, but shall not exclude the use of any mechanism permitted under federal law. In addition, the evidence of financial ability submitted pursuant to Section 43600 shall provide that funds shall be available to the regional water boards upon the issuance of any order under Chapter 5 (commencing with Section 13300) of Division 7 of the Water Code to implement closure and postclosure activities.

(c) The state water board or the appropriate regional water board shall have access to the financial assurance funds for closure and postclosure activities, and to financial assurance funds for corrective action, as necessary, to address water quality problems, if the owner

or operator of the solid waste landfill has failed to implement the required closure and postclosure activities or corrective action activities.

(d) The owner or operator may request disbursement for expenditures to conduct closure, postclosure maintenance, or corrective actions from the financial assurance mechanism established for that activity. Requests for disbursement shall be granted by the board only if sufficient funds are remaining in the financial assurance mechanism to cover the remaining approved total costs of closure, postclosure maintenance, or corrective actions, as appropriate.

SEC. 35. Section 44002 of the Public Resources Code is amended to read:

44002. (a) (1) No person shall operate a solid waste facility without a solid waste facilities permit if that facility is required to have a permit pursuant to this division. If the enforcement agency determines that a person is so operating a solid waste facility, the enforcement agency shall immediately issue a cease and desist order pursuant to Section 45005 ordering the facility to immediately cease operations, and directing the owner or operator of the facility to obtain a solid waste facilities permit in order to resume operation of the facility.

(2) This subdivision shall become operative October 16, 1996.

(b) (1) Notwithstanding subdivision (a), the enforcement agency may stay the issuance of a cease and desist order issued pursuant to subdivision (a) if the solid waste facility meets all of the following conditions:

(A) The facility is in the process of changing its ownership and use, and is in the process of obtaining a new or modified solid waste facilities permit.

(B) The owner or operator of the facility is actively engaging in good faith efforts, as determined by the enforcement agency, to obtain the new or modified solid waste facilities permit in an expeditious manner.

(C) An environmental impact report has been prepared and certified for the solid waste facility pursuant to Division 13 (commencing with Section 21000).

(D) During the time that the facility is operating without a solid waste facilities permit, the facility is otherwise operating in a manner that is in compliance with this division and with any conditions required for that compliance imposed by the enforcement agency.

(2) A stay granted by the enforcement agency pursuant to paragraph (1) shall be for not more than one year and may be extended by the enforcement agency for a period of time not to exceed one additional year, provided that the operator or proposed operator of the solid waste facility makes a continuing food faith effort, as determined by the enforcement agency, to obtain the solid

waste facilities permit and remains in compliance with paragraph (1).

(3) This subdivision shall become inoperative on January 1, 1999.

SEC. 36. Section 48022 of the Public Resources Code is repealed.

SEC. 37. Section 48027 of the Public Resources Code is amended to read:

48027. (a) (1) The Legislature hereby finds and declares that effective response to cleanup at solid waste disposal and codisposal sites requires that the state have sufficient funds available in the trust fund created pursuant to subdivision (b).

(2) The Legislature further finds and declares that the maintenance of the trust fund is of the utmost importance to the state and that it is essential that any money in the trust fund be used solely for the purposes authorized in this article and not be used, loaned, or transferred for any other purpose.

(b) The Solid Waste Disposal Site Cleanup Trust Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the money in the trust fund is hereby continuously appropriated to the board for expenditure, without regard to fiscal years, for the purposes of this article.

(c) The following money shall be deposited into the trust fund:

(1) Funds appropriated by the Legislature from the Integrated Waste Management Account to the board for solid waste disposal or codisposal site cleanup.

(2) Any interest earned on the money in the trust fund.

(3) Any cost recoveries from responsible parties for solid waste disposal or codisposal site cleanup and loan repayments pursuant to this article.

(d) If this article is repealed, the trust fund shall be dissolved and all money in the fund shall be distributed to solid waste landfill operators who have paid into the trust fund during effective life of the trust fund.

(e) Any trust fund distributions received by solid waste landfill operators pursuant to subdivision (c) may be used for only any of the following activities, as related to solid waste landfills:

(1) Solid waste landfill closure and postclosure maintenance operations.

(2) Implementation of Part 258 (commencing with Section 258.1) of Title 40 of the Code of Federal Regulations.

(3) Corrective actions at the solid waste landfill.

(f) The balance in the trust fund each July 1 shall not exceed thirty million dollars ($30,000,000).

SEC. 38. Section 48657 of the Public Resources Code is amended to read:

48657. The board shall keep accurate books, records, and accounts of all of its dealings, and these books, records, and accounts, and any amounts paid into or from the fund, are subject to an annual audit by an auditing firm selected by the board. The auditing firm or

the board shall also conduct a selective audit of entities making payments to, or receiving payments from, the board to determine whether payments required by Section 48650 are being paid to the board on all lubricating oil sold in California, and that grants and recycling incentives are being paid out properly by the board.

SEC. 39. Section 48676 of the Public Resources Code is amended to read:

48676. The board shall establish reporting periods for the reporting of accumulated industrial and lubricating oil sales and used oil recycling rates, and each reporting period shall be six months. The board shall issue a report based on the information received within 120 days of the end of each reporting period.

SEC. 40. Section 50000 of the Public Resources Code is amended to read:

50000. (a) Until an integrated waste management plan has been approved by the California Integrated Waste Management Board pursuant to Division 30 (commencing with Section 40000), no person shall establish a new solid waste facility or transformation facility or expand an existing solid waste facility or transformation facility which will result in a significant increase in the amount of solid waste handled at the facility without a certification by the enforcement agency that one of the following has occurred:

(1) The facility is identified and described in, or found to conform with, a county solid waste management plan which was in compliance with statutes and regulations in existence on December 31, 1989, adopted pursuant to former Title 7.3 (commencing with Section 66700) of the Government Code as that former statute read on December 31, 1989. The conformance finding with that plan shall be in accordance with the procedure for a finding of conformance which was set forth in the plan prior to January 1, 1990.

(2) The facility is identified and described in the most recent county solid waste management plan which has been approved by the county and by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county, except in those counties which have only two cities, in which case, the plan has been approved by the county and by the city which contains a majority of the population of the incorporated area of the county.

(3) Pursuant to the procedures in subdivision (b), the facility has been approved by the county and by a majority of the cities within the county which contain a majority of the population of the incorporated area of the county, except in those counties which have only two cities, in which case, the facility has been approved by the county and by the city which contains a majority of the population of the incorporated area of the county.

(4) The facility is a material recovery facility and the site identification and description of the facility has been submitted to the task force created pursuant to Section 40950 for review and

comment, pursuant to the procedures set forth in subdivision (c). For purposes of this paragraph, "material recovery facility" means a transfer station which is designed to, and, as a condition of its permit, shall, recover for reuse or recycling at least 15 percent of the total volume of material received by the facility.

(5) The facility is identified and described in the countywide siting element which has been approved pursuant to Section 41721.

(b) (1) The review and approval of a solid waste facility or facility transformation facility which has not been identified or described in a county solid waste management plan shall be initiated by submittal by the person or agency proposing the facility of a site identification and description to the county board of supervisors.

(2) The county shall submit the site identification and description to each city within the county within 20 days from the date that the site identification and description is submitted to the county board of supervisors. The county and each city shall approve or disapprove by resolution the site identification and description within 90 days from the date that the site identification and description is initially submitted to the county or city. Each city shall notify the county board of supervisors of its decision within that 90-day period. If the county or a city fails to approve or disapprove the site identification and description within 90 days, the city or county shall be deemed to have approved the site identification and description as submitted.

(3) If a city or county disapproves the site identification and description, the city or county shall mail notice of its decision by first-class mail to the person or agency requesting the approval within 10 days of the disapproval by the city or county, stating its reasons for the disapproval.

(4) No county or city shall disapprove a proposed site identification and description for a new solid waste facility or transformation facility or an expanded solid waste facility or transformation facility which will result in a significant increase in the amount of solid waste handled at the facility unless it determines, based upon substantial evidence in the record, that there will be one or more significant adverse impacts within its boundaries from the proposed project.

(5) Within 45 days from the date of a decision by a city or county to disapprove a site identification and description, or a decision by the board not to concur in the issuance of a permit pursuant to Section 44009, any person may file with the superior court a writ of mandate for review of the decision. The evidence before the court shall consist of the record before the city or county which disapproved the site identification and description or the record before the board in its determination not to concur in issuance of the permit. Section 1094.5 of the Code of Civil Procedure shall govern the proceedings conducted pursuant to this subdivision.

(c) To initiate the review and comment by the task force required by paragraph (4) of subdivision (a) and subdivision (d), the person

or agency proposing the facility shall submit the site identification and description of the facility to the task force. Within 90 days after the site identification and description is submitted to the task force, the task force shall meet and comment on the facility in writing. Those comments shall include, but are not limited to, the relationship between the proposed new or expanded material recovery facility and the requirements of Section 41780. The task force shall transmit those comments to the applicant, to the county, and to all of the cities in the county.

(d) On or before February 1, 1991, each county, by vote of the board of supervisors and the majority of the cities in the county containing a majority of the population of the incorporated area of the county, except in those counties which have only two cities, in which case the vote is subject to approval of the city which contains a majority of the population of the incorporated area of the county, shall adopt two resolutions after holding a public hearing. One resolution shall address solid waste transfer facilities which are designed to, and, as a condition of their permits, shall, recover for reuse or recycling less than 15 percent of the total volume of material received by the facility and which serve more than one jurisdiction. The second resolution shall address solid waste transfer facilities which are designed to, and, as a condition of their permits, shall, recover for reuse or recycling less than 15 percent of the total volume of material received by the facility and which serve only one jurisdiction. These resolutions shall specify whether the facilities shall be subject to the review and approval process described in subdivision (b) or the review and comment process described in subdivision (c). If the resolutions required by this subdivision are not adopted on or before February 1, 1991, those facilities shall be subject to the review process described in subdivision (c).

For purposes of this subdivision, a facility serves only one jurisdiction if it serves only one city, only the unincorporated area of one county, or only one city and county.

SEC. 41. Section 50001 of the Public Resources Code is amended to read:

50001. (a) Except as provided by subdivision (b), after a countywide or regional agency integrated waste management plan has been approved by the California Integrated Waste Management Board pursuant to Division 30 (commencing with Section 40000), no person shall establish or expand a solid waste facility, as defined in Section 40194, in the county unless the solid waste facility meets one of the following criteria:

(1) The solid waste facility is a disposal facility or a transformation facility, the location of which is identified in the countywide siting element or amendment thereto, which has been approved pursuant to Section 41721.

(2) The solid waste facility is a facility which is designed to, and which as a condition of its permit, will recover for reuse or recycling

at least 5 percent of the total volume of material received by the facility, and which is identified in the nondisposal facility element or amendment thereto, which has been approved pursuant to Section 41800 or 41801.5.

(b) Solid waste facilities other than those specified in paragraphs (1) and (2) of subdivision (a) shall not be required to comply with the requirements of this section.

(c) The person or agency proposing to establish a solid waste facility shall prepare and submit a site identification and description of the proposed facility to the task force established pursuant to Section 40950. Within 90 days after the site identification and description is submitted to the task force, the task force shall meet and comment on the proposed solid waste facility in writing. These comments shall include, but are not limited to, the relationship between the proposed solid waste facility and the implementation schedule requirements of Section 41780 and the regional impact of the facility. The task force shall transmit these comments to the person or public agency proposing establishment of the solid waste facility, to the county, and to all cities within the county. The comments shall become part of the official record of the proposed solid waste facility.

(d) The review and comment by the local task force required by subdivision (c) for amendment to an element may be satisfied by the review required by subdivision (a) of Section 41734 for an amendment to an element.

SEC. 42. It is the intent of the Legislature that local governments and state agencies that own or operate real property in this state should work cooperatively to meet the requirements of the California Integrated Waste Management Act of 1989 (Division 30 (commencing with Section 40000) of the Public Resources Code).

SEC. 43. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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

SEC. 44. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to promote the public health and safety pursuant to this act at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1039

An act to amend Section 15339.2 of, to repeal Sections 15339.4 and 15339.5 of, and to repeal and add Section 15339.3 of, the Government Code, relating to small business development.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 15339.2 of the Government Code is amended to read:

15339.2. For purposes of this chapter, the following definitions apply:

(a) "Incubator" means a facility that allows new small businesses to increase their probability of success through sharing needed equipment, services, and facilities, including at least six of the following:

(1) Reception and meeting areas.
(2) Secretarial services.
(3) Accounting and bookkeeping services.
(4) Research libraries.
(5) Onsite financial, management, and technical counseling.
(6) Flexible lease arrangements for flexible space.
(7) Computer and word processing facilities.
(8) Office furniture rentals.
(9) Management and entrepreneurial training programs that have an entry and exit policy.

(b) "Office" means the Office of Small Business within the Trade and Commerce Agency.

SEC. 2. Section 15339.3 of the Government Code is repealed.

SEC. 3. Section 15339.3 is added to the Government Code, to read:

15339.3. (a) The Office of Small Business shall award one or more grants to California nonprofit corporations or public agencies pursuant to the application process described in this section.

(b) In developing the applications for grants, the office shall consult with incubators and other interested parties to ensure that the application is understandable and is disseminated as widely as possible.

(c) Applications for grants shall be issued no later than June 30, 1997.

(d) The grant or grants shall be awarded to the proposal or proposals scoring the highest points, based upon criteria that shall include the following:

(1) The highest priority shall be given to proposals that provide maximum debt or equity funding to businesses located within a California incubator. In calculating the amount of funding available, the office shall encourage applicants to leverage the state funds with funds from other sources used to provide funding to the incubator businesses.

(2) Points shall also be awarded to a proposal providing grant funds to a California incubator.

(e) Grant awardees shall provide the office with suitable financial records to ensure their financial viability, and after receiving the grant, shall allow the office to audit the records of the expenditure of grant funds.

SEC. 4. Section 15339.4 of the Government Code is repealed.

SEC. 5. Section 15339.5 of the Government Code is repealed.

SEC. 6. The Trade and Commerce Agency shall adopt any regulations necessary to implement Section 3 of this act as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The Office of Administrative Law shall consider these emergency regulations to be necessary for the immediate preservation of the public peace, health, and safety, and the general welfare within the meaning of Section 11349.6 of the Government Code. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall not remain in effect for more than 180 days and shall be superseded upon the adoption of formal regulations by the agency.

CHAPTER 1040

An act to add Chapter 14 (commencing with Section 5956) to Division 6 of Title 1 of the Government Code, relating to governmental infrastructure financing.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Chapter 14 (commencing with Section 5956) is added to Division 6 of Title 1 of the Government Code, to read:

CHAPTER 14. INFRASTRUCTURE FINANCING

5956. Local governmental agencies have experienced a significant decrease in available tax revenues to fund necessary infrastructure improvements. If local governmental agencies are going to maintain the quality of life that this infrastructure provides, they must find new funding sources. One source of new money is private sector investment capital utilized to design, construct, maintain, rebuild, repair, and operate infrastructure facilities. Unless private sector investment capital becomes available to study, plan, design, construct, develop, finance, maintain, rebuild, improve, repair, or operate, or any combination thereof, fee-producing infrastructure facilities, some local governmental agencies will be unable to replace deteriorating infrastructure. Further, some local governmental agencies will be unable to expand and build new infrastructure facilities to serve the increasing population.

5956.1. It is the intent of the Legislature that local governmental agencies have the authority and flexibility to utilize private investment capital to study, plan, design, construct, develop, finance, maintain, rebuild, improve, repair, or operate, or any combination thereof, fee-producing infrastructure facilities. Without the ability to utilize private sector investment capital to study, plan, design, construct, develop, finance, maintain, rebuild, improve, repair, or operate, or any combination thereof, fee-producing infrastructure facilities, the Legislature finds that some local governmental agencies will not be able to adequately, competently, or satisfactorily retrofit, reconstruct, repair, or replace existing infrastructure and will not be able to adequately, competently, or satisfactorily design and construct new infrastructure.

5956.2. It is the intent of the Legislature that this chapter be construed as creating a new and independent authority for local governmental agencies to utilize private sector investment capital to study, plan, design, construct, develop, finance, maintain, rebuild, improve, repair, or operate, or any combination thereof, fee-producing infrastructure facilities. To that end, this authority is intended to supplement and be independent of any existing authority and does not limit, replace, or detract from existing authority. This chapter may be used by local governmental entities when they deem it appropriate in the exercise of their discretion. It is the intent of the Legislature that this act create no new governmental entities.

5956.3. (a) For purposes of this chapter, "governmental agency" includes a city, county, city and county, including a chartered city or county, school district, community college district, public district, county board of education, joint powers authority, transportation commission or authority, or any other public or municipal corporation.

(b) For purposes of this chapter, "private entity" includes a person, business entity, combination of persons and business entities, or a combination of business entities.

5956.4. A governmental agency may solicit proposals and enter into agreements with private entities for the design, construction, or reconstruction by, and may lease to, private entities for the following types of fee-producing infrastructure projects:

(a) Irrigation.
(b) Drainage.
(c) Energy or power production.
(d) Water supply, treatment, and distribution.
(e) Flood control.
(f) Inland waterways.
(g) Harbors.
(h) Municipal improvements.
(i) Commuter and light rail.
(j) Highways or bridges.
(k) Tunnels.
(*l*) Airports and runways.
(m) Purification of water.
(n) Sewage treatment, disposal, and water recycling.
(o) Refuse disposal.
(p) Structures or buildings, except structures or buildings that are to be utilized primarily for sporting or entertainment events.

5956.5. Notwithstanding Chapter 10 (commencing with Section 4525) of Division 5, or Part 2 (commencing with Section 10100) or Part 3 (commencing with Section 20100) of Division 2 of the Public Contract Code, the governmental agency soliciting proposals and entering into agreements with private entities for the studying, planning, design, developing, financing, construction, maintenance, rebuilding, improvement, repair, or operation, or any combination thereof, by private entities for fee-producing infrastructure projects shall ensure that the contractor is selected pursuant to a competitive negotiation process. Projects may be proposed by the private entity and selected by the governmental agency at the discretion of the governmental agency. Projects may be proposed and selected individually or as part of a related or larger project. The competitive negotiation process shall utilize, as the primary selection criteria, the demonstrated competence and qualifications for the studying, planning, design, developing, financing, construction, maintenance, rebuilding, improvement, repair, or operation, or any combination thereof, of the facility. The selection criteria shall also ensure that the facility be operated at fair and reasonable prices to the user of the infrastructure facility services. The competitive negotiation process shall not require competitive bidding. The competitive negotiation process shall specifically prohibit practices that may result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit

governmental agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this section that would subject those employees to the prohibition of Section 87100. Other than these criteria and applicable provisions related to providing security for the construction and completion of the facility, the governmental agency soliciting proposals is not subject to any other provisions of the Public Contract Code or this code that relates to public procurements.

5956.6. (a) For purposes of facilitating projects, the agreements specified in Section 5956.4 may include provisions for the lease of rights-of-way in, and airspace over, property owned by a governmental agency, for the granting of necessary easements, and for the issuance of permits or other authorizations to enable the private entity to construct infrastructure facilities supplemental to existing government-owned facilities. Infrastructure constructed by a private entity pursuant to this chapter shall, at all times, be owned by a governmental agency, unless the governmental agency, in its discretion, elects to provide for ownership of the facility by the private entity during the term of the agreement. The agreement shall provide for the lease of those facilities to, or ownership by, the private entity for up to 35 years. In consideration therefor, the agreement shall provide for complete reversion of the privately constructed facility to the governmental agency at the expiration of the lease at no charge to the governmental agency. Subsequent to the expiration of the lease or ownership period, the governmental agency may continue to charge fees for use of the infrastructure facility. If, after the expiration of the lease or ownership period, the governmental agency continues to lease airspace rights to the private entity, it shall do so at fair market value.

(b) The agreement between the governmental agency and the private entity shall include, but need not be limited to, provisions to ensure the following:

(1) Compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code). Neither the act of selecting a proposed project or a private entity, nor the execution of an agreement with a private entity, shall require prior compliance with the act. However, appropriate compliance with the act shall thereafter occur before project development commences.

(2) Security for the construction of the facility to ensure its completion, and contractual provisions that are necessary to protect the revenue streams of the project.

(3) Adequate financial resources of the private entity to design, build, and operate the facility, after the date of the agreement.

(4) Authority for the governmental agency to impose user fees for use of the facility in an amount sufficient to protect the revenue streams necessary for projects or facilities undertaken pursuant to

this chapter. User fee revenues shall be dedicated exclusively to payment of the private entity's direct and indirect capital outlay costs for the project, direct and indirect costs associated with operations, direct and indirect user fee collection costs, direct and indirect costs of administration of the facility, reimbursement for the direct and indirect costs of maintenance, and a negotiated reasonable return on investment to the private entity.

(5) As a precondition to the imposition or increase of a user fee, the governmental agency shall conduct at least one public hearing at which public testimony will be received regarding a proposed user fee revenue or increase in user fee revenues. The public hearing shall precede the action by the governmental agency to actually impose a user fee or to increase an existing user fee. The governmental agency shall consider the public testimony prior to imposing a new or increased user fee. The governmental agency shall provide the following notices and utilize the following procedures:

(A) Notice of the date, time, and place of the meeting, including a general explanation of the matter to be considered, shall be mailed at least 14 days prior to the meeting to any interested party who files a written request with the governmental agency for mailed notice of the meeting on new or increased fees or service charges. Any written request for mailed notices shall be valid for one year from the date on which it is filed unless a renewal request is filed prior to the expiration of the one-year period for which the written request was filed. The legislative body may establish a reasonable annual charge for sending notices based on the estimated cost of providing the service.

(B) At least 10 days prior to the meeting, the governmental agency shall make available to the public data that supports the amount of the fee or the increase in the fee.

(C) (i) At least 10 days prior to the meeting, the governmental agency shall publish a notice in a newspaper of general circulation in that agency's jurisdiction stating the date, time, and place of the meeting, including a general explanation of the matter to be considered.

(ii) Any costs incurred by the governmental agency in conducting the meeting or meetings required by this section may be recovered from fees charged for the services that are the subject of the fee.

(iii) For transportation projects specifically authorized by this chapter, at least 10 days prior to the meeting, the governmental agency shall publish for four consecutive times, a notice in the newspaper of general circulation in the affected area stating in no smaller that 10-point type a notice specifying the subject of the hearing, the date, time, and place of the meeting, and in at least 8-point type a general explanation of the matter to be considered.

(D) No local agency shall levy a new fee or service charge or increase an existing fee or service charge to an amount that exceeds the estimated amount required to provide the service for which the

fee or service charge is levied and a reasonable rate of return on investment, pursuant to paragraph (4). Any action by a local agency to levy a new fee or service charge or to approve an increase in an existing fee or service charge pursuant to this chapter shall be taken only by ordinance or resolution. The legislative body of a local agency shall not delegate the authority to adopt a new fee or service charge, or to increase a fee or service charge.

(6) Require that if the legislative body of the governmental agency determines that fees or service charges create revenues in excess of the actual cost for which the user fee revenues are dedicated and a reasonable rate of return on investment, pursuant to paragraph (4), those revenues shall either be applied to any indebtedness incurred by the private entity with respect to the project, be paid into a reserve account in order to offset future operation costs, be paid into the appropriate government account, be used to reduce the user fee or service charge creating the excess, or a combination of these sources.

(7) Require the private entity to maintain the facility in good operating condition at all times, including the time the facility reverts to the governmental agency.

(8) Preparation by the private entity of an annual audited report accounting for the income received and expenses to operate the facility. The private entity shall make that report available to any member of the public for a cost not to exceed the cost of reproduction of the report.

(9) Provision for a buyout of the private entity by the governmental entity in the event of termination or default before the end of the lease term.

(10) Provision for appropriate indemnity promises between the governmental agency and the private entity.

(11) Provision requiring the private entity to maintain insurance with those coverages and in those amounts that the governmental agency deems appropriate.

(12) In the event of a dispute between the governmental agency and the private entity, both parties shall be entitled to all available legal or equitable remedies.

5956.7. (a) The governmental agency may exercise any power possessed by it with respect to the development and construction of infrastructure projects pursuant to this chapter. Agreements for the maintenance and police services entered into pursuant to this chapter shall provide for full reimbursement for services rendered by the governmental agency in accordance with the terms and conditions specified in the agreement. The governmental agency may provide services for which it is reimbursed with respect to preliminary planning, environmental certification, and preliminary design of the infrastructure projects. The governmental agency may consult with legal, financial, and other consultants in the negotiation and development of the agreement. To the extent existing public

utility infrastructure is necessarily required to be modified, relocated, or removed in order for an infrastructure project authorized by this chapter to be constructed, the cost of modification, relocation, or removal of the existing infrastructure shall be borne by the private entity and included as a recoverable capital cost of the project. This cost shall not be construed to include costs of increasing the capacity, or upgrading, or improving the existing public utility infrastructure.

(b) The private entity's responsibility to modify, relocate, or remove existing public utility infrastructure shall not alter any agreements that may be in place between the governmental agency and any public utility regarding projects funded by the governmental agency.

(c) In the event of a dispute regarding the reimbursement required, a private entity may request an audit of the public utility's costs by a mutually acceptable certified public accountant. The result of the audit shall determine the actual costs. If the audit indicates that the public utility's actual costs were less than 95 percent of the cost claimed, the cost of the audit shall be borne by the public utility. If the audit indicates that the public utility's actual costs were 95 percent or more of the cost claimed, the cost of the audit shall be borne by the private entity.

5956.8. The plans and specifications for each project constructed pursuant to this chapter shall comply with all applicable governmental design standards for that particular infrastructure project. The private entity designing, constructing, operating, and maintaining infrastructure facilities pursuant to this chapter shall utilize private sector design and construction firms to design and construct the infrastructure facilities. However, a facility subject to this chapter and leased to a private entity shall, during the term of the lease, be deemed to be public property for purposes of identification, maintenance, enforcement of laws and for purposes of Division 3.6 (commencing with Section 810). All public works constructed pursuant to this chapter shall comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

5956.9. In order to use the authority conferred by this chapter to the maximum extent, a governmental agency may use private infrastructure financing pursuant to this chapter as the exclusive revenue source or as a supplemental revenue source with federal or local funds. The governmental agency involved may be a local governmental agency or a combination of local governmental agencies. The governmental agency may work cooperatively with the California Infrastructure and Economic Development Board with regard to the design, construction, operation, and financing of privately financed facilities, but the projects will not be subject to the review or approval of that board.

5956.10. Notwithstanding any provision of this chapter, neither the state or any state agency may directly or indirectly use the authority in this chapter, nor may any governmental agency as defined in Section 5956.3, use the authority in this chapter, to design, construct, finance, or operate a state project. For purposes of this section, a state project includes any of the following:

(a) Toll roads on state highways.

(b) State water projects.

(c) State park and recreation projects.

(d) State financed projects.

These limitations shall not prohibit the state, any state agency, or any governmental agency as defined in Section 5956.3, from utilizing authorizations contained in other provisions of law.

CHAPTER 1041

An act to amend Section 22056 of the Financial Code, to amend Section 11126 of the Government Code, to amend Section 12162 of the Public Contract Code, and to amend Sections 40055, 40062, 40122, 40191, 40192, 42164, 42823.5, 43501, 43600, 43602, 43610, 44009, 44106, and 48670 of, and to repeal and add Section 40120.1 of, the Public Resources Code, relating to solid waste.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 22056 of the Financial Code is amended to read:

22056. This division does not apply to the Department of Commerce or to the California Integrated Waste Management Board.

SEC. 2. Section 11126 of the Government Code is amended to read:

11126. (a) (1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is

not given, any disciplinary or other action taken against any employee at the closed session shall be null and void.

(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, "employee" shall not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, the term employee shall include a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies which administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(2) Prevent an advisory body of a state body which administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters which the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(3) Prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 or similar provisions of law.

(4) Prevent any state body from holding a closed session to consider matters affecting the national security.

(5) Grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(6) Prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests which the donor or proposed donor has requested in writing to be kept confidential.

(7) Prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(8) (A) Prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

(B) However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties which the negotiations may concern and the person or persons with whom its negotiator may negotiate.

(C) For purposes of this paragraph, the negotiator may be a member of the state body.

(D) For purposes of this paragraph, "lease" includes renewal or renegotiation of a lease.

(E) Nothing in this paragraph shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (q).

(9) Prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(10) Prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(11) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or data the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

(12) Prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(14) Prevent the State Board of Education, or any committee advising the State Board of Education, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of Part 33 of the Education Code during which actual test content is reviewed and

discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the California Integrated Waste Management Board or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph 8 relating to the identification of real properties prior to the closed session.

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(d) (1) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

(2) Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against regulated utilities.

(e) (1) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

(2) For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this article. For purposes of this subdivision,

litigation shall be considered pending when any of the following circumstances exist:

(3) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(4) (A) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.

(B) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to subparagraph (A).

(5) (A) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

(B) The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to paragraph (2) or (3), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

(C) For purposes of this subdivision, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(D) Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(f) In addition to subdivisions (a), (b), and (c), nothing in this article shall be construed to do any of the following:

(1) Prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(2) Prevent the examining committee established by the State Board of Forestry, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(3) Prevent an administrative committee established by the State Board of Accountancy pursuant to Section 5020 or 5020.3 of the Business and Professions Code from conducting a closed session to

consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent an examining committee established by the Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(4) Prevent a state body, as defined in Section 11121.2, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

(5) Prevent a state body, as defined in Section 11121.7, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to Section 11121, 11121.2, or 11121.5.

(6) Prevent a state body, as defined in Section 11121.8, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

(7) Prevent the State Board of Equalization from holding closed sessions for either of the following:

(A) When considering matters pertaining to the appointment or removal of the executive secretary of the State Board of Equalization.

(B) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(8) Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of the Office of Emergency Services or the Governor pursuant to Section 8590 concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article shall not prevent either of the following:

(1) The Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(2) The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

SEC. 2.5. Section 11126 of the Government Code is amended to read:

11126. (a) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, or dismissal of a public employee or to hear complaints or charges brought against

that employee by another person or employee unless the employee requests a public hearing. As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void. The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body. Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

For the purposes of this section, "employee" shall not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, the term employee shall include a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(b) Nothing in this article shall be construed to prevent state bodies which administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(c) Nothing in this article shall be construed to prevent an advisory body of a state body which administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters which the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(d) Nothing in this article shall be construed to prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 or similar provisions of law.

(e) Nothing in this article shall be construed to prevent any state body from holding a closed session to consider matters affecting the national security.

(f) Nothing in this article shall be construed to grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(g) Nothing in this article shall be construed to prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests which the donor or proposed donor has requested in writing to be kept confidential.

(h) Nothing in this article shall be construed to prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(i) Nothing in this article shall be construed to prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties which the negotiations may concern and the person or persons with whom its negotiator may negotiate.

For purposes of this subdivision, the negotiator may be a member of the state body.

For purposes of this subdivision, "lease" includes renewal or renegotiation of a lease.

Nothing in this subdivision shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (q).

(j) (1) Nothing in this article shall be construed to prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(2) Nothing in this article shall be construed to prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(k) Nothing in this article shall be construed to prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or information the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board. Nothing in this article shall be construed

to require the Franchise Tax Board to disclose any confidential tax information considered in closed sessions, the public disclosure of which is prohibited pursuant to Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of the Revenue and Taxation Code.

(*l*) Nothing in this article shall be construed to prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(m) Nothing in this article shall be construed to prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(n) Nothing in this article shall be construed to prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this subdivision, a state body shall also be exempt from the provision of subdivision (i) relating to the identification of real properties prior to the closed session.

(o) Nothing in this article shall be construed to prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(p) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against regulated utilities.

(q) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby

abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed-session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(1) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(2) (A) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body; or

(B) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to subparagraph (A).

(3) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to paragraph (2) or (3), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

For purposes of this subdivision, "litigation" includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(r) Nothing in this article shall be construed to prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(s) Nothing in this article shall be construed to prevent the examining committee established by the State Board of Forestry, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(t) Nothing in this article shall be construed to prevent an administrative committee established by the State Board of Accountancy pursuant to Section 5020 or 5020.3 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent an examining committee established by the Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(u) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.2, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

(v) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.7, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to Section 11121, 11121.2, or 11121.5.

(w) Nothing in this article shall be construed to prevent a state body, as defined in Section 11121.8, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

(x) Nothing in this article shall be construed to prevent the State Board of Equalization from holding closed sessions for either of the following:

(1) When considering matters pertaining to the appointment or removal of the executive secretary of the State Board of Equalization.

(2) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

Nothing in this article shall be construed to require the State Board of Equalization to disclose any action taken in closed session or documents executed in connection with that action, the public disclosure of which is prohibited by law pursuant to Sections 15619 and 15641 of this code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of the Revenue and Taxation Code.

(y) Nothing in this article shall be construed to prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of the Office of Emergency Services or the Governor pursuant to Section 8590 concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(z) This article shall not prevent the Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or

removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(aa) This article shall not prevent the Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

(bb) Nothing in this article shall be construed to prevent the State Board of Education, or any committee advising the State Board of Education, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of Part 33 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(cc) This article shall not prevent the California Integrated Waste Management Board or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

SEC. 3. Section 12162 of the Public Contract Code is amended to read:

12162. (a) The department shall set as a goal for the purchase of recycled paper products that, by January 1, 1996, at least 50 percent of the total dollar amount of paper products purchased or procured is to be a recycled paper product, as defined in Section 12161. In addition, at least 25 percent of the total fine writing and printing paper purchased or procured is to be a recycled paper product, as defined in Section 12161.

(b) All state agencies shall report to the department and to the board on their progress in meeting the goals specified in subdivision (a) and Section 12205 and shall submit to the department and to the board a detailed plan to meet those goals. The department shall develop a uniform reporting procedure which state agencies shall follow. If at any time a goal has not been met, the department, in consultation with the board, shall review procurement policies and shall make recommendations for immediate revisions to ensure that the goal is met. The department, in consultation with the board, shall present its conclusions and recommendations on these revisions of procurement policies to the Legislature in the department's annual report pursuant to Section 12225.

(c) (1) All state agencies shall give a price preference, not to exceed 10 percent, to recycled paper products, if the product's fitness, quality, and availability are comparable to nonrecycled products. The board, in consultation with the department, shall establish, on or before May 1, 1994, and every two years thereafter,

price preferences for the purposes of meeting the goals set forth in this section and Section 12205 for recycled products. For those priority commodities, as defined by the board, the price preference established by the board shall not be less than 5 percent. The board shall publish the established price preferences annually in the board's report to the Legislature pursuant to Section 40507 of the Public Resources Code.

(2) In establishing the price preferences, the board shall take into consideration all of the following factors:

(A) Materials that comprise the largest percentage of the state's solid waste stream.

(B) Materials that have the highest percentage of postconsumer material.

(C) Materials that require expanded markets.

(D) Any other market factors as determined by the board.

(3) The combined dollar amount of preference granted pursuant to this section and any other provision of law shall not exceed one hundred thousand dollars ($100,000).

(d) Notwithstanding paragraph (1) of subdivision (c), the recycled paper bidder preference shall not exceed fifty thousand dollars ($50,000) if a preference exceeding that amount would preclude an award to a small business that offers nonrecycled paper products and is qualified in accordance with Section 14838 of the Government Code.

(e) The board shall implement a pilot program, from January 1, 1994, to January 1, 1997, for funding claims submitted by state agencies for providing the price preferences required by this section and Section 12205. A state agency's purchase of recycled paper products pursuant to subdivision (a) shall be ineligible for claims under the pilot program. On or before March 31, 1996, in conjunction with the annual report required by Section 40507 of the Public Resources Code, the board shall report to the Legislature and Governor on the pilot program and make recommendations concerning the continuation or modification of the program. A sum of not more than three hundred thousand dollars ($300,000) total, or one hundred thousand dollars ($100,000) annually, shall be expended for the purposes of implementing the pilot program. This subdivision shall be operative only if adequate funds for the pilot program are made available.

(f) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute which is chaptered prior to that date extends or deletes that date.

SEC. 4. Section 40055 of the Public Resources Code is amended to read:

40055. (a) This division, or any rules or regulations adopted pursuant thereto, is not a limitation on the power of any state agency in the enforcement or administration of any provision of law which it is specifically authorized or required to enforce or administer,

including, but not limited to, the exercise by the state water board or the regional water boards of any of their powers and duties pursuant to Division 7 (commencing with Section 13000) of the Water Code, the exercise by the Department of Toxic Substances Control of any of its powers and duties pursuant to Chapter 6.5 (commencing with Section 25100) of Division 20 of the Health and Safety Code, and the exercise by the State Air Resources Board or any air pollution control district or air quality management district of any of its powers and duties pursuant to Division 26 (commencing with Section 39000) of the Health and Safety Code.

(b) The exercise of authority under this division, including, but not limited to, the adoption of regulations, plans, permits, or standards or the taking of any enforcement actions shall not duplicate or be in conflict with any determination relating to water quality control made by the state water board or regional water boards, including requirements in regulations adopted by or under the authority of the state water board.

(c) Any plans, permits, standards, or corrective action taken under this division shall be consistent with all applicable water quality control plans adopted pursuant to Section 13170, and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7, of the Water Code and the state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code existing at the time of the action or proposed action.

SEC. 5. Section 40062 of the Public Resources Code is amended to read:

40062. (a) Upon the request of any person furnishing any report, notice, application, plan, or other document required by this division, including any research or survey information requested by the board for the purpose of implementing its programs, neither the board nor an enforcement agency, in accordance with subdivisions (c) and (d), shall make available for inspection by the public any portion of the report, notice, application, plan, or other document that contains a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, that has been identified pursuant to subdivision (b).

(b) Any person furnishing information, as described in subdivision (a), to the board or an enforcement agency pursuant to this division shall, at the time of submission, identify all information which the person believes is a trade secret. Any information not identified by the person as a trade secret shall be made available to the public, unless exempted from disclosure by another provision of law.

(c) (1) With regard to information that has been identified as a trade secret pursuant to subdivision (b), the board, upon its own initiative, or upon receipt of a request for public information pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, shall determine whether any or all of the information has been properly identified as a trade secret.

If the board determines that the information is not a trade secret, the board shall notify the person who furnished the information by certified mail.

(2) The person who furnished the information shall have 30 days from the date of receipt of the notice required by paragraph (1) to provide the board with a complete justification and statement of the grounds on which the trade secret privilege is claimed. The justification and statement shall be submitted to the board by certified mail.

(3) The board shall determine whether the information is protected as a trade secret within 15 days from the date of receipt of the justification and statement or, if no justification and statement is filed, within 45 days from the date of the notice required by paragraph (1). The board shall notify the person who furnished the information and any party who has requested the information pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code of that determination by certified mail. If the board has determined that the information is not protected as a trade secret, this final notice shall also specify a date, not sooner than 15 days from the date of the date of mailing of the final notice, when the information shall be available to the public.

(d) Except as provided in subdivision (c), the board or an enforcement agency may release information submitted and designated as a trade secret only to the following public agencies under the following conditions:

(1) To other public agencies in connection with the responsibilities of the board or an enforcement agency under this division or for use in making reports.

(2) To the state or any state agency in judicial review for enforcement proceedings involving the person furnishing the information.

(e) For the purpose of implementing this section, the disclosure of information shall be consistent with Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

SEC. 6. Section 40120.1 of the Public Resources Code is repealed.

SEC. 7. Section 40120.1 is added to the Public Resources Code, to read:

40120.1. "Disposal" has the same meaning as "solid waste disposal" as defined in Section 40192.

SEC. 8. Section 40122 of the Public Resources Code is amended to read:

40122. "Disposal site" or "site" includes the place, location, tract of land, area, or premises in use, intended to be used, or which has been used, for the landfill disposal of solid wastes. "Disposal site" includes solid waste landfill, as defined in Section 40195.1.

SEC. 9. Section 40191 of the Public Resources Code is amended to read:

40191. (a) Except as provided in subdivision (b), "solid waste" means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes.

(b) "Solid waste" does not include any of the following wastes:

(1) Hazardous waste, as defined in Section 40141.

(2) Radioactive waste regulated pursuant to the Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code).

(3) Medical waste regulated pursuant to the Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code). Untreated medical waste shall not be disposed of in a solid waste landfill, as defined in Section 40195.1. Medical waste that has been treated and deemed to be solid waste shall be regulated pursuant to this division.

SEC. 10. Section 40192 of the Public Resources Code is amended to read:

40192. (a) Except as provided in subdivisions (b) and (c), "solid waste disposal" or "disposal" means the final deposition of solid wastes onto land, into the atmosphere, or into the waters of the state.

(b) Except as provided in Part 2 (commencing with Section 40900), for purposes of Part 2 (commencing with Section 40900), "disposal" means the management of solid waste through landfill disposal or transformation at a permitted solid waste facility.

(c) For purposes of Chapters 16 (commencing with Section 42800) and 19 (commencing with Section 42950) of Part 3, Part 4 (commencing with Section 43000), Part 5 (commencing with Section 45000), Part 6 (commencing with Section 45030), and Chapter 2 (commencing with Section 47900) of Part 7, "solid waste disposal" or "disposal" means the final deposition of solid wastes onto land.

SEC. 11. Section 42164 of the Public Resources Code is amended to read:

42164. "Solid waste landfill" means a solid waste landfill, as defined in Section 40195.1.

SEC. 12. Section 42823.5 of the Public Resources Code is amended to read:

42823.5. (a) A cement manufacturing plant shall be exempt from the requirement to obtain a permit pursuant to Section 42823 if the operator of the cement manufacturing plant meets both of the following requirements:

(1) The owner or operator of the cement manufacturing plant stores not more than a one-month supply of waste tires at the site of the cement manufacturing plant at any time. A one-month supply of waste tires shall be based on either of the following:

(A) The average monthly consumption of waste tires by the plant during the previous year.

(B) The waste tire percentage of the total fuel supply allowed by the air pollution control district or air quality management district, multiplied by the average monthly consumption of fuel for the previous year.

(2) The operator or owner of the cement manufacturing plant is in compliance with any regulations adopted by the board pertaining to waste tire storage and disposal.

(b) To apply for the exemption provided by this section, the operator or owner of a cement manufacturing plant shall provide all of the following information to the board in writing:

(1) The name, address, and physical location of the plant.

(2) The name, address, and telephone number of the plant operator and owner.

(3) Information describing compliance with subdivision (a).

(4) Signatures of the operator and owner of the plant certifying to the accuracy of the information provided.

(c) If there is any change to the information provided pursuant to subdivision (b), the operator or owner of the cement manufacturing plant shall report the change to the board, in writing, within 30 days from the date of the change.

(d) Within 60 days from the date of the receipt of the information required by subdivision (b), the board shall determine whether the operator or owner of a cement manufacturing plant qualifies for the exemption provided by this section and shall notify the operator or owner of the plant of its determination in writing.

(e) The board or the local enforcement agency may inspect a cement manufacturing plant that receives the exemption provided by this section to determine compliance with this section.

(f) Any operator or owner of a cement manufacturing plant who receives an exemption pursuant to this section shall allow the board, upon presentation of the proper credentials, to enter the cement manufacturing plant during normal working hours to examine and copy books, papers, records, or memoranda pertaining to the use and storage of waste tires, and to conduct inspections and investigations pertaining to waste tire use and storage.

SEC. 13. Section 43501 of the Public Resources Code is amended to read:

43501. (a) Any person owning or operating a solid waste landfill, as defined in Section 40195.1, shall do both of the following:

(1) Upon application to become an operator of a solid waste facility pursuant to Section 44001, certify to the board and the local enforcement agency that all of the following have been accomplished:

(A) The owner or operator has prepared an initial estimate of closure and postclosure maintenance costs. The board shall adopt regulations that provide for an increase in the initial cost estimate to

account for cost overruns due to unforeseeable circumstances, and to provide a reasonable contingency comparable to that which is built into cost estimates for other, similar public works projects.

(B) The owner or operator has established a trust fund or equivalent financial arrangement acceptable to the board, as specified in Article 4 (commencing with Section 43600).

(C) The amounts that the owner or operator will deposit annually in the trust fund or equivalent financial arrangement acceptable to the board will ensure adequate resources for closure and postclosure maintenance.

(2) Submit to the regional water board, the local enforcement agency, and the board a plan for the closure of the solid waste landfill and a plan for the postclosure maintenance of the solid waste landfill.

(b) Notwithstanding subparagraph (C) of paragraph (1) of subdivision (a) or any other provision of law, if the owner or operator is a county with a population of 200,000 or less, as determined by the 1990 decennial census, the county shall not be required to make annual deposits in excess of the amount required by the federal act or any other applicable federal law, or by any board-approved formula which meets the requirements of the federal act.

(c) If not in conflict with federal law or regulations, a county or city may, with regard to a solid waste landfill owned or operated by the county or city, base its estimate of closure and postclosure maintenance costs on the costs of employing county or city employees or persons under contract with the county or city in performing closure and postclosure maintenance. However, even if, to meet federal requirements, the costs estimate is based on the most expensive costs of closure and postclosure maintenance performed by a third party, the county or city may, to effect cost savings, employ county or city employees or employ persons under contract to actually perform closure operations or postclosure maintenance operations.

SEC. 14. Section 43600 of the Public Resources Code is amended to read:

43600. (a) Except as otherwise provided in subdivision (b), any person owning or operating a solid waste landfill, as defined in Section 40195.1, shall, with the closure plan and postclosure maintenance plan submitted pursuant to subdivision (b) of Section 43501, submit to the board evidence of financial ability to provide for the cost of closure and postclosure maintenance, in an amount that is equal to the estimated cost of closure and 15 years of postclosure maintenance, contained in the closure plan and the postclosure maintenance plan submitted.

(b) On and after the effective date of the federal regulations set forth in Subpart G (commencing with Section 258.70) of Part 258 of Title 40 of the Code of Federal Regulations, any person owning or operating a solid waste landfill, shall, with the closure plan and postclosure maintenance plan submitted pursuant to subdivision (b)

of Section 43501, submit to the board evidence of financial ability to provide for closure and postclosure maintenance, in an amount that is equal to the estimated cost of closure and 30 years of postclosure maintenance, contained in the closure plan and the postclosure maintenance plan submitted.

SEC. 15. Section 43602 of the Public Resources Code is amended to read:

43602. (a) Except as provided in subdivision (b), evidence of financial ability required of an owner or operator of a solid waste landfill, as defined in Section 40195.1, shall be adjusted to equal the estimated costs of closure and 15 years of postclosure maintenance in the approved plans. Revisions in the plans prior to closure shall be accompanied by corresponding revisions in cost estimates and financial assurances.

(b) On and after the effective date of the federal regulations set forth in Subpart G (commencing with Section 258.70) of Part 258 of Title 40 of the Code of Federal Regulations, the evidence of financial ability required of an owner or operator of a solid waste landfill shall be adjusted to equal the estimated costs of closure and 30 years of postclosure maintenance in the approved plans. Revisions in the plans prior to closure shall be accompanied by corresponding revisions in cost estimates and financial assurances.

SEC. 16. Section 43610 of the Public Resources Code is amended to read:

43610. (a) Notwithstanding Article 3 (commencing with Section 43500) or this article, a small city which operates a solid waste landfill, as defined in Section 40195.1, in Kings County, that is operational and, as of January 1, 1991, has been granted all required permits, is not required to submit a postclosure maintenance plan or to provide a fund for postclosure maintenance pursuant to Article 3 (commencing with Section 43500) or this article, if all of the following conditions are met:

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

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

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

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

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

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

become inoperative on the effective date of the federal regulations set forth in Subpart G (commencing with Section 258.70) of Part 258 of Title 40 of the Code of Federal Regulations.

SEC. 17. Section 44009 of the Public Resources Code is amended to read:

44009. (a) (1) The board shall, in writing, concur or object to the issuance, modification, or revision of any solid waste facilities permit within 60 days from the date of the board's receipt of any proposed solid waste facilities permit submitted under Section 44007 after consideration of the issues in this section.

(2) If the board determines that the permit is not consistent with the state minimum standards adopted pursuant to Section 43020, or is not consistent with Sections 43040, 43600, 44007, 44010, 44017, 44150, and 44152 or Division 31 (commencing with Section 50000), the board shall object to provisions of the permit and shall submit those objections to the local enforcement agency for its consideration.

(3) If the board fails to concur or object in writing within the 60-day period specified in paragraph (1), the board shall be deemed to have concurred in the issuance of the permit as submitted to it.

(b) Notwithstanding subdivision (a), the board is not required to concur in, or object to, and shall not be deemed to have concurred in, the issuance of a solid waste facilities permit for a disposal facility if the owner or operator is not in compliance with, as determined by the regional water board, an enforcement order issued pursuant to Chapter 5 (commencing with Section 13300) of Division 7 of the Water Code, or if all of the following conditions exist:

(1) Waste discharge requirements for the disposal facility issued by the applicable regional water board are pending review in a petition before the state water board.

(2) The petition for review of the waste discharge requirements includes a request for a stay of the waste discharge requirements.

(3) The state water board has not taken action on the stay request portion of the pending petition for review of waste discharge requirements.

(c) In objecting to the issuance, modification, or revision of any solid waste facilities permit pursuant to this section, the board shall, based on substantial evidence in the record as to the matter before the board, state its reasons for objecting. The board shall not object to the issuance, modification, or revision of any solid waste facilities permit unless the board finds that the permit is not consistent with the state minimum standards adopted pursuant to Section 43020, or is not consistent with Section 43040, 43600, 44007, 44010, 44017, 44150, or 44152 or Division 31 (commencing with Section 50000).

(d) Nothing in this section is intended to require that a solid waste facility obtain a waste discharge permit from a regional water board prior to obtaining a solid waste facilities permit.

SEC. 18. Section 44106 of the Public Resources Code is amended to read:

44106. (a) The enforcement agency shall develop a compliance schedule for a solid waste facility included in the inventory prepared pursuant to Section 44104. The compliance schedule shall ensure that diligent progress will be made to bring the solid waste facility into compliance.

(b) Except as provided in subdivision (d), if the solid waste facility is not in compliance with the schedule established by the enforcement agency, the enforcement agency may revoke the operating permit of the solid waste facility until the violations of state minimum standards are remedied. If a closed or abandoned disposal site is not in compliance within the one-year period, the unremedied condition is prima facie evidence of negligence; and, in any action for damages against the owner of the property for injury caused by the unremedied condition, the burden of proving that the injury was not caused by the unremedied condition shall be on the owner of the property.

(c) The enforcement agency may recover any costs incurred pursuant to this section by charging the fee authorized by Section 43213.

(d) The enforcement agency shall refer violations of a waste discharge requirement adopted under Section 13263 of the Water Code to the appropriate regional water board.

SEC. 19. Section 48670 of the Public Resources Code is amended to read:

48670. To be eligible for payment of a recycling incentive, an industrial generator of used lubricating oil, a used oil collection center, or a curbside collection program shall report to the board, for each quarter, the amount of lubricating oil purchased and the amount of used lubricating oil that is transported to a certified used oil recycling facility, or to a used oil storage facility or to a used oil transfer facility, or that is transported to an out-of-state recycling facility registered with the Environmental Protection Agency and permitted to operate by the applicable regulatory agency of the state in which the facility is located, or that is used to generate electricity pursuant to subdivision (b) of Section 48651. The reports shall be submitted on or before the 45th day following each quarter, in the form and manner which the board may prescribe, and shall include copies of manifests or modified manifest receipts from used oil haulers. The board may delegate to the executive officer of the board the authority to accept reports submitted after the 45th day and to reduce, eliminate, or approve the amount of incentive fee to be paid due to the late submission of the report. The board may provide, by regulation, for a longer reporting period for industrial generators that generate less than 1,000 gallons of used oil annually.

SEC. 20. Section 2.5 of this bill incorporates amendments to Section 11126 of the Government Code proposed by both this bill and SB 1803. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1997, (2) each bill amends Section

11126 of the Government Code, and (3) this bill is enacted after SB 1803, in which case Section 2 of this bill shall not become operative.

CHAPTER 1042

An act to add Section 16728 to the Business and Professions Code, to amend Sections 3710.3 and 3716.4 of the Labor Code, to amend Sections 211, 212, 214.5, 622, 727, 728.5, 731, 768, 816.5, 1904, 2107.5, 2117, 2119, 4000, 4001, 4005, 4006, 4007, 4010, 4015, 4022, 5001, 5003.1, and 5005 of, to amend the heading of Chapter 2.5 (commencing with Section 4000) of Division 2 of, to add Sections 216.5 and 224.6 to, to add Article 9 (commencing with Section 5325) to Chapter 7 of Division 2 of, to add Chapter 1 (commencing with Section 3901) to Division 2 of, to repeal Sections 213, 214.1, 421.5, 452.1, 452.2, 454.1, 460.5, 586, 726, 1010, 4008.1, and 5004 of, and to repeal Article 4 (commencing with Section 1061) of Chapter 5 of Part 1 of Division 1, Chapter 1 (commencing with Section 3501), Chapter 2 (commencing with Section 3901), Chapter 2.7 (commencing with Section 4120), Chapter 3 (commencing with Section 4301), and Chapter 5 (commencing with Section 4801) of Division 2 of, the Public Utilities Code, to add Part 1.55 (commencing with Section 7231) to Division 2 of the Revenue and Taxation Code, to amend Sections 1808.1, 34505.6, 34505.7, and 40000.22 of, to add Division 14.85 (commencing with Section 34600) to, and to repeal Section 1808.3 of, the Vehicle Code, and to amend the Budget Act of 1996 (Chapter 162 of the Statutes of 1996) by amending Items 8660-001-0412 and 8660-001-0462 of Section 2.00 thereof, relating to carriers, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. This act shall be known and may be cited as the Motor Carrier Safety Improvement Act of 1996.

SEC. 1.5. The Legislature finds that the provisions of the Public Utilities Code that authorize the Public Utilities Commission to regulate the rates, routes and services of highway carriers engaged in for-hire transportation of property between points within California have been preempted by federal law (P.L. 103-305). It is the intention of the Legislature by this enactment to exercise the power over motor carriers of property authorized by P.L. 103-305.

SEC. 2. Section 16728 is added to the Business and Professions Code, to read:

16728. Notwithstanding any other provision of law, motor carriers of property, as defined in Section 34601 of the Vehicle Code, may voluntarily elect to participate in uniform cargo liability rules, uniform bills of lading or receipts for property being transported, uniform cargo credit rules, joint line rates or routes, classifications and mileage guides. Motor carriers of property that so elect shall comply with all requirements of Section 11501 of Title 49 of the United States Codes (P.L. 103-305 Section 601(c)) and with federal regulations promulgated pursuant thereto. The Legislature intends by this section to provide to motor carriers of property the antitrust immunity authorized by state action pursuant to Section 11501(h)(3) of Title 49 of the United States Code.

SEC. 2.3. Section 3710.3 of the Labor Code is amended to read:

3710.3. Whenever a stop order has been issued pursuant to Section 3701.1 to a motor carrier of property subject to the jurisdiction and control of the Department of Motor Vehicles or to a household goods carrier, passenger stage corporation, or charter-party carrier of passengers subject to the jurisdiction and control of the Public Utilities Commission, the director shall transmit the stop order to the Public Utilities Commission or the Department of Motor Vehicles, whichever has jurisdiction over the affected carrier, within 30 days.

SEC. 2.5. Section 3716.4 of the Labor Code is amended to read:

3716.4. Whenever a final judgment has been entered against a motor carrier of property subject to the jurisdiction and control of the Department of Motor Vehicles or a passenger stage corporation, charter-party carrier of passengers, or a household goods carrier subject to the jurisdiction and control of the Public Utilities Commission as a result of an award having been made pursuant to Section 3716.2, the director may transmit to the Public Utilities Commission or the Department of Motor Vehicles, whichever has jurisdiction over the affected carrier, a copy of the judgment along with the name and address of the regulated entity and any other persons, corporations, or entities named in the judgment which are jointly and severally liable for the debt to the State Treasury with a complaint requesting that the Public Utilities Commission or the Department of Motor Vehicles immediately revoke the carrier's Public Utilities Commission certificate of public convenience and necessity or Department of Motor Vehicles motor carrier permit.

SEC. 3. Section 211 of the Public Utilities Code is amended to read:

211. "Common carrier" means every person and corporation providing transportation for compensation to or for the public or any portion thereof, except as otherwise provided in this part.

"Common carrier" includes:

(a) Every railroad corporation; street railroad corporation; dispatch, sleeping car, dining car, drawing-room car, freight, freightline, refrigerator, oil, stock, fruit, car-loaning, car-renting,

car-loading, and every other car corporation or person operating for compensation within this state.

(b) Every corporation or person, owning, controlling, operating, or managing any vessel used in the transportation of persons or property for compensation between points upon the inland waters of this state or upon the high seas between points within this state, except as provided in Section 212. "Inland waters" as used in this section includes all navigable waters within this state other than the high seas.

(c) Every "passenger stage corporation" operating within this state.

SEC. 4. Section 212 of the Public Utilities Code is amended to read:

212. "Common carrier" shall not include:

(a) Any corporation or person owning, controlling, operating, or managing any vessel, by reason of the furnishing of water transportation service between points upon the inland waters of this state or upon the high seas between points within this state for affiliated or parent or subsidiary companies or for the products of other corporations or persons engaged in the same industry, if the water transportation service is furnished in tank vessels or barges specially constructed to hold liquids or fluids in bulk and if the service is not furnished to others not engaged in the same industry.

(b) Any corporation or person who operates any vessel for the transportation of persons for compensation, between points in this state if one terminus of every trip operated by the corporation or person is within the boundaries of a United States military reservation and is performed under a contract with an agency of the federal government which specifies the terms of service to be provided; and provided that the corporation or person does not perform any service between termini within this state which are outside of a United States military reservation. For the purposes of this subdivision, the conditions of this exemption shall be reviewed by the Public Utilities Commission annually as of the first day of January of each year.

(c) Any corporation or person owning, controlling, operating, or managing any recreational conveyance such as a ski lift, ski tow, J-bar, T-bar, chair lift, aerial tramway, or other device or equipment used primarily while participating in winter sports activities.

(d) Any corporation or person furnishing or otherwise providing transportation by horse, mule, or other equine animal for entertainment or recreational purposes.

(e) Any motor carrier of property, as defined in Section 34601 of the Vehicle Code.

SEC. 5. Section 213 of the Public Utilities Code is repealed.

SEC. 6. Section 214.1 of the Public Utilities Code is repealed.

SEC. 7. Section 214.5 of the Public Utilities Code is amended to read:

214.5. With respect to a motor vehicle used in the transportation of passengers for compensation by a passenger stage corporation, "owner" means the corporation or person who is registered with the Department of Motor Vehicles as the owner of the vehicle, or who has a legal right to possession of the vehicle pursuant to a lease or rental agreement.

SEC. 8. Section 216.5 is added to the Public Utilities Code, to read:

216.5. Notwithstanding Section 216, "public utility" does not include a motor carrier of property.

SEC. 9. Section 421.5 of the Public Utilities Code is repealed.

SEC. 10. Section 224.6 is added to the Public Utilities Code, to read:

224.6. "Motor carrier of property" means a motor carrier of property as defined in Section 34601 of the Vehicle Code.

SEC. 11. Section 452.1 of the Public Utilities Code is repealed.

SEC. 12. Section 452.2 of the Public Utilities Code is repealed.

SEC. 13. Section 454.1 of the Public Utilities Code is repealed.

SEC. 14. Section 460.5 of the Public Utilities Code is repealed.

SEC. 15. Section 586 of the Public Utilities Code is repealed.

SEC. 16. Section 622 of the Public Utilities Code is amended to read:

622. (a) As used in this section, "motor carrier" means:

A passenger stage corporation as defined in Section 226.

(b) As used in this section, "water carrier" means a common carrier operating upon any waterway in this state between fixed termini or over a regular route.

(c) A motor carrier or water carrier may condemn any property necessary for the construction and maintenance of terminal facilities for the receipt, transfer, or delivery of the passengers or property it carries or for other terminal facilities of any such carrier.

SEC. 17. Section 726 of the Public Utilities Code is repealed.

SEC. 18. Section 727 of the Public Utilities Code is amended to read:

727. It is the policy of the state that the use of all waterways, ports, and harbors of this state shall be encouraged, and to that end the commission is directed in the establishment of rates for water carriers applying to business moving between points within this state to fix those rates at such a differential under the rates of competing land carriers that the water carriers shall be able fairly to compete for such business. In fixing the rates there shall be taken into consideration quality and regularity of service and class and speed of vessels.

SEC. 19. Section 728.5 of the Public Utilities Code is amended to read:

728.5. The commission may establish rates or charges for the transportation of passengers and freight by railroads and other transportation companies, except motor carriers of property, and no railroad or other transportation company, except motor carriers of property, shall charge or demand or collect or receive a greater or

less or different compensation for such transportation of passengers or freight, or for any service in connection therewith, between the points named in any tariff of rates established by the commission than the rates, fares and charges which are specified in such tariff. The commission may examine books, records and papers of all railroad and other transportation companies, except motor carriers of property; may hear and determine complaints against railroad and other transportation companies; and may issue subpoenas and all necessary process and send for persons and papers. The commission and each of the commissioners may administer oaths, take testimony and punish for contempt in the same manner and to the same extent as courts of record. The commission may prescribe a uniform system of accounts to be kept by all railroad and other transportation companies, except motor carriers of property.

SEC. 20. Section 731 of the Public Utilities Code is amended to read:

731. Whenever the commission, after a hearing, finds that any rate or toll for the transportation of property is lower than a reasonable or sufficient rate and that the rate is not justified by actual competitive transportation rates of competing carriers, or the cost of other means of transportation, the commission shall prescribe such rates as will provide an equality of transportation rates for the transportation of property between all such competing agencies of transportation, except motor carriers of property. When in the judgment of the commission a differential is necessary to preserve equality of competitive transportation conditions, a reasonable differential between rates of common carriers by rail and water for the transportation of property may be maintained by such carriers, and the commission may by order require the establishment of such rates.

SEC. 21. Section 768 of the Public Utilities Code is amended to read:

768. The commission may, after a hearing, require every public utility to construct, maintain, and operate its line, plant, system, equipment, apparatus, tracks, and premises in a manner so as to promote and safeguard the health and safety of its employees, passengers, customers, and the public. The commission may prescribe, among other things, the installation, use, maintenance, and operation of appropriate safety or other devices or appliances, including interlocking and other protective devices at grade crossings or junctions and block or other systems of signaling. The commission may establish uniform or other standards of construction and equipment, and require the performance of any other act which the health or safety of its employees, passengers, customers, or the public may demand. The Department of the California Highway Patrol shall have the primary responsibility for the regulation of the safety of operation of passenger stage corporations. The commission

shall cooperate with the Department of the California Highway Patrol to ensure safe operation of these carriers.

SEC. 22. Section 816.5 of the Public Utilities Code is amended to read:

816.5. Nothing in this article or in Article 6 (commencing with Section 851) requires a common carrier by railroad subject to the Interstate Commerce Act (49 U.S.C. Sec. 10101 et seq.) or passenger stage corporation to secure from the commission authority to execute any conditional sales contract for the purchase of motor vehicle or railroad equipment or any note or chattel mortgage on that equipment securing the payment of all, or any part, of the purchase price.

SEC. 22.5. Section 1010 of the Public Utilities Code is repealed.

SEC. 23. Article 4 (commencing with Section 1061) of Chapter 5 of Part 1 of Division 1 of the Public Utilities Code is repealed.

SEC. 24. Section 1904 of the Public Utilities Code is amended to read:

1904. The commission shall also charge and collect the following fees:

(a) Except as otherwise provided in Sections 1010 and 1036 for filing each application for a certificate of public convenience and necessity, or for the mortgage, lease, transfer, or assignment thereof, seventy-five dollars ($75).

(b) For a certificate authorizing an issue of bonds, notes, or other evidences of indebtedness, two dollars ($2) for each one thousand dollars ($1,000) of the face value of the authorized issue or fraction thereof up to one million dollars ($1,000,000), one dollar ($1) for each one thousand dollars ($1,000) over one million dollars ($1,000,000) and up to ten million dollars ($10,000,000), and fifty cents ($0.50) for each one thousand dollars ($1,000) over ten million dollars ($10,000,000), with a minimum fee in any case of fifty dollars ($50). No fee need be paid on such portion of any such issue as may be used to guarantee, take over, refund, discharge, or retire any stock, bond, note or other evidence of indebtedness on which a fee has theretofore been paid to the commission. If the commission modified the amount of the issue requested in any case and the applicant thereupon elects not to avail itself of the commission's authorization, no fee shall be paid, and if such fee is paid prior to the issuance of such certificate by the commission, such fee shall be returned.

SEC. 25. Section 2107.5 of the Public Utilities Code is amended to read:

2107.5. When the commission finds, after hearing, that any person or corporation has knowingly aided or abetted a common carrier in violating Section 458 or has violated Section 459, or any order, decision, rule, regulation, direction, demand, or requirement issued under those provisions, the commission may impose a fine for each violation not to exceed five thousand dollars ($5,000). In addition to the fine, the commission may impose interest on the fine,

not to exceed the maximum rate of interest provided for in Section 1 of Article XV of the Constitution. Interest shall commence to accrue on the date when the payment of the fine becomes delinquent.

SEC. 26. Section 2117 of the Public Utilities Code is amended to read:

2117. (a) Whenever a written notice to appear has been mailed to the owner of a passenger stage, an exact and legible duplicate copy of the notice, when filed with the magistrate in lieu of a verified complaint, is a complaint to which the defendant may plead guilty.

(b) If, however, the defendant fails to appear, does not deposit bail, or pleads other than guilty to the offense charged, a complaint shall be filed which conforms to Chapter 2 (commencing with Section 948) of Title 5 of Part 2 of the Penal Code and which shall be deemed to be an original complaint, and thereafter the proceeding shall be held as provided by law, except that the defendant may, by an agreement in writing, subscribed by the defendant and filed with the court, waive the filing of a verified complaint and elect that the prosecution may proceed upon a written notice to appear.

SEC. 27. Section 2119 of the Public Utilities Code is amended to read:

2119. Every passenger stage corporation and every officer, director, agent, or employee of a passenger stage corporation, who displays on any vehicle any identifying symbol other than one prescribed by the commission pursuant to Section 1038.5, or who fails to remove an identifying symbol when required by the commission, is guilty of a misdemeanor and is punishable by a fine of not more than one thousand dollars ($1,000), by imprisonment in the county jail for not more than one year, or by both.

SEC. 28. Chapter 1 (commencing with Section 3501) of Division 2 of the Public Utilities Code is repealed.

SEC. 29. Chapter 2 (commencing with Section 3901) of Division 2 of the Public Utilities Code is repealed.

SEC. 29.5. Chapter 1 (commencing with Section 3901) is added to Division 2 of the Public Utilities Code, to read:

CHAPTER 1. INTERSTATE AND FOREIGN MOTOR CARRIERS OF HOUSEHOLD GOODS AND PASSENGERS ACT

Article 1. General Provisions

3901. This chapter may be cited as the Interstate and Foreign Motor Carriers of Household Goods and Passengers Act.

3902. (a) No household goods carrier, as defined in Section 5109, shall engage in any interstate or foreign transportation of property for compensation by motor vehicle, and no motor carrier shall engage in any interstate or foreign transportation of passengers for compensation by motor vehicle, on any public highway in this state without first having registered the operation with the commission or

the carrier's base registration state, if other than California, as determined in accordance with final regulations issued by the Interstate Commerce Commission pursuant to the Intermodal Surface Transportation Efficiency Act of 1991 (49 U.S.C. Sec. 11506). To register with the commission, carriers specified in this section shall comply with the following:

(1) When the operation requires authority from the Interstate Commerce Commission under the Interstate Commerce Act, or authority from another federal regulatory agency, a copy of that authority shall be filed with the initial application for registration. A copy of any additions or amendments to the authority shall be filed with the commission.

(2) If the operation does not require authority from the Interstate Commerce Commission under the Interstate Commerce Act, or authority from another federal regulatory agency, an affidavit of that exempt status shall be filed with the application for registration.

(3) The commission shall grant registration upon the filing of the application pursuant to applicable law and the payment of any applicable fees, subject to the carrier's compliance with this chapter.

3903. Household goods carriers, as defined in Section 5109, engaged in interstate or foreign transportation or property for compensation by motor vehicle, and motor carriers engaged in interstate or foreign transportation of passengers for compensation by motor vehicle, upon any public highway in this state who had registered their authority from the Interstate Commerce Commission with the commission pursuant to former Section 3810 are not required to file another initial application as prescribed in paragraph (1) of subdivision (a) of Section 3902.

SEC. 30. The heading of Chapter 2.5 (commencing with Section 4000) of Division 2 of the Public Utilities Code is amended to read:

CHAPTER 2.5. PRIVATE CARRIERS OF PASSENGERS

SEC. 31. Section 4000 of the Public Utilities Code is amended to read:

4000. This chapter may be cited as the Private Carriers of Passengers Registration Act.

SEC. 32. Section 4001 of the Public Utilities Code is amended to read:

4001. (a) For purposes of this chapter, "private carrier" means a not-for-hire motor carrier, as defined in Section 408 of the Vehicle Code, who transports passengers and is required to display a carrier identification number pursuant to Section 34507.5 of the Vehicle Code, but does not include persons providing transportation services specified in subdivision (k) or (*l*) of Section 5353.

(b) For purposes of this chapter, "department" means the Department of the California Highway Patrol.

SEC. 33. Section 4005 of the Public Utilities Code is amended to read:

4005. Except as provided in Section 4008, no private carrier of passengers shall operate a motor vehicle on any public highway in this state unless its operation is currently registered with the commission. The commission shall grant registration upon the filing of the application and the payment of the fee as required by this article, subject to the private carrier of passengers' compliance with this chapter.

SEC. 34. Section 4006 of the Public Utilities Code is amended to read:

4006. (a) A fee of twenty-five dollars ($25) shall be paid to the commission for the filing of the initial registration of private carriers of passengers, and an annual renewal fee of twenty dollars ($20) shall also be paid by private carriers of passengers. The fees required to be paid by carriers of passengers pursuant to this section shall be deposited in the Public Utilities Commission Transportation Reimbursement Account in the General Fund.

(b) Notwithstanding subdivision (a), the commission may increase the amount of the initial registration fee to not more than thirty-five dollars ($35) in the case of private carriers of passengers, and the amount of the annual renewal fee to not more than thirty dollars ($30) in the case of private carriers of passengers if the commission finds and determines that to do so is necessary to defray the costs of implementing Section 4022. If the commission increases the fee pursuant to this subdivision, it shall prepare and transmit to the Joint Legislative Budget Committee, the Assembly Committee on Utilities and Commerce, and the Senate Committee on Energy and Public Utilities a report of the amount of the increase instituted together with an audited statement of the receipts and disbursements related to the administration of private carrier of passengers registrations.

SEC. 35. Section 4007 of the Public Utilities Code is amended to read:

4007. (a) When the department issues a carrier identification number pursuant to Section 34507.5 of the Vehicle Code to a private carrier of passengers, it shall inform the carrier of the provisions of this chapter and the requirement that the carrier register with the Public Utilities Commission.

(b) The department shall periodically, but not less frequently than quarterly, transmit to the commission a list of the persons, firms, and corporations to whom it has issued a carrier identification number. Upon receipt of the list, the commission shall notify the private carriers of passengers of the registration requirements and of the penalties for failure to register.

SEC. 36. Section 4008.1 of the Public Utilities Code is repealed.

SEC. 37. Section 4010 of the Public Utilities Code is amended to read:

4010. (a) Registration shall not be granted to any private carrier of passengers until there is filed with and accepted by the commission, in the form that it prescribes, a currently effective certificate of insurance or a surety bond evidencing protection against liability imposed by law for the payment of damages for personal injury to, or death of, any person or property damage, or both.

(b) Whenever the commission determines that the certificate of insurance or surety bond of a private carrier of passengers has lapsed or been terminated, the commission shall suspend the private carrier of passenger's registration.

(c) The commission shall notify the private carrier of passengers of any action taken under subdivision (b).

SEC. 38. Section 4015 of the Public Utilities Code is amended to read:

4015. A private carrier of passengers shall display the carrier identification number, as required by Section 34507.5 of the Vehicle Code, on the vehicles operated pursuant to the registration granted under this chapter.

SEC. 39. Section 4022 of the Public Utilities Code is amended to read:

4022. (a) Upon receipt of a written recommendation from the department that the registration of a private carrier of passengers be suspended for failure to either (1) maintain any vehicle of the carrier in a safe operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety, if that failure is either a consistent failure or presents an imminent danger to public safety, or (2) enroll all drivers in the pull notice system as required by Section 1808.1 of the Vehicle Code, the commission shall, pending a hearing in the matter pursuant to subdivision (d), suspend the carrier's registration. The department's written recommendation shall specifically indicate compliance with subdivision (c).

(b) A private carrier of passengers whose registration is suspended pursuant to subdivision (a) may obtain a reinspection of its terminal and vehicles by the department by submitting a written request for reinstatement to the commission and paying a reinstatement fee of one hundred twenty-five dollars ($125). The fees required to be paid by carriers of passengers pursuant to this section shall be deposited in the Public Utilities Commission Transportation Reimbursement Account in the General Fund. Upon payment of the fee, the commission shall forward a request for reinspection to the department which shall perform a reinspection within a reasonable time. The commission shall reinstate a carrier's registration suspended under subdivision (a) promptly upon receipt of a written recommendation from the department that the carrier's safety compliance has improved to the satisfaction of the

department, unless the registration is suspended for another reason or has been revoked.

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

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

(2) That the determination may result in a suspension or revocation of the carrier's registration by the commission.

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

(d) Whenever the commission suspends the registration of any private carrier of passengers pursuant to subdivision (a), the commission shall furnish the carrier written notice of the suspension and shall hold a hearing within a reasonable time, not to exceed 21 days, after a written request therefor is filed with the commission, with a copy thereof furnished to the department. At the hearing, the carrier shall show cause why the suspension should not be continued. At the conclusion of the hearing, the commission may terminate the suspension, continue the suspension in effect, or revoke the registration. The commission may revoke the registration of any carrier suspended pursuant to subdivision (a) at any time 90 days or more after its suspension if the commission has not received a written recommendation for reinstatement from the department and the carrier has not filed a written request for a hearing with the commission.

SEC. 40. Chapter 2.7 (commencing with Section 4120) of Division 2 of the Public Utilities Code is repealed.

SEC. 41. Chapter 3 (commencing with Section 4301) of Division 2 of the Public Utilities Code is repealed.

SEC. 42. Chapter 5 (commencing with Section 4801) of Division 2 of the Public Utilities Code is repealed.

SEC. 43. Section 5001 of the Public Utilities Code is amended to read:

5001. This chapter is enacted for the following purpose:

(a) Creating a special fund to administer and enforce the commission's jurisdiction to regulate household goods carriers.

(b) This chapter shall not apply to motor carriers of property who are required to register with the Department of Motor Vehicles under the Motor Carriers of Property Permit Act (Division 14.85 (commencing with Section 34600) of the Vehicle Code).

SEC. 43.5. Section 5003.1 of the Public Utilities Code is amended to read:

5003.1. Every household goods carrier owning or operating motor vehicles in the transportation of property for hire upon the public highways under the jurisdiction of the commission shall, between the first and 15th days of January, April, July, and October of each year, file with the commission a statement showing the gross operating revenue derived by that person or corporation from the transportation of property for the preceding three calendar months, and shall, at the time of filing the report, pay to the commission a fee of fifteen dollars ($15) for each quarter. Five dollars ($5) from each fifteen dollars ($15) quarterly base fee shall be allocated on a quarterly basis to the Commercial Motor Carrier Safety Enforcement Fund. Every household goods carrier owning or operating motor vehicles in the transportation of property for hire upon the public highways under the jurisdiction of the commission shall, at the time of filing the report, pay to the commission a fee equal to one-third of 1 percent of the amount of the gross operating revenue, except as follows:

(a) For any particular fiscal year, the commission, with the approval of the Department of Finance, may fix the fee at less than one-third of 1 percent of that amount.

(b) The commission may increase the fee pursuant to subdivision (b) of Section 5003.2.

SEC. 44. Section 5004 of the Public Utilities Code is repealed.

SEC. 45. Section 5005 of the Public Utilities Code is amended to read:

5005. All fees collected under this chapter and all fees charged and collected for copies of papers, records, transcripts of testimony, or other documents, the cost of which is charged to the Transportation Rate Fund, shall be deposited at least once a month in the State Treasury to the credit of the Transportation Rate Fund, which is continued in existence. The money in the fund shall be in augmentation of the current appropriation for the support of the commission, and shall be expended by the commission for the purpose of administering and enforcing the Household Goods Carriers Act.

SEC. 47. Article 9 (commencing with Section 5325) is added to Chapter 7 of Division 2 of the Public Utilities Code, to read:

Article 9. Household Goods Carriers Uniform Business License Tax Act

5325. This article may be cited as the Household Goods Carriers Uniform Business License Tax Act.

5326. An adequate transportation system is essential to the welfare of the state, and an important part of that system is service rendered by highway carriers.

5327. On and after the effective date of this article no city or county shall assess, levy, or collect an excise or license tax of any kind,

character, or description whatever upon the intercity transportation business conducted on or after the effective date of this article, by any household goods carriers, or person or corporation, owning or operating motor vehicles in the transportation of property for hire upon the public highways, under the jurisdiction of the commission. For purposes of this article, intercity transportation business includes every service performed in the connection with transportation of property by transportation companies where both the origin point and the destination point of the transported property are not within the exterior boundaries of a single city or city and county.

5328. (a) On and after the effective date of this article, there is imposed upon every household goods carriers, and every person or corporation, owning or operating motor vehicles in the transportation of property for hire upon the public highways, under the jurisdiction of the commission, a license fee equal to one-tenth of 1 percent of gross operating revenue, which shall be payable to the commission in the manner and at the times provided for the payment of the fee provided in Section 5003.1. For purposes of this section, "gross operating revenue" shall be the gross operating revenue defined in Section 5002.

(b) The license fee imposed by this section is in lieu of all city or city and county excise or license taxes of any kind, character, or description whatever, upon the intercity transportation business of any express corporation, freight forwarder, motor transportation broker or person or corporation, owning or operating motor vehicles in the transportation of property for hire upon the public highways, under the jurisdiction of the commission.

(c) This section does not prohibit the imposition by any city, or city and county, of any excise or license tax authorized under Division 2 (commencing with Section 6001) of the Revenue and Taxation Code.

5329. On and after the effective date of this article, any person or corporation, subject to the license fee imposed by Section 4304, required to pay any excise or license tax of any kind, character, or description whatever imposed by any city, or city and county, other than an excise or license tax authorized under Division 2 (commencing with Section 6001) of the Revenue and Taxation Code, for the privilege of doing any transportation business therein on or after the effective date of this article, may credit the amount of the tax against the fee imposed by Section 4304.

5330. (a) All funds collected by the commission pursuant to this chapter shall be deposited in the State Treasury to the credit of the Highway Carrier's Uniform Business License Tax Fund.

(b) Of the moneys in the Highway Carrier's Uniform Business License Tax Fund, that amount necessary for the payment of refunds is hereby appropriated, without regard to fiscal years, to the commission for that purpose.

(c) Any remaining moneys in the Highway Carrier's Uniform Business License Tax Fund shall be transferred to the General Fund on the order of the Controller.

5331. (a) If any person or corporation is in default in the payment of the license fee prescribed by this chapter for a period of 30 days or more, the commission may suspend or revoke any certificate of public convenience and necessity, permit, or license of the person or corporation, shall estimate from all available information the gross operating revenue of that person or corporation, shall compute the license fee required by Section 4304, and shall impose a penalty of 25 percent of the fee for failure, neglect, or refusal to report. In no event shall the amount of the penalty be less than one dollar ($1). Upon payment of the estimated license fee and the penalty, the certificate, permit, or license of the agency suspended in accordance with the provisions of this section shall be reinstated.

(b) The commission may grant a reasonable extension of the 30-day period to any person or corporation, upon written application of the person or corporation and showing of the necessity for the extension.

(c) Upon the revocation of any operating authority issued to any person or corporation subject to this chapter, all fees provided for by this chapter shall become due and payable immediately.

5332. The commission may bring an action, in its own name, or in the name of the people of the state, in any court of competent jurisdiction of the state, for the collection of delinquent fees estimated under Section 5331 plus any penalties, for an amount due, owing and unpaid to it, as shown by a report filed by the person or corporation, together with a penalty of 25 percent of the amount for the delinquency.

5333. The employees, representatives, and inspectors of the commission may, under its order of direction, inspect and examine any books, accounts, records, memoranda, documents, papers, and correspondence kept by any person, corporation, or person having direct or indirect control over a person or corporation subject to the license fee prescribed by this article.

5334. The commission may make refunds of all or any amount of a fee provided for in this article if it determines that such fee or amount thereof was paid in error.

5335. (a) The commission may establish rules and regulations as it deems necessary to carry out this article.

(b) This section does not prohibit the imposition by any city, county, or city and county, of any excise or license tax authorized under Division 2 (commencing with Section 6001).

SEC. 48. Part 1.55 (commencing with Section 7231) is added to Division 2 of the Revenue and Taxation Code, to read:

PART 1.55. MOTOR CARRIERS

CHAPTER 1. MOTOR CARRIERS OF PROPERTY PERMIT FEE

7231. (a) This chapter may be cited as the Motor Carriers of Property Uniform Permit Fee Act.

(b) The Legislature finds and declares that a safe and efficient transportation system is essential to the welfare of the state, and an important part of the system is service rendered by motor carriers of property.

7232. (a) Every motor carrier of property shall annually pay a permit fee to the Department of Motor Vehicles. The fees contained in this section are due and shall be paid by each carrier at the time of application for initial motor carrier permit, and upon annual renewal, with the Department of Motor Vehicles, pursuant to the Motor Carriers of Property Permit Act, as set forth in Division 14.85 (commencing with Section 34600) of the Vehicle Code. The Department of Motor Vehicles may, upon initial application for a motor carrier permit, assign an expiration date not less than six months, nor more than 18 months, from date of application, and may charge one-twelfth of the annual fee for each month covered by the initial permit. The fee paid by each motor carrier of property shall be based on the number of commercial motor vehicles operated in California by the motor carrier of property.

(b) For the purposes of this chapter, a commercial motor vehicle is defined as any self-propelled vehicle listed in subdivisions (a), (b), (f), (g), and (k) of Section 34500 of the Vehicle Code, any motortruck of two or more axles that is more than 10,000 pounds gross vehicle weight rating, and any other motortruck or motor vehicle used to transport property for compensation but does not include household goods carriers, as defined in Section 5109 of the Public Utilities Code or persons providing transportation of passengers, and operated on a public highway by a motor carrier of property.

(c) The "number of commercial motor vehicles operated by the motor carrier of property" as used in this section means all of the commercial motor vehicles owned, registered to, or leased by the carrier. For interstate and foreign motor carriers of property the fees set forth in subdivision (a) shall be apportioned on the fleet miles traveled in California, pursuant to the tax apportionment provisions of Article 4 (commencing with Section 8050) of Chapter 4 of Division 3 of the Vehicle Code.

(d) "Motor carrier of property" means any person who operates any commercial motor vehicle as defined in subdivision (b).

(e) "For hire motor carrier of property" means a motor carrier of property, as defined in subdivision (d), who transports property for compensation.

(f) (1) Fees contained in this chapter shall not apply to a motor carrier of property while engaged in any interstate or foreign

transportation of property for compensation by motor vehicle. No motor carrier of property shall engage in any interstate or foreign transportation of property for compensation by motor vehicle on any public highway in this state without first having registered the operation with the Department of Motor Vehicles or with the carrier's base registration state, if other than California, as determined in accordance with final regulations issued by the Interstate Commerce Commission pursuant to the Intermodal Surface Efficiency Act of 1991 (49 U.S.C. Sec. 11506). To register with the Department of Motor Vehicles, carriers specified in this subdivision shall comply with the following:

(A) When the operation requires authority from the Interstate Commerce Commission under the Interstate Commerce Act, or authority from another federal regulatory agency, a copy of that authority shall be filed with the initial application for registration. A copy of any additions or amendments to the authority shall be filed with the Department of Motor Vehicles.

(B) If the operation does not require authority from the Interstate Commerce Commission under the Interstate Commerce, or authority from another federal regulatory agency, an affidavit of that exempt status shall be filed with the application for registration.

(2) The Department of Motor Vehicles shall grant registration upon the filing of the application pursuant to applicable law and the payment of any applicable fees, subject to the carrier's compliance with this chapter.

(3) This subdivision does not apply to household goods carriers, as defined in Section 5109 of the Public Utilities Code, and motor carriers engaged in the transportation of passengers for compensation.

7233. No city, county, or city and county, shall assess, levy, or collect an excise or license tax of any kind, character, or description whatever upon the transportation business conducted on or after the effective date of this chapter, by any for-hire motor carrier of property.

7234. (a) The uniform business license tax fee imposed by this chapter is in lieu of all city, county, or city and county excise or license taxes of any kind, character, or description whatever, upon the transportation business of any for-hire motor carrier of property.

(b) This section does not prohibit the imposition by any city, county, or city and county, of any excise or license tax authorized under Division 2 (commencing with Section 6001).

7235. The Safety Fee and Cargo Theft Interdiction Program Fee imposed by this chapter shall be paid by all motor carriers of property, as defined in Section 34601 of the Vehicle Code.

7236. (a) All funds collected by the Department of Motor Vehicles pursuant to Section 7232 shall be deposited in the State Treasury to the credit of the Motor Carriers Permit Fund, which is hereby created. The following fees shall be paid to the department:

(1) For-hire motor carriers of property shall pay, according to the following schedule, fees indicated as safety fee, cargo theft interdiction fee, and uniform business license tax fee, based on the size of their motor vehicle fleet.

(2) Private carriers of property with a fleet size of 10 or less motor vehicles shall pay a fee of thirty-five dollars ($35). Private carriers of property with a fleet size of 11 or more motor vehicles shall pay, according to the following schedule, fees indicated as safety fee and cargo theft interdiction fee, based on the size of their motor vehicle fleet. Any carrier that does not pay a uniform business license tax fee shall not operate as a for-hire motor carrier.

(3) A seasonal permit may be issued to a motor carrier of property upon payment of fees indicated as safety fee and cargo theft interdiction fee, and one twelfth of the fee indicated as uniform business license tax fee, rounded to the next dollar, for each month the permit is valid. The original seasonal permit shall be valid for a period of not less than six months, and may be renewed upon payment of a five dollar ($5) fee, and one-twelfth of the fee indicated as a uniform business license tax fee for each additional month of operation.

Fleet Size–Commercial Motor Vehicles Fee	Safety Fee	Cargo Theft Interdiction Fee	Uniform Business License Tax
1	$60	$10	$60
2–4	$75	$25	$125
5–10	$200	$35	$275
11–20	$240	$50	$470
21–35	$325	$70	$650
36–50	$430	$95	$880
51–100	$535	$115	$1,075
101–200	$635	$140	$1,300
201–500	$730	$160	$1,510
501–1000	$830	$185	$1,715
1001–2,000	$930	$210	$1,900
2,001–over	$1,030	$260	$2,000

Notwithstanding the above fee schedule, motor carriers of property with 10 or fewer trucks shall not pay fees higher than they would have paid under the fee structure in place as of January 1, 1996. Notwithstanding Section 34606 of the Vehicle Code, fees for these carriers shall not be subject to increase by the Department of Motor Vehicles.

(b) The Department of Motor Vehicles shall transfer funds deposited in the Motor Carriers Permit Fund as follows:

(1) Funds derived from Cargo Theft Interdiction Program Fees shall be transferred to the Motor Carriers Safety Improvement Fund.

(2) Funds derived from Uniform Business License Tax Fees shall be transferred to the General Fund.

(3) Funds derived from Safety Fees shall remain in the Motor Carriers Permit Fund and shall be available for appropriation by the Legislature to cover costs incurred by the Department of Motor Vehicles and the Department of the California Highway Patrol in regulating motor carriers of property pursuant to Division 14.85 (commencing with Section 34600) of the Vehicle Code.

(c) It is the intent of the Legislature that the fee schedule established in subdivision (a) shall not discriminate against small fleet or individual vehicle operators or result in a disproportionate share of those fees being assigned to small fleet or individual vehicle operators.

CHAPTER 2. MOTOR CARRIER SAFETY IMPROVEMENT FUND

7237. This chapter is enacted for the purpose of creating a special fund to cover the costs to the Department of the California Highway Patrol to deter commercial motor vehicle cargo thefts and provide security of highway carriers and cargoes throughout the state.

7238. All money or fees deposited in the Motor Carriers Safety Improvement Fund shall be available for appropriation by the Legislature to cover the costs to the Department of the California Highway Patrol to deter commercial motor vehicle cargo thefts and provide security of highway carriers and cargoes throughout the state.

SEC. 49. Section 1808.1 of the Vehicle Code is amended to read:

1808.1. (a) The prospective employer of a driver who drives any vehicle specified in subdivision (*l*) shall obtain a report showing the driver's current public record as recorded by the department. For purposes of this subdivision, a report is current if it was issued less than 30 days prior to the date the employer employs the driver. The report shall be reviewed, signed, and dated by the employer and maintained at the employer's place of business until receipt of the pull notice system report pursuant to subdivisions (b) and (c). These reports shall be presented upon request to any authorized representative of the Department of the California Highway Patrol during regular business hours.

(b) The employer of a driver who drives any vehicle specified in subdivision (*l*) shall participate in a pull notice system, which is a process for the purpose of providing the employer with a report showing the driver's current public record as recorded by the department, and any subsequent convictions, failures to appear, accidents, driver's license suspensions, driver's license revocations, or any other actions taken against the driving privilege or certificate, added to the driver's record while the employer's notification

request remains valid and uncanceled. As used in this section, participation in the pull notice system means obtaining a requester code and enrolling all employed drivers who drive any vehicle specified in subdivision (*l*) under that requester code.

(c) The employer of a driver of any vehicle specified in subdivision (*l*) shall, additionally, obtain a periodic report from the department at least every six months, except that an employer who enrolls more than 500 drivers in the pull notice system under a single requester code shall obtain a report at least every 12 months. The employer shall verify that each employee's driver's license has not been suspended or revoked, the employee's traffic violation point count, and whether the employee has been convicted of a violation of Section 23152 or 23153. The report shall be signed and dated by the employer and maintained at the employer's principal place of business. The reports shall be presented upon demand to any authorized representative of the Department of the California Highway Patrol during regular business hours.

(d) Upon the termination of a driver's employment, the employer shall notify the department to discontinue the driver's enrollment in the pull notice system.

(e) For the purposes of the pull notice system and periodic report process required by subdivisions (b) and (c), owners, other than owner-operators as defined in Section 3557 of the Public Utilities Code, and employers who drive vehicles described in subdivision (*l*), shall be enrolled as if they were employees. Family members and volunteer drivers who drive vehicles described in subdivision (*l*) shall also be enrolled as if they were employees.

(f) An employer who, after receiving any driving record pursuant to this section, employs or continues to employ as a driver any person against whom a disqualifying action has been taken regarding his or her driving privilege or required driver's certificate, is guilty of a public offense, and upon conviction thereof, shall be punished by imprisonment in the county jail for not more than six months, by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment.

(g) As part of its inspection of bus maintenance facilities and terminals required at least once every 13 months pursuant to subdivision (c) of Section 34501, the Department of the California Highway Patrol shall determine whether each transit operator, as defined in Section 99210 of the Public Utilities Code, is then in compliance with this section and Section 12804.6, and shall certify each operator found to be in compliance. No funds shall be allocated under Chapter 4 (commencing with Section 99200) of Part 11 of Division 10 of the Public Utilities Code to a transit operator which the Department of the California Highway Patrol has not certified under this section.

(h) A request to participate in the pull notice system established by this section shall be accompanied by a fee determined by the

department to be sufficient to defray the entire actual cost to the department for the notification service. For the receipt of subsequent reports, the employer shall also be charged a fee established by the department pursuant to Section 1811. Any employer who qualifies under Section 1812 shall be exempt from any fee required under this section. Failure to pay the fee shall result in automatic cancellation of the employer's participation in the notification services.

(i) The department, as soon as feasible, may establish an automatic procedure to provide the periodic reports in subdivision (c) to employers on a regular basis without the need for individual requests.

(j) This section shall not be construed to change the definition of "employer," "employee," or "independent contractor" for any other purpose.

(k) The employer of a driver who is employed as a casual driver is not required to enter that driver's name in the pull notice system, as otherwise required by subdivision (a). However, the employer of a casual driver shall be in possession of a report of the driver's current public record as recorded by the department, prior to allowing a casual driver to drive any vehicle specified in subdivision (*l*). A report is current if it was issued less than six months prior to the date the employer employs the driver. As used in this subdivision, a driver is employed as a casual driver when the employer has employed the driver less than 30 days during the preceding six months. For purposes of this subdivision, "casual driver" does not include any driver who operates a vehicle that requires a passenger transportation endorsement.

(*l*) This section applies to any vehicle for the operation of which the driver is required to have a class 1, class 2, class A, or class B driver's license, a class C license with a hazardous materials endorsement, or a certificate issued pursuant to Section 2512, 12517, 12519, 12520, 12523, or 12523.5, or any passenger vehicle having a seating capacity of not more than 10 persons, including the driver, operated for compensation by a charter-party carrier of passengers or passenger stage corporation pursuant to a certificate of public convenience and necessity or a permit issued by the Public Utilities Commission.

SEC. 50. Section 1808.3 of the Vehicle Code is repealed.

SEC. 51. Section 34505.6 of the Vehicle Code is amended to read:

34505.6. (a) Upon determining that a motor carrier or motor carrier of property operating any vehicle described in subdivision (a), (b), (e), (f), (g), or (k) of Section 34500 or any motortruck of two or more axles that is more than 10,000 pounds gross vehicle weight rating, and operated on a public highway by a motor carrier or motor carrier of property, has done either of the following: (1) failed to maintain any vehicle used in transportation for compensation in a safe operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the

California Code of Regulations relative to motor carrier safety, and, in the department's opinion, that failure presents an imminent danger to public safety or constitutes a consistent failure as to justify a suspension, revocation, or denial of the motor carrier's motor carrier permit or operating authority or (2) failed to enroll all drivers in the pull notice system as required by Section 1808.1, the department shall recommend that the Department of Motor Vehicles or the Public Utilities Commission, as appropriate, deny, suspend, or revoke the carrier's motor carrier permit or operating authority. For interstate operators, the department shall recommend to the federal Highway Administration Office of Motor Carriers that appropriate administrative action be taken against the carrier. For purposes of this subdivision, two consecutive unsatisfactory compliance ratings for an inspected terminal assigned because the motor carrier failed to comply with the periodic report requirements of Section 1808.1 or the cancellation of the carrier's enrollment by the Department of Motor Vehicles for nonpayment of required fees is a consistent failure. The department shall retain a record, by operator, of every recommendation made pursuant to this section.

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

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

(2) That the determination may result in a suspension, revocation, or denial of the carrier's motor carrier permit by the Department of Motor Vehicles, suspension, revocation, of the motor carrier's operating authority by the California Public Utilities Commission, or administrative action by the federal Highway Administration Office of Motor Carriers.

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

(c) Upon receipt of a written recommendation from the department that a motor carrier permit or operating authority be suspended, revoked, or denied, the Department of Motor Vehicles or Public Utilities Commission, as appropriate, shall, pending a hearing in the matter pursuant to Section 34623, suspend the motor carrier permit or operating authority. The written recommendation shall specifically indicate compliance with subdivision (b).

SEC. 52. Section 34505.7 of the Vehicle Code is amended to read:

34505.7. (a) Upon determining that a private carrier of passengers, as defined in Section 4001 of the Public Utilities Code, has either (1) failed to maintain any vehicle of the carrier in a safe

operating condition or to comply with the Vehicle Code or with regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety, and, in the department's opinion, the failure presents an imminent danger to public safety or constitutes such a consistent failure as to justify a recommendation to the Public Utilities Commission, or (2) failed to enroll all drivers in the pull notice system as required by Section 1808.1, the department shall make a written recommendation to the Public Utilities Commission that the carrier's registration be suspended. Two consecutive unsatisfactory terminal ratings assigned for failure to comply with the periodic report requirements in Section 1808.1, or cancellation of an employer's enrollment by the Department of Motor Vehicles for nonpayment of fees, constitutes a consistent failure. The department shall retain a record, by operator, of every recommendation made pursuant to this section.

(b) Before transmitting a recommendation pursuant to subdivision (a), the department shall give written notice to the carrier of all of the following:

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

(2) That the determination may result in a suspension or revocation of the carrier's registration by the California Public Utilities Commission.

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

(c) Commercial vehicle inspection facilities along the border of Mexico, including those in Calexico and Otay Mesa, shall be staffed at all times by a California Highway Patrol inspector whenever those facilities are open to the public. The California Highway Patrol shall also assign, as staffing permits, a commercial inspector to control truck traffic entering the United States at the Tecate border crossing.

SEC. 53. Division 14.85 (commencing with Section 34600) is added to the Vehicle Code, to read:

DIVISION 14.85. MOTOR CARRIERS OF PROPERTY PERMIT ACT

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

34600. This division shall be known and may be cited as the Motor Carriers of Property Permit Act.

34601. (a) "Motor carrier of property" means:

(1) Any motor carrier as defined in Section 408 operating in California, whether intrastate, interstate, or a foreign carrier, who is required to obtain an identification number pursuant to Section 34507.5.

(2) Any person who operates one or more motortrucks of two or more axles that are more than 10,000 pounds gross vehicle weight rating.

(3) "Motor carrier of property" does not include household goods carriers, as defined in Section 5109 of the Public Utilities Code, persons providing only transportation of passengers, or a passenger stage corporation transporting baggage and express upon a passenger vehicle incidental to the transportation of passengers.

(b) For purposes of this chapter, "for-hire motor carrier or property" means a motor carrier of property as defined in subdivision (a) who transports property for compensation and any person, partnership, or corporation who transports property for compensation in any motortruck or motor vehicle not specified in subdivision (a).

(c) For purposes of this chapter, "private carrier" means a motor carrier of property, as defined in subdivision (a), who does not transport any goods or property for compensation.

34602. As used in this division, "fund" means the Motor Carriers Permit Fund.

34603. The Department of the California Highway Patrol, the Public Utilities Commission, and the State Board of Equalization shall furnish, upon request, whatever information from their records may be required to assist the department in the effective development and enforcement of this division.

34604. The department may adopt reasonable rules and regulations necessary to administer this division. The department may also adopt rules and regulations necessary to administer civil sanction proceedings and impose fines for failure to comply with Division 14.8 (commencing with Section 34500), or this division, or regulations adopted pursuant to this code.

34605. (a) The department may contract with the Office of Administrative Hearings to administer proceedings and impose fines for failure to comply with Division 14.8 (commencing with Section 34500), or this division, or regulations adopted pursuant to this code.

(b) The department and the California Highway Patrol may also contract with the Public Utilities Commission to administer this division in a manner described by the contract, or if permitted by the Department of Motor Vehicles, in a manner as existed on January 1, 1996. This temporary authority shall be terminated on December 31, 1997.

(c) All fees collected under this contract shall be deposited in the Motor Carriers Permit Fund created pursuant to subdivision (a) of Section 7236 of the Revenue and Taxation Code.

34606. The fee schedule set forth in Section 7236 of the Revenue and Taxation Code shall be reviewed by the Department of Motor Vehicles and may be lowered should revenue exceed the costs of the Department of Motor Vehicles and the California Highway Patrol to administer and enforce the provisions of this division. The department shall also adjust the uniform business license tax fee by the amounts as are necessary to produce an annual revenue that shall not exceed the amount collected under Section 4304 of the Public Utilities Code as it existed on June 30, 1996, for the period beginning on July 1, 1995, and ending on June 30, 1996.

CHAPTER 2. MOTOR CARRIER PERMITS

34620. (a) Except as provided in subdivision (b) and Section 34622, no motor carrier of property shall operate a motor vehicle on any public highway in this state unless it has complied with Section 34507.5 and has registered with the department its carrier identification authorized or assigned thereunder. The department shall issue a motor carrier permit upon the carrier's written request, compliance with Sections 34507.5, 34630, and 34640, and the payment of the fee required by this chapter.

(b) Motor carriers of property who were in compliance with the insurance requirements of this state on the day prior to the effective date of this section and continue to be in compliance with those requirements may continue to operate until directed by the department to obtain a motor carrier permit as required by subdivision (a). The department shall require all of those carriers to obtain permits pursuant to subdivision (a) on or before December 31, 1998.

34621. (a) The fee required by Section 7232 of the Revenue and Taxation Code shall be paid to the department upon initial application for a motor carrier permit and for annual renewal.

(b) Every application for an original or a renewal motor carrier permit shall contain all of the following information:

(1) The full name of the motor carrier; any fictitious name under which it is doing business; address, both physical and mailing; and business telephone number.

(2) Status as individual, partnership, owner, operator, or both, or corporation, and officers of corporation and all partners.

(3) Name, address, and driver's license number of owner or principal officer, California carrier number, number of commercial motor vehicles in fleet, interstate or intrastate operations, State Board of Equalization, federal Department of Transportation or Interstate Commerce Commission number, as applicable.

(4) Transporter or not a transporter of hazardous materials or petroleum.

(5) Business affiliations.

(6) Evidence of financial responsibility.

(7) Evidence of Workman's Compensation coverage, if applicable.

(8) Any other information necessary to enable the department to determine whether the applicant is entitled to a permit.

34622. This chapter does not apply to any vehicles exempt from vehicle registration fees.

34623. (a) The Department of the California Highway Patrol has exclusive jurisdiction for the regulation of safety of operation of motor carriers of property.

(b) The motor carrier permit of a motor carrier of property may be suspended for failure to either (1) maintain any vehicle of the carrier in a safe operating condition or to comply with this code or with regulations contained in Title 13 of the California Code of Regulations relative to motor carrier safety, if that failure is either a consistent failure or presents an imminent danger to public safety, or (2) enroll all drivers in the pull notice system as required by Section 1808.1. The department may, pending a hearing in the matter pursuant to subdivision (d), suspend a carrier's permit.

(c) A motor carrier whose motor carrier permit is suspended pursuant to subdivision (b) may obtain a reinspection of its terminal and vehicles by the Department of the California Highway Patrol by submitting a written request for reinstatement to the department and paying a reinstatement fee as required by Section 34623.5. The department shall deposit all reinstatement fees collected from carriers of property pursuant to this section in the fund. Upon receipt of the fee, the department shall forward a request to the Department of the California Highway Patrol, which shall perform a reinspection within a reasonable time. The department shall reinstate a carrier's motor carrier permit suspended under subdivision (b) upon notification by the Department of the Highway Patrol that the carrier's safety compliance has improved to the satisfaction of the Department of the California Highway Patrol, unless the permit is suspended for another reason or has been revoked.

(d) Whenever the department suspends the permit of any carrier pursuant to subdivision (b), the department shall furnish the carrier with written notice of the suspension and shall provide for a hearing within a reasonable time, not to exceed 21 days, after a written request is filed with the department. At the hearing, the carrier shall show cause why the suspension should not be continued. Following the hearing, the department may terminate the suspension, continue the suspension in effect, or revoke the permit. The department may revoke the permit of any carrier suspended pursuant to subdivision (b) at any time that is 90 days or more after its suspension if the carrier has not filed a written request for a hearing with the department or has failed to submit a request for reinstatement pursuant to subdivision (c).

(e) Notwithstanding any other provision of this code, no hearing shall be provided when the suspension of the motor carrier permit

is based solely upon the failure of the motor carrier to maintain satisfactory proof of financial responsibility as required by this code.

34623.5. Notwithstanding any other provision of this code, before a permit may be reissued after a suspension has been terminated, there shall, in addition to any other fees required by this code, be paid to the department a fee of one hundred fifty dollars ($150).

34624. (a) The department shall establish a classification of motor carrier of property known as owner-operators.

(b) As used in this section and in Sections 1808.1 and 34501.12, an owner-operator is a person who meets all of the following requirements:

(1) Holds a class A or class B driver's license or a class C license with a hazardous materials endorsement.

(2) Owns, leases, or otherwise operates not more than one power unit and not more than three towed vehicles.

(3) Is required to obtain a permit as a motor carrier of property by the department under this division.

(c) (1) As used in this section, "power unit" is a motor vehicle described in subdivision (a), (b), (g), (f), or (k) of Section 34500, or a motortruck of two or more axles that is more than 10,000 pounds gross vehicle weight rating, but does not include those vehicles operated by household goods carriers, as defined in Section 5109 of the Public Utilities Code or persons providing transportation of passengers. A "towed vehicle" is a nonmotorized vehicle described in subdivision (d), (e), (f), (g), or (k) of that section.

(2) As used in this section, subdivision (f) of Section 34500 includes those combinations where the gross vehicle weight rating of the towing vehicle exceeds 10,100 pounds, and subdivision (g) of Section 34500 includes only those vehicles transporting hazardous materials for which the display of placards is required pursuant to Section 27903, a license is required pursuant to Section 32000.5, or for which a hazardous waste hauler registration is required pursuant to Section 25163 of the Health and Safety Code.

(d) The department, upon suspending or revoking the driving privilege of an owner-operator shall also suspend the owner-operator's motor carrier permit, unless the owner-operator, within 15 days, shows good cause why the permit should not be suspended.

(e) This section shall not be construed to change the definition of "employer," "employee," or "independent contractor" for any other purpose.

CHAPTER 3. INSURANCE

34630. (a) A motor carrier permit shall not be granted to any motor carrier of property until there is filed with the department proof of financial responsibility in the form of a currently effective certificate of insurance, issued by a company licensed to write that

insurance in this state or by a nonadmitted insurer subject to Section 1763 of the Insurance Code, if the policy represented by the certificate meets the minimum insurance requirements contained in Section 34631.5. The certificate of insurance or surety bond shall provide coverage with respect to the operation, maintenance, or use of any vehicle for which a permit is required, although the vehicle may not be specifically described in the policy, or a bond of surety issued by a company licensed to write surety bonds in this state, or written evidence of self-insurance by providing the self-insured number granted by the department on a form approved by the department.

(b) Proof of financial responsibility shall be continued in effect during the active life of the motor carrier permit. The certificate of insurance shall not be cancelable on less than 30 days' written notice from the insurer to the department except in the event of cessation of operations as a permitted motor carrier of property.

(c) Whenever the department determines or is notified that the certificate of insurance or surety bond of a motor carrier of property will lapse or be terminated, the department shall suspend the carrier's permit effective on the date of lapse or termination unless the carrier provides evidence of valid insurance coverage pursuant to subdivision (a). If the carrier's permit is suspended, the carrier shall pay a reinstatement fee as set forth in Section 34623.5, and prior to conducting on-highway operations, present proof of financial responsibility pursuant to subdivision (a) in order to have the permit reinstated.

34631. The proof of financial responsibility required under Section 34630 shall be evidenced by the deposit with the department, covering each vehicle used or to be used under the motor carrier permit applied for, of one of the following:

(a) A certificate of insurance, issued by a company licensed to write insurance in this state, or by a nonadmitted insurer subject to Section 1763 of the Insurance Code, if the policies represented by the certificate comply with Section 34630 and the rules promulgated by the department pursuant to Section 34604.

(b) A bond of a surety company licensed to write surety bonds in the state.

(c) Evidence of qualification of the carrier as a self-insurer as provided for in subdivision (a) of Section 34630. However, any certificate of self-insurance granted to a motor carrier of property shall be limited to serve as proof of financial responsibility under paragraph (1) of subdivision (a) of Section 34631.5 minimum limits only and shall not be acceptable as proof of financial responsibility for the coverage required pursuant to paragraph (2) or (3) of subdivision (a) of Section 34631.5.

34631.5. (a) (1) Every motor carrier of property as defined in Section 34601 (except those subject to paragraph (2) or (3), shall provide and thereafter continue in effect adequate protection

against liability imposed by law upon those carriers for the payment of damages for personal bodily injuries (including death resulting therefrom) in the amount of not less than two hundred fifty thousand dollars ($250,000) on account of bodily injuries to or death of, one person, and protection against total liability of those carriers on account of bodily injuries to, or death of more than one person as a result of any one accident, but subject to the same limitation for each person, in the amount of not less than five hundred thousand dollars ($500,000) and protection in the amount of not less than one hundred thousand dollars ($100,000) for one accident resulting in damage to or destruction of property other than property being transported by the carrier for any shipper or consignee, whether the property of one or more than one claimant, or a combined single limit in the amount of not less than six hundred thousand dollars ($600,000) on account of bodily injuries to, or death of, one or more persons, or damage to or destruction of, property other than property being transported by the carrier for any shipper or consignee whether the property of one or more than one claimant in any one accident.

(2) Every intrastate motor carrier of property, as defined in Section 34601, who transports petroleum products in bulk, including waste petroleum and waste petroleum products, shall provide and thereafter continue in effect adequate protection against liability imposed by law upon the carrier for the payment of damages for personal bodily injuries (including death resulting therefrom) in the amount of not less than five hundred thousand dollars ($500,000) on account of bodily injuries to, or death of, one person; and protection against a total liability of those carriers on account of bodily injuries to, or death of more than one person as a result of any one accident, but subject to the same limitation for each person in the amount of not less than one million dollars ($1,000,000); and protection in an amount of not less than two hundred thousand dollars ($200,000) for one accident resulting in damage to or destruction to property other than property being transported by the carrier for any shipper or consignee, whether the property of one or more than one claimant; or a combined single limit in the amount of not less than one million two hundred thousand dollars ($1,200,000) on account of bodily injuries to, or death of, one or more person or damage to or destruction of property, or both, other than property being transported by the carrier for any shipper or consignee whether the property of one or more than one claimant in any one accident.

(3) Except as provided in paragraph (2), every motor carrier of property, as defined in 34601, that transports any hazardous material, as defined by Section 353, shall provide and thereafter continue in effect adequate protection against liability imposed by law on those carriers for the payment of damages for personal injury or death, and damage to or destruction of property, in amounts of not less than the minimum levels of financial responsibility specified for carriers of hazardous materials by the United States Department of

Transportation in Part 387 (commencing with Section 387.1) of Title 49 of the Code of Federal Regulations. The applicable minimum levels of financial responsibility required are as follows:

Commodity Transported:	Combined Single Limit Coverage
(a) Oil listed in Section 172.101 of Title 49 of the Code of Federal Regulations; hazardous waste, hazardous materials and hazardous substances defined in Section 171.8 of Title 49 of the Code of Federal Regulations and listed in Section 172.101 of Title 49 of the Code of Federal Regulations, but not mentioned in (c) or (d).	$1,000,000
(b) Hazardous waste as defined in Section 25117 of the Health and Safety Code and in Article 1 (commencing with Section 66261.1) of Chapter 11 of Division 4.5 of Title 22 of the California Code of Regulations, but not mentioned in (c) or (d).	$1,000,000
(c) Hazardous substances, as defined in Section 171.8 of Title 49 of the Code of Federal Regulations, or liquefied compressed gas or compressed gas, transported in cargo tanks, portable tanks, or hopper-type vehicle with capacities in excess of 3,500 water gallons.	$5,000,000
(d) Any quantity of class A or B explosives; any quantity of poison gas (Poison A); or highway route controlled quantity radioactive materials as defined in Section 173.403 of Title 49 of the Code of Federal Regulations.	$5,000,000

(4) The protection required under paragraphs (1), (2), and (3) shall be evidenced by the deposit with the department, covering each vehicle used or to be used in conducting the service performed by each motor carrier of property, an authorized certificate of public liability and property damage insurance, issued by a company licensed to write the insurance in the State of California, or by a nonadmitted insurer subject to Section 1763 of the Insurance Code.

(5) The protection required under paragraphs (1), (2), and (3) by every motor carrier of property engaged in interstate or foreign transportation of property in or through California, shall be

evidenced by the filing and acceptance of a department authorized certificate of insurance, or qualification as a self-insurer as may be authorized by law.

(6) A certificate of insurance, evidencing the protection, shall not be cancelable on less than 30 days' written notice to the department, the notice to commence to run from the date notice is actually received at the office of the department in Sacramento.

(7) Every insurance certificate or equivalent protection to the public shall contain a provision that the certificate or equivalent protection shall remain in full force and effect until canceled in the manner provided by paragraph (6).

(8) Upon cancellation of an insurance certificate or the cancellation of equivalent protection authorized by the Department of Motor Vehicles, the motor carrier permit of any motor carrier of property, shall stand suspended immediately upon the effective date of the cancellations.

(9) No carrier shall engage in any operation on any public highway of this state during the suspension of its permit.

(10) No motor carrier of property, whose permit has been suspended under paragraph (8) shall resume operations unless and until the carrier has filed an insurance certificate or equivalent protection in effect at the time and that meets the standards set forth in this section. The operative rights of the complying carriers shall be reinstated from suspension upon the filing of an insurance certificate or equivalent protection.

(11) In order to expedite the processing insurance filings by the department, each insurance filing made should contain the insured's California carrier number, if known, in the upper right corner of the certificate.

34632. (a) Every motor carrier of property shall furnish the department annually, as specified by the department, a list, prepared under oath, of all vehicles, described in Section 34601, used in transportation during the preceding year.

(b) If the carrier's insurer informs the department that the carrier has failed to obtain insurance coverage for any vehicle reported on the list, the department shall, in addition to any other applicable penalty provided in this division, suspend the carrier's permit.

34633. Every motor carrier of property with a carrier fleet of 20 or more commercial motor vehicles as defined in Section 34601 shall, under oath, file annually a report with the department indicating the number, classification, and compensation of all employees and owner-operator drivers hired or engaged during the reporting period. The department shall submit a copy of the report to the administrator of the corporation's workers' compensation self-insurance plan if the corporation is self-insured, or to the carrier's workers' compensation insurer if the carrier's workers' compensation protection is provided by a policy or policies of insurance.

34634. (a) Upon receipt of a stop order issued by the Director of Industrial Relations pursuant to Section 3710.1 of the Labor Code, the department shall determine whether the motor carrier of property has filed a false statement relative to workers' compensation insurance coverage, in violation of statute, or rules or orders of the department. If, after notice and opportunity to be heard, the department determines that there has been a violation of statute, or rules or orders of the department, the department shall, in addition to any other applicable penalty provided in this division, suspend the carrier's permit.

(b) Upon notification from the Director of Industrial Relations that a final judgment has been entered against any motor carrier of property as a result of an award having been made to an employee pursuant to Section 3716.2 of the Labor Code, the department shall, 30 days from the date the carrier is mailed the notice pursuant to subdivision (c), revoke the carrier's permit unless the judgment has been satisfied or has been discharged in accordance with the bankruptcy laws of the United States or the carrier requests a hearing pursuant to subdivision (c).

(c) Within seven days of notification from the Director of Industrial Relations that a final judgment has been entered against any motor carrier of property as a result of an award having been made to an employee pursuant to Section 3716.2 of the Labor Code, the department shall furnish to the carrier named in the final judgment written notice of the right to a hearing regarding the revocation of the permit and the procedure to follow to request a hearing. The notice shall state that the department is required to revoke the carrier's permit pursuant to subdivision (b) after 30 days from the date the notice is mailed unless the carrier provides proof that the judgment is satisfied or has been discharged in accordance with the bankruptcy laws of the United States and the department has been so notified seven days prior to the conclusion of the 30-day waiting period. The carrier may request a hearing within 10 days from the date the notice is sent by the department. The request for the hearing shall stay the revocation. The hearing shall be held within 30 days of the receipt of the request. If the department finds that an unsatisfied judgment exists concerning a debt arising under Section 3717 of the Labor Code, the department shall immediately revoke the carrier's permit.

CHAPTER 4. WORKERS' COMPENSATION

34640. (a) A motor carrier permit shall not be granted to any motor carrier of property until one of the following is filed with the department:

(1) A certificate of workers' compensation coverage for its employees issued by an admitted insurer.

(2) A certification of consent to self-insure issued by the Director of Industrial Relations, and the identity of the administrator of the carrier's workers' compensation self-insurance plan.

(3) A statement, under penalty of perjury, stating that, in its operations as a motor carrier of property, it does not employ any person in any manner so as to become subject to the workers' compensation laws of this state.

(b) The workers' compensation certified under paragraph (1) of subdivision (a) shall be effective until canceled. The insurer shall provide to the motor carrier of property and to the department a notice of cancellation not less than 30 days in advance of the effective date.

(c) If, after filing the statement described in paragraph (3) of subdivision (a), the carrier becomes subject to the workers' compensation laws of this state, the carrier shall promptly notify the department that the carrier is withdrawing its statement under paragraph (3) of subdivision (a), and shall simultaneously file the certificate described in either paragraph (1) or (2) of subdivision (a).

(d) Whenever the department determines or is notified that the certificate of workers' compensation insurance or certification to self-insure a motor carrier of property will lapse or be terminated, the department shall suspend the carrier's permit effective on the date of the lapse or termination, unless the motor carrier provides evidence of valid insurance coverage pursuant to subdivision (a). If the carrier's permit is suspended, the carrier shall pay a reinstatement fee as set forth in Section 34671, and prior to conducting on-highway operations, present proof of valid insurance coverage pursuant to subdivision (a) in order to have the permit reinstated.

CHAPTER 5. IDENTIFICATION

34650. Notwithstanding paragraph (1) of subdivision (b) of Section 34507.5, a motor carrier of property required to obtain a permit under this division shall display the carrier identification number, as otherwise required by Section 34507.5, on any vehicle operated pursuant to the permit.

CHAPTER 6. FINES AND PENALTIES

34660. (a) A motor carrier of property, after its motor carrier permit has been suspended by the department, who continues to operate as a motor carrier, either independently or for another motor carrier, is guilty of a misdemeanor, punishable by a fine of not more than two thousand five hundred dollars ($2,500), or by imprisonment in the county jail for not more than three months, or by both that fine and imprisonment.

(b) Each violation of this section is a separate and distinct offense, and, in the case of a continuing violation, each day's continuance of operation as a carrier in violation of this section is a separate and distinct offense.

(c) Upon finding that a motor carrier of property is willfully violating this section after being advised that it is not operating in compliance with the laws of this state, the court may issue an injunction to stop the carrier's continued operation.

(d) A member of the Department of the California Highway Patrol may impound a vehicle or combination of vehicles operated by a motor carrier of property, when the vehicle or combination of vehicles is found upon a highway, any public lands, or an offstreet parking facility and the motor carrier is found to be in violation of this section. For purposes of this subdivision, the vehicle shall be released to the registered owner or authorized agent only after the registered owner or authorized agent furnishes the Department of the California Highway Patrol with proof of current registration, a currently valid driver's license of the appropriate class to operate the vehicle or combination of vehicles, and proof of compliance with this division. The registered owner or authorized agent is responsible for all towing and storage charges related to the impoundment.

34661. Any person or corporation who violates any provision of this division is guilty of a misdemeanor, punishable by a fine of not more than two thousand five hundred dollars ($2,500), or by imprisonment in the county jail for not more than three months, or by both that fine and imprisonment.

34670. Any violation of Division 14.8 (commencing with Section 34500) or any violation of this division relating to motor carriers of property that results in a suspension or revocation of the motor carrier permit, in addition to any other penalties, shall be sanctioned as follows:

(a) If there have been no prior sanctions imposed on the permitholder, the permit shall be suspended for 30 days.

(b) If the permit had been suspended once prior in the previous 36 months, the permit shall be suspended for 60 days.

(c) If the permit had been previously suspended two or more times in the previous 36 months, the permit shall be suspended for 90 days, and a fine of one thousand five hundred dollars ($1,500) shall be imposed.

34671. No motor carrier permit suspended or revoked under the provisions of this code shall be reinstated until a fee of one hundred fifty dollars ($150) has been paid, and the motor carrier permitholder has met all requirements for the issuance of a permit.

34672. If a motor carrier permit is paid for by a check that is dishonored by the bank, the permit shall be canceled. A dishonored check fee of twenty dollars ($20) shall be assessed to the motor carrier permit applicant. The department shall notify the carrier that the check was dishonored and that the permit will be canceled 30 days

from the date of notification if the applicant does not make restitution. If the applicant does not make restitution for the dishonored check, and pay the dishonored check fee within 30 days of the notice, the application for a motor carrier permit shall be canceled.

SEC. 54. Section 40000.22 of the Vehicle Code is amended to read:

40000.22. (a) A violation of subdivision (e) of Section 34501, subdivision (f) of Section 34501.12, or subdivision (c) of Section 34501.14, relating to applications for inspections, is a misdemeanor and not an infraction.

(b) A violation of Division 14.85 (commencing with Section 34600), relating to motor carriers of property, is a misdemeanor and not an infraction.

SEC. 55. On January 1, 1997, seven million three hundred thousand dollars ($7,300,000) shall be transferred from the Transportation Rate Fund to the Motor Carriers Permit Fund, created pursuant to subdivision (a) of Section 7236 of the Revenue and Taxation Code. These funds are hereby appropriated for the implementation of the Motor Carriers Safety Act of 1996, as follows: the sum of four million nine hundred eighteen thousand dollars ($4,918,000) from the Motor Carriers Permit Fund is appropriated to the Department of Motor Vehicles to provide for implementation costs and contractual costs to the Public Utilities Commission pursuant to subdivision (a) of Section 34605 of the Vehicle Code. The sum of one million nine hundred thirty-five thousand dollars ($1,935,000) is appropriated from the Motor Carriers Permit Fund to the Department of the California Highway Patrol to conduct enforcement activities as required by this act. The sum of one million four hundred thousand dollars ($1,400,000) is appropriated from the Motor Carriers Safety Improvement Fund to the Department of the California Highway Patrol for the Cargo Theft Interdiction Program.

SEC. 56. Item 8660-001-0412, of Section 2.00 of the Budget Act of 1996 (Chapter 162 of the Statutes of 1996) is amended to read:

8660−001−0412−For support of Public Utilities Commission, for payment to Item 8660−001−0462, payable from the Transportation Rate Fund 6,743,000

SEC. 57. Item 8660-001-0462, of Section 2.00 of the Budget Act of 1996 (Chapter 162 of the Statutes of 1996) is amended to read:

8660−001−0462−For support of Public Utilities Commission, payable from the Public Utilities Commission Utilities Reimbursement Account, General Fund 49,039,000
Schedule:

(a) 100000—Personal Services	56,915,000
(b) 300000—Operating Expenses and Equipment	21,675,000
(c) Reimbursements	−9,180,000
(d) Amount payable from the State Highway Account, State Transportation Fund (Item 8660−001−0042)	−2,295,000
(e) Amount payable from the Transportation Planning and Development Account, State Transportation Fund (Item 8660−001−0046)	−2,403,000
(f) Amount payable from the Transportation Rate Fund (Item 8660−001−0412)	−6,743,000
(g) Amount payable from the Public Utilities Commission Transportation Reimbursement Account, General Fund (Item 8660−001−0461)	−8,436,000
(h)Amount payable from the Federal Trust Fund (Item 8660−001−0890)	−494,000

SEC. 58. Sections 5 and 6 of this act shall become operative on January 1, 1997.

SEC. 59. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

SEC. 60. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that motor carriers are properly insured and operate commercial vehicles in a safe manner, as soon as possible, and to ensure a smooth and immediate transition to the changed regulatory environment precipitated by federal legislation, it is necessary that this act take effect immediately.

CHAPTER 1043

An act to amend Sections 12517.4, 12520, 12527, 12804.6, 12814.5, 12816, 14900, 14900.1, 14901, 15250.5, 15250.6, 15255, and 15255.1 of, to add Sections 15250.7 and 15255.2 to, and to repeal Section 14901.1 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 12517.4 of the Vehicle Code is amended to read:

12517.4. This section governs the issuance of a certificate to drive a schoolbus, school pupil activity bus, youth bus, general public paratransit vehicle, or farm labor vehicle.

(a) The driver certificate shall be issued only to applicants meeting all applicable provisions of this code and passing the examinations prescribed by the department and the Department of the California Highway Patrol. The examinations shall be conducted by the Department of the California Highway Patrol, pursuant to Sections 12517, 12519, 12522, 12523, and 12523.5.

(b) A temporary driver certificate shall be issued by the Department of the California Highway Patrol after an applicant has cleared a criminal history background check by the Department of Justice and, if applicable, the Federal Bureau of Investigation, and has passed the examinations and meets all other applicable provisions of this code.

(c) A permanent driver's certificate shall be issued by the department after an applicant has passed all tests and met all applicable provisions of this code. Certificates are valid for a maximum of five years and shall expire on the same date as the applicant's driver's license.

(d) No holder of a certificate shall violate any restriction placed on the certificate. Depending upon the type of vehicle used in the driving test and the abilities and physical condition of the applicant, the Department of the California Highway Patrol and the department may place restrictions on a certificate to assure the safe operation of a motor vehicle and safe transportation of passengers.

These restrictions may include, but are not limited to, all of the following:

(1) Automatic transmission only.

(2) Hydraulic brakes only.

(3) Type 2 bus only.

(4) Conventional or type 2 bus only.

(5) Two-axle motor truck or passenger vehicle only.

(e) No holder of a certificate shall drive any motor vehicle equipped with a two-speed rear axle unless the certificate is endorsed: "May drive vehicle with two-speed rear axle."

SEC. 2. Section 12520 of the Vehicle Code is amended to read:

12520. (a) No person employed as a tow truck driver, as defined in Section 2430.1, shall operate a tow truck unless that person has, in his or her immediate possession, a valid California driver's license of an appropriate class for the vehicle to be driven, and a tow truck driver certificate issued by the department or a temporary tow truck driver certificate issued by the Department of the California Highway Patrol, to permit the operation of the tow truck.

(b) When notified that the applicant has been cleared through the Department of Justice or the Federal Bureau of Investigation, or both, and if the applicant meets all other applicable provisions of this code, the department shall issue a permanent tow truck driver certificate. The permanent tow truck driver certificate shall be valid for a maximum of five years and shall expire on the same date as that of the applicant's driver's license.

SEC. 3. Section 12527 of the Vehicle Code is amended to read:

12527. In addition to satisfying all requirements specified in this code and regulations adopted pursuant to this code, an applicant for an ambulance driver certificate shall satisfy all of the following requirements:

(a) Except as otherwise provided, every ambulance driver responding to an emergency call or transporting patients shall be at least 18 years of age, hold a driver's license valid in California, possess a valid ambulance driver certificate, and be trained and competent in ambulance operation and the use of safety and emergency care equipment required by the California Code of Regulations governing ambulances.

(b) Except as provided in subdivision (f), no person shall operate an ambulance unless the person has in his or her immediate possession a driver's license for the appropriate class of vehicle to be driven, and a certificate issued by the department to permit the operation of an ambulance.

(c) An ambulance driver certificate may be issued by the department only upon the successful completion of an examination conducted by the department and subject to all of the following conditions:

(1) An applicant for an original or renewal driver certificate shall submit a report of medical examination on a form approved by the

department, the Federal Highway Administration, or the Federal Aviation Administration. The report shall be dated within the two years preceding the application date.

(2) An applicant for an original driver certificate shall submit an acceptable fingerprint card.

(3) The certificate to drive an ambulance shall be valid for a period not exceeding five years and six months and shall expire on the same date as the driver's license. The ambulance driver certificate shall be valid only when both of the following conditions exist:

(A) The certificate is accompanied by a medical examination certificate that was issued within the preceding two years and approved by the department, Federal Highway Administration, or Federal Aviation Administration.

(B) A copy of the medical examination report from which the certificate was issued is on file with the department.

(4) The ambulance driver certificate is renewable under conditions prescribed by the department. Except as permitted under paragraphs (2) and (3) of subdivision (d), applicants renewing an ambulance driver certificate shall possess certificates or licenses evidencing compliance with the emergency medical training and educational standards for ambulance attendants established by the Emergency Medical Service Authority.

(d) (1) Every ambulance driver shall have been trained to assist the ambulance attendant in the care and handling of the ill and injured.

Except as provided in paragraph (2), the driver of a California-based ambulance shall, within one year of initial issuance of the driver's ambulance driver certificate, possess a certificate or license evidencing compliance with the emergency medical training and educational standards established for ambulance attendants by the Emergency Medical Service Authority. In those emergencies requiring both the regularly assigned driver and attendant to be utilized in providing patient care, the specialized emergency medical training requirement shall not apply to persons temporarily detailed to drive the ambulance.

(2) Paragraph (1) does not apply to an ambulance driver who is a volunteer driver for a volunteer ambulance service under the circumstances specified in this paragraph, if the service is provided in the unincorporated areas of a county with a population of less than 125,000 persons, as determined by the most recent federal decennial census. The operation of an ambulance under this paragraph shall only apply if the name of the driver and the volunteer ambulance service and facts substantiating the public health necessity for an exemption are submitted to the department by the county board of supervisors and by at least one of the following entities in the county where the driver operates the ambulance:

(A) The county health officer.

(B) The county medical care committee.

(C) The local emergency medical services agency coordinator.

(3) The information required by paragraph (2) shall be submitted to the department at the time of application for an ambulance driver certificate. Upon receipt of that information, the department shall restrict the certificate holder to driving an ambulance for the volunteer ambulance service.

(4) The director may terminate any certificate issued pursuant to paragraph (2) at any time the department determines that the qualifying conditions specified therein no longer exist.

(5) The exemption granted pursuant to paragraph (2) shall expire on the expiration date of the ambulance driver certificate.

(e) A person holding a valid certificate to permit the operation of an ambulance, issued prior to January 1, 1991, shall not be required to reapply for a certificate to satisfy the requirements of this section until the certificate he or she holds expires or is canceled or revoked.

(f) An ambulance certificate is not required for persons operating ambulances in the line of duty as salaried, regular, full-time police officers, deputy sheriffs, or members of a fire department of a public agency. This exemption does not include volunteers and part-time employees or members of a department whose duties are primarily clerical or administrative.

SEC. 4. Section 12804.6 of the Vehicle Code is amended to read:

12804.6. (a) No person shall operate a transit bus transporting passengers unless that person has received from the department a certificate to operate a transit bus or is certified to drive a schoolbus or school pupil activity bus pursuant to Section 12517.

(b) All transit busdrivers shall comply with standards established in Section 40083 of the Education Code. The Department of Motor Vehicles shall establish an implementation program for transit busdrivers to meet these requirements. Any transit busdriver who was employed as a busdriver on or before July 1, 1990, shall comply with Section 40085.5 of the Education Code instead of Section 44083 of that code in order to receive his or her original certificate.

(c) Implementation procedures for the issuance of transit busdrivers' certificates may be established by the Department of Motor Vehicles as necessary to implement an orderly transit busdriver training program.

(d) The department shall issue a transit busdriver certificate to any person who provides either of the following:

(1) Proof that he or she has complied with Section 40083 of the Education Code.

(2) Proof that he or she has complied with Section 40085.5 of the Education Code.

(e) The department may charge a fee of ten dollars ($10) to an applicant for an original or a duplicate or renewal certificate under this section.

(f) The department shall issue a certificate to the applicant. The status of the certificate shall also become part of the pull notice and

periodic reports issued pursuant to Section 1808.1. The certificate or the pull notice or periodic reports shall become part of, the person's employee records for the purpose of inspection pursuant to Sections 1808.1 and 34501. It shall be unlawful for the employer to permit a person to drive a transit bus who does not have a valid certificate.

(g) The term of a certificate shall be a period not to exceed five years, and shall expire with the driver's license.

SEC. 5. Section 12814.5 of the Vehicle Code is amended to read:

12814.5. (a) The director may establish a program to evaluate the traffic safety and other effects of renewing driver's licenses by mail. Pursuant to that program, the department may renew by mail driver's licenses for licensees not holding a probationary license, and whose records, for the two years immediately preceding the determination of eligibility for the renewal, show no notification of a violation of subdivision (a) of Section 40509, a total violation point count not greater than one as determined in accordance with Section 12810, no suspension of the driving privilege pursuant to Section 13353.2, and no refusal to submit to or complete chemical testing pursuant to Section 13353 or 13353.1.

(b) The director may terminate the renewal by mail program authorized by this section at any time the department determines that the program has an adverse impact on traffic safety.

(c) No renewal by mail shall be granted to any person who is 70 years of age or older.

(d) (1) The department shall charge a fee of twelve dollars ($12) for each noncommercial license renewal and twenty-seven dollars ($27) for each commercial license or noncommercial firefighter license renewal granted pursuant to subdivision (a) which expires on the fourth birthday following the date of the application.

(2) The department shall charge a fee of fifteen dollars ($15) for each noncommercial license renewal and thirty-four dollars ($34) for each commercial license or noncommercial firefighter license renewal granted pursuant to subdivision (a) which expires on the fifth birthday following the date of the application.

(e) The department shall notify each licensee granted a renewal by mail pursuant to this section of major changes to the Vehicle Code affecting traffic laws occurring during the prior five-year period.

(f) The department shall not renew a driver's license by mail if the license has been previously renewed by mail two consecutive times for five-year periods.

SEC. 6. Section 12816 of the Vehicle Code is amended to read:

12816. (a) Every original driver's license expires on the fifth birthday of the applicant following the date of the application for the license.

(b) Renewal of a driver's license shall be made for a term which expires on the fifth birthday of the applicant following the expiration of the license renewed, if application for renewal is made within six months prior to the expiration of the license to be renewed, or within

90 days after expiration of the license. If renewal is not applied for within 90 days after expiration of the license, the application and fee is considered the same as an application for an original license.

(c) The department may accept application for a renewal of a driver's license made more than six months prior to the date of expiration. The renewal shall be made for a term which expires on the fifth birthday of the applicant following the date of the application for the renewal license.

(d) The department may accept an application for a license of a different class made more than six months before the expiration of the license previously issued, if the previously issued license is surrendered for cancellation in accordance with Section 13100. The driver's license issued from that application expires on the fifth birthday of the applicant following the date of the application.

(e) Notwithstanding subdivisions (a), (b), (c), and (d), the department may adjust the expiration date for any driver's license issued pursuant to this code.

SEC. 7. Section 14900 of the Vehicle Code is amended to read:

14900. Upon application for an original class C or M driver's license, or for the renewal of a class C or M driver's license, there shall be paid to the department a fee of twelve dollars ($12) for a license that will expire on the fourth birthday of the applicant following the date of the application. The payment of the fee entitles the person paying the fee to apply for a driver's license and to take three examinations within a period of 12 months from the date of the application or during the period that an instruction permit is valid, as provided in Section 12509.

SEC. 8. Section 14900.1 of the Vehicle Code is amended to read:

14900.1. Except as provided in Sections 15250.5 and 15255, upon application for an original driver's license, or for the renewal of a driver's license or for a license to operate a different class of vehicle, there shall be paid to the department a fee of fifteen dollars ($15) for a license that will expire on the fifth birthday of the applicant following the date of the application. The payment of the fee entitles the person paying the fee to apply for a driver's license and to take three examinations within a period of 12 months from the date of the application or during the period that an instruction permit is valid, as provided in Section 12509.

SEC. 9. Section 14901 of the Vehicle Code is amended to read:

14901. Upon an application for a duplicate driver's license or for a change of name on a driver's license, there shall be paid the department a fee of twelve dollars ($12).

SEC. 10. Section 14901.1 of the Vehicle Code is repealed.

SEC. 11. Section 15250.5 of the Vehicle Code is amended to read:

15250.5. (a) No person shall operate firefighting equipment unless that person has in his or her immediate possession a valid driver's license for the appropriate class of vehicle operated, or a license issued pursuant to subdivision (b).

(b) The department may issue a restricted driver's license for the appropriate class of vehicle to a firefighter for the operation of firefighting equipment. The restricted license shall be valid only for operating (1) firefighting equipment within this state, or in another state during a response under a mutual aid pact, or (2) any vehicle for which a class C driver's license is required.

(c) The restricted firefighter's license may be issued only to an applicant qualified by examination prescribed and conducted by the department.

The pretrip inspection and driving test required to receive the license shall be the same as required to obtain a license under Section 15250.

The written examination shall be developed by the department with the cooperation of the State Fire Marshal. The department shall include a sufficient number of questions from the examinations required to obtain a license under Section 15250 to ensure that passing the special examination under this section assures a level of safety comparable to examinations given under Section 15250.

(d) In lieu of a report of medical examination required by Section 12804.9, an applicant for a restricted license issued pursuant to subdivision (b) shall, upon application and every two years thereafter, submit medical information on a form approved by the department.

(e) Upon application for issuance of an original driver's license pursuant to subdivision (b) or for renewal of a driver's license issued pursuant to subdivision (b), there shall be paid to the department a fee of twenty-seven dollars ($27) for a license that will expire on the fourth birthday of an applicant following the date of the application.

(f) A "firefighter" is any person employed as a firefighter by a federal or state agency or by a regularly organized fire department of a city, county, city and county, or district, or registered as a volunteer member of a regularly organized fire department having official recognition of the city, county, city and county, or district in which the department is located.

(g) "Firefighting equipment" means a motor vehicle used to travel to and from the scene of any emergency situation, or to transport equipment used in the control of any emergency situation, and which is owned by, or under the exclusive control of, a federal or state agency, a regularly organized fire department of a city, county, city and county, or district, or a volunteer fire department having official recognition of the city, county, city and county, or district in which the department is located.

(h) For purposes of the penalties and sanctions prescribed by Article 7 (commencing with Section 15300), the operation of firefighting equipment under a license issued pursuant to subdivision (b) is deemed to be the operation of a commercial motor vehicle.

SEC. 12. Section 15250.6 of the Vehicle Code is amended to read:

15250.6. (a) No person shall operate firefighting equipment unless that person has in his or her immediate possession a valid driver's license for the appropriate class of vehicle operated, or a license issued pursuant to subdivision (b).

(b) The department may issue a restricted driver's license for the appropriate class of vehicle to a firefighter for the operation of firefighting equipment. The restricted license shall be valid only for operating (1) firefighting equipment within this state, or in another state during a response under a mutual aid pact, or (2) any vehicle for which a class C driver's license is required.

(c) The restricted firefighter's license may be issued only to an applicant qualified by examination prescribed and conducted by the department.

The pretrip inspection and driving test required to receive the license shall be the same as required to obtain a license under Section 15250.

The written examination shall be developed by the department with the cooperation of the State Fire Marshal. The department shall include a sufficient number of questions from the examinations required to obtain a license under Section 15250 to ensure that passing the special examination under this section assures a level of safety comparable to examinations given under Section 15250.

(d) In lieu of a report of medical examination required by Section 12804.9, an applicant for a restricted license issued pursuant to subdivision (b) shall, upon application and every two years thereafter, submit medical information on a form approved by the department.

(e) Upon application for issuance of an original driver's license pursuant to subdivision (b), or for a renewal of a driver's license issued pursuant to subdivision (b), there shall be paid to the department a fee of thirty-four dollars ($34) for a license that will expire on the fifth birthday of the applicant following the date of the application.

(f) A "firefighter" is any person employed as a firefighter by a federal or state agency or by a regularly organized fire department of a city, county, city and county, or district, or registered as a volunteer member of a regularly organized fire department having official recognition of the city, county, city and county, or district in which the department is located.

(g) "Firefighting equipment" means a motor vehicle used to travel to and from the scene of any emergency situation, or to transport equipment used in the control of any emergency situation, and which is owned by, or under the exclusive control of, a federal or state agency, a regularly organized fire department of a city, county, city and county, or district, or a volunteer fire department having official recognition of the city, county, city and county, or district in which the department is located.

(h) For purposes of the penalties and sanctions prescribed by Article 7 (commencing with Section 15300), the operation of firefighting equipment under a license issued pursuant to subdivision (b) is deemed to be the operation of a commercial motor vehicle.

SEC. 13. Section 15250.7 is added to the Vehicle Code, to read:

15250.7. Upon application for issuance of a duplicate driver's license pursuant to subdivision (b) of Section 15250.5 or subdivision (b) of Section 15250.6, there shall be paid to the department a fee of twenty-seven dollars ($27).

SEC. 14. Section 15255 of the Vehicle Code is amended to read:

15255. (a) Except as otherwise specified in subdivisions (b) and (c), upon an application for an original commercial driver's license, there shall be paid to the department a fee of fifty-seven dollars ($57) for a license that will expire on the fourth birthday of the applicant following the date of the application. A fee of fifty-seven dollars ($57) shall also be paid to the department upon an application to change a license classification or to remove a restriction if the change or removal requires a driving-skill test and the license will expire on the fourth birthday of the applicant following the date of the application.

(b) Upon application for issuance of an original commercial driver's license or for the renewal of a commercial driver's license by a currently licensed class A or class B driver who meets the driver record requirements and all other requirements established by Section 383.77 of Title 49 of the Code of Federal Regulations, there shall be paid to the department a fee of twenty-seven dollars ($27) for a license that will expire on the fourth birthday of the applicant following the date of the application.

(c) Upon application for an original class C commercial driver's license or for the renewal of a class C commercial driver's license which requires an endorsement as provided in Section 15278, there shall be paid to the department a fee of twenty-seven dollars ($27) for a license that will expire on the fourth birthday of the applicant following the date of the application.

(d) Following failure in taking a driving-skill test, there shall be paid to the department a fee of thirty dollars ($30) for each subsequent administration of the driving-skill test required by the application.

SEC. 15. Section 15255.1 of the Vehicle Code is amended to read:

15255.1. (a) Except as otherwise specified in subdivisions (b) and (c), upon an application for an original commercial driver's license, there shall be paid to the department a fee of sixty-four dollars ($64) for a license that will expire on the fifth birthday of the applicant following the date of the application. A fee of sixty-four dollars ($64) shall also be paid to the department upon an application to change a license classification or to remove a restriction if the change or removal requires a driving-skill test and the license will expire on the fifth birthday of the applicant following the date of the application.

(b) Upon application for an original commercial driver's license or for the renewal of commercial driver's license by a currently licensed class A or class B, or class A or class B, driver who meets the driver record requirements and all other requirements established by Section 383.77 of Title 49 of the Code of Federal Regulations, there shall be paid to the department a fee of thirty-four dollars ($34) for a license that will expire on the fifth birthday of the applicant following the date of the application.

(c) Upon application for an original class C commercial driver's license or for the renewal of a class C commercial driver's license which requires an endorsement as provided in Section 15278, there shall be paid to the department a fee of thirty-four dollars ($34) for a license that will expire on the fifth birthday of the applicant following the date of the application.

(d) Following failure in taking a driving-skill test, there shall be paid to the department a fee of thirty dollars ($30) for each subsequent administration of the driving-skill test required by the application.

SEC. 16. Section 15255.2 is added to the Vehicle Code, to read:

15255.2. Upon application for a duplicate commercial driver's license by a currently licensed class A or class B driver, or a class C commercial driver's license which requires an endorsement as provided in Section 15278, from an applicant who meets the driver record requirements and all other requirements established by Section 383.77 of Title 49 of the Code of Federal Regulations, there shall be paid to the department a fee of twenty-seven dollars ($27).

CHAPTER 1044

An act to amend Section 14161 of the Penal Code, relating to gaming.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 29, 1996.]

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

SECTION 1. Section 14161 of the Penal Code is amended to read:

14161. As used in this title:

(a) "Financial institution" means, when located or doing business in this state, any national bank or banking association, state bank or banking association, commercial bank or trust company organized under the laws of the United States or any state, any private bank, industrial savings bank, savings bank or thrift institution, savings and loan association, or building and loan association organized under the laws of the United States or any state, any insured institution as defined in Section 401 of the National Housing Act, any credit union

organized under the laws of the United States or any state, any national banking association or corporation acting under Chapter 6 (commencing with Section 601) of Title 12 of the United States Code, any foreign bank, any currency dealer or exchange, any person or business engaged primarily in the cashing of checks, any person or business who regularly engages in the issuing, selling, or redeeming of traveler's checks, money orders, or similar instruments, any broker or dealer in securities registered or required to be registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934, any licensed sender of money, any investment banker or investment company, any insurance company, any dealer in coins, precious metals, stones, or jewelry, any pawnbroker, any telegraph company, any person or business engaged in legal gambling or gaming within the meaning of Section 19802 of the Business and Professions Code, whether registered to do so or not, and any person or business defined as a "bank," "financial agency," or "financial institution" by Section 5312 of Title 31 of the United States Code or Section 103.11 of Title 31 of the Code of Federal Regulations and any successor provisions thereto.

(b) "Transaction" includes the deposit, withdrawal, transfer, bailment, loan, payment, or exchange of currency, or a monetary instrument, as defined by subdivision (d), by, through, or to, a financial institution, as defined by subdivision (a). "Transaction" does not include the purchase of gold, silver, or platinum bullion or coins, or diamonds, emeralds, rubies, or sapphires by a bona fide dealer therein, and does not include the sale of gold, silver, or platinum bullion or coins, or diamonds, emeralds, rubies, or sapphires by a bona fide dealer therein in exchange for other than a monetary instrument, and does not include the exchange of gold, silver, or platinum bullion or coins, or diamonds, emeralds, rubies, or sapphires by a bona fide dealer therein for gold, silver, or platinum bullion or coins, or diamonds, emeralds, rubies, or sapphires.

(c) "Monetary instrument" means United States currency and coin; the currency and coin of any foreign country; and any instrument defined as a "monetary instrument" by Section 5312 of Title 31 of the United States Code or Section 103.11 of Title 31 of the Code of Federal Regulations, or the successor of either. Notwithstanding any other provision of this subdivision, "monetary instrument" does not include bank checks, cashier's checks, traveler's checks, personal checks, or money orders made payable to the order of a named party that have not been endorsed or that bear restrictive endorsements.

(d) "Department" means the Department of Justice.

(e) "Criminal justice agency" means the Department of Justice and any district attorney's office, sheriff's department, police department, or city attorney's office of this state.

(f) "Currency" means United States currency or coin, the currency or coin of any foreign country, and any legal tender or coin

defined as currency by Section 103.11 of Title 31 of the Code of Federal Regulations or any succeeding provision.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 1045

An act to amend Sections 41906, 41912, and 51852 of, and to add Section 41907.5 to, the Education Code, relating to schools, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 41906 of the Education Code is amended to read:

41906. In applying for state reimbursement for driver training expenses incurred in the school year 1968–69 and thereafter, school districts, county superintendents of schools, the California Youth Authority, and the State Department of Education shall certify to having met the requirements set forth in this article and, in addition, shall certify that all teachers used in the driver education or driver training programs are qualified instructors, as defined in Section 41907.

SEC. 2. Section 41907.5 is added to the Education Code, to read:

41907.5. (a) Any waiver granted by the Commission on Teacher Credentialing of the credentialing requirements specified in Section 41907 shall not extend beyond one year unless the individual to whom the waiver was granted demonstrates substantial progress toward meeting those credentialing requirements.

(b) This section shall be implemented only upon certification by the Commission on Teacher Credentialing that it has developed alternative routes to coursework requirements authorized pursuant to Section 44260.7, and that reasonable opportunities exist for prospective credentialholders to receive this coursework.

SEC. 3. Section 41912 of the Education Code is amended to read:

41912. (a) The Legislature finds and declares all of the following:

(1) To assist in reducing the number of fatalities involving youthful drivers, a minimum standard of six hours of behind-the-wheel driver training conducted by a public or private secondary school, or by a qualified instructor of a licensed private driving school, shall be established.

(2) According to the National Highway Traffic Safety Administration, traffic crashes are the number one killer of teenagers. Per mile driven, teenage drivers are involved in accidents four times as often as adults.

(3) According to the Center for Disease Control and Prevention, motor vehicle crashes are the leading cause of death among youths 16 to 20 years of age. Nationwide, about 6,000 youths 16 to 20 years of age, die each year in traffic accidents. Teenage drivers represent about 7 percent of the country's population, but account for about 17 percent of the victims of fatal crashes.

(4) According to the Department of Motor Vehicles, during 1993, 4,163 people were killed and 315,184 were injured in traffic accidents across the state.

(5) According to the National Safety Council, driver error causes 69 percent of all automobile collisions. Annually, 11,900,000 accidents occur nationwide resulting in 2,000,000 injuries and 42,000 fatalities. Automobile accidents cost one hundred sixty-seven billion dollars ($167,000,000,000) annually.

(6) The Department of Motor Vehicles has introduced the first major revision of the driver's license test since 1933, in recognition of a need to require first-time drivers to pass an examination representative of the complex driving conditions confronting motorists throughout the state. A minimum of six hours of behind-the-wheel driver training conducted by a public or private secondary school, or by a qualified instructor of a licensed private driving school, is required to prepare the first-time driver under 18 years of age to pass this examination.

(b) The expressed purpose of the Legislature is that highway accidents can and must be reduced through the education and training of drivers prior to licensing, and that this instruction properly belongs in the high school curriculum on a basis of having comparable standards of instruction, quality, teacher-pupil ratio and class scheduling in driver education as in other courses in the regular academic program. Only through a high quality program of driver instruction can the greatest potential in traffic accident prevention be realized. Further, the state has a responsibility to share in the reasonable costs of providing those courses.

SEC. 4. Section 51852 of the Education Code is amended to read:

51852. A course of instruction in the laboratory phase of driver education shall include, for each student enrolled in the class, instruction under one of the following plans:

(a) Plan One. A minimum of 12 hours allocated as follows:

(1) A minimum of six hours of on-street behind-the-wheel practice driving instruction in a dual-control automobile with a qualified instructor.

(2) A minimum of six hours in a dual-control automobile with a qualified instructor for the purposes of observation. Practice driving on an off-street multiple-car driving range approved by the department under the supervision of a qualified instructor may be substituted for all or part of the observation time.

(b) Plan Two. A minimum of 24 hours allocated as follows:

(1) Three hours of on-street behind-the-wheel practice driving instruction in a dual-control automobile with a qualified instructor.

(2) Six hours in a dual-control automobile with a qualified instructor for the purposes of observation. Practice driving on an off-street multiple-car driving range approved by the department under the supervision of a qualified instructor may be substituted for all or part of the observation time.

(3) Twelve hours of instruction by a qualified instructor in a driving simulator approved by the department.

(4) At least three additional hours of instruction specified in one or more of paragraphs 1 to 3, inclusive, of this subdivision.

(c) Plan Three. A minimum of 24 hours allocated as follows:

(1) Three hours of on-street behind-the-wheel practice driving instruction in a dual-control automobile with a qualified instructor.

(2) Six hours in a dual-control automobile with a qualified instructor for the purpose of observation.

(3) Twelve hours of instruction by a qualified instructor on an off-street multiple-car driving range.

(4) At least three additional hours of instruction specified in one or more of paragraphs 1 to 3, inclusive, of this subdivision.

(d) Plan Four. A minimum of 24 hours allocated as follows:

(1) Three hours of on-street behind-the-wheel practice driving instruction in a dual-control automobile with a qualified instructor.

(2) Three hours in a dual-control automobile with a qualified instructor for the purpose of observation.

(3) Eighteen hours of instruction by a qualified instructor in a driving simulator approved by the department and on an off-street multiple-car driving range. The governing board of the district shall establish the proportion of time to be utilized in simulators and on the off-street multiple-car driving range.

(e) Plan Five.

(1) Competency-based driver training which means a program in which each student receives a minimum of three hours of on-street behind-the-wheel practice driving instruction, a minimum of one hour of behind-the-wheel pretesting, and a minimum of one hour of behind-the-wheel posttesting. The pretest and posttest for public school programs shall include basic skill evaluation by the instructor, as adopted by the Superintendent of Public Instruction pursuant to

paragraph (2). The one hour posttest shall be conducted by an instructor other than the instructor who conducted the three hours of behind-the-wheel practice driving instruction or the pretest. Each student shall receive at least one additional hour of either behind-the-wheel practice driving instruction or observation time.

(2) The Superintendent of Public Instruction shall adopt rules, regulations, and basic skill requirements for public school programs pursuant to this subdivision.

(3) Local district superintendents offering this program shall annually report to the Superintendent of Public Instruction, on a form developed by the State Department of Education, on student completion of instruction pursuant to paragraph (1).

(f) For purposes of this section, one hour means 60 minutes including passing time.

(g) Any deviation from the standard use of a simulator or off-street multiple-car driving range, or both, shall have prior approval by the Department of Education before the school district, county superintendent of schools, the California Youth Authority, or the Department of Education can be reimbursed for the students trained.

(h) Nothing in this section shall be construed to direct or restrict courses of instruction in the classroom phase or the laboratory phase of driver education offered by private elementary and secondary schools or to require the use of credentialed or certified instructors in the laboratory phase of driver education offered by private elementary and secondary schools, except that each student enrolled in a course shall satisfactorily complete a minimum of six hours of on-street behind-the-wheel driving instruction. This section shall not be construed to limit eligibility for a provisional driver's license for pupils who have completed driver education or driver training courses offered in private elementary or secondary schools.

(i) For the purposes of this section, private elementary or secondary schools are those subject to the provisions of Sections 33190 and 48222.

SEC. 5. Section 4 of this act shall become operative on July 1, 1996.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide protection to the motoring public, it is necessary that this act take effect immediately.

CHAPTER 1046

An act to amend the heading of Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of, and to amend

Sections 14010, 14020, 14021, 14022, 14024, 14025, 14026, 14028, 14030, 14030.2, 14035, 14037, 14037.6, 14040, 14043, 14045, 14046, 14052, 14056, 14059, 14060, 14061, 14066, 14070, 14071, 14072, 14076, 14085, and 14086 of, to add Section 14060.5 to, and to repeal Section 14029 of, the Corporations Code, relating to financial development, and making an appropriation therefor.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. The heading of Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code is amended to read:

CHAPTER 1. CALIFORNIA SMALL BUSINESS FINANCIAL DEVELOPMENT CORPORATIONS

SEC. 2. Section 14010 of the Corporations Code is amended to read:

14010. Unless the context otherwise requires, the definitions in this section govern the construction of this part.

(a) "Corporation" or "the corporation" means any nonprofit California small business financial development corporation created pursuant to this part.

(b) "Financial institution" means banking organizations including national banks and trust companies authorized to conduct business in California and state-chartered commercial banks, trust companies, and savings and loan associations.

(c) "Financial company" means banking organizations including national banks and trust companies, savings and loan associations, state insurance companies, mutual insurance companies, and other banking, lending, retirement, and insurance organizations.

(d) "Expansion Fund" means the California Small Business Expansion Fund.

(e) "Corporate Fund" means the California Small Business Financial Development Corporation Loan Guarantee Fund.

(f) "Loan Account" means the California Small Business Financial Development Loan Guarantee Account.

(g) Unless otherwise defined by the office by regulation, "small business loan" means a loan to a business defined as an eligible small business as set forth in Section 121.3-10 of Part 121 of Chapter 1 of Title 13 of the Code of Federal Regulations, including those businesses organized for agricultural purposes that create or retain employment as a result of the loan. From time to time, the director shall provide guidelines as to the preferred ratio of jobs created or retained to total funds borrowed for guidance to the corporations.

(h) "Employment incentive loan" means a loan to a qualified business, as defined in subdivision (h) of Section 7082 of the Government Code, or to a business located within an enterprise zone, as defined in subdivision (b) of Section 7072 of the Government Code.

(i) "Loan committee" means a committee appointed by the board of directors of a corporation to determine the course of action on a loan application pursuant to Section 14060.

(j) "Board of directors" means the board of directors of the corporation.

(k) "Office" means the California Office of Small Business Development.

(*l*) "Board" means the California Small Business Board.

(m) "Agency" means the Trade and Commerce Agency.

(n) "Director" means the Executive Director of the California Office of Small Business.

(o) "Secretary" means the Secretary of Trade and Commerce.

SEC. 3. Section 14020 of the Corporations Code is amended to read:

14020. There is in the agency the California Small Business Board.

SEC. 4. Section 14021 of the Corporations Code is amended to read:

14021. The board consists of the following membership:

(a) The Secretary of Trade and Commerce or his or her designee.

(b) Six members appointed by the Governor, one of whom will serve as chair of the board, who are actively involved in the California small business community.

(c) Two persons actively involved in the business or agricultural communities, one appointed by the Speaker of the Assembly and one appointed by the Senate Rules Committee.

(d) Two Members of the Legislature or their designees, one appointed by the Speaker of the Assembly and one appointed by the Senate Rules Committee, shall serve on the board insofar as it does not conflict with the duties of the legislators.

SEC. 5. Section 14022 of the Corporations Code is amended to read:

14022. The board shall do each of the following:

(a) Advise the director on matters regarding this part.

(b) Select a vice chairperson of the board and adopt bylaws as are required to govern the conduct and operation of the board.

(c) Approve new corporations recommended by the director, based on an examination of each of the following:

(1) Review of the articles of incorporation and bylaws of the corporation to determine whether they contain the provisions required by this chapter and conform with the regulations adopted pursuant to this part.

(2) Determination as to whether the legislative intent expressed in Section 14002 shall be served by the proposed corporation.

(3) Determination as to whether the responsibility, character, and general fitness of the individuals who will manage the corporation are such as to command the confidence of the state and to warrant the belief that the business of the proposed corporation will be honestly and efficiently conducted in accordance with the intent and purpose of this chapter and that they include representatives of the financial and business community, as well as the economically disadvantaged.

(d) Hold public hearings in order to carry out the objectives of the agency in regards to its responsibilities as legislative advocate and ombudsman for the state's small business community.

(e) Advise the Governor, the director, and the Small Business Advocate regarding issues and programs affecting California's small business community, including, but not limited to, business innovation and expansion, export financing, state procurement, management and technical assistance, venture capital, and financial assistance.

SEC. 6. Section 14024 of the Corporations Code is amended to read:

14024. The agency shall adopt regulations concerning the implementation of this chapter and direct lending as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare within the meaning of subdivision (b) of Section 11346.1 of the Government Code. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall not remain in effect for more than 180 days unless the agency complies with all provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, as required by subdivision (e) of Section 11346.1 of the Government Code. This section also applies to any direct loan program administered by the agency.

SEC. 7. Section 14025 of the Corporations Code is amended to read:

14025. The director, as provided for in Section 15335.07 of the Government Code, shall do all of the following:

(a) Administer this part.

(b) In accordance with program resources, stimulate the formation of corporations and the use of branch offices for the purposes of making this program accessible to all areas of the state.

(c) Expeditiously approve or disapprove the articles of incorporation and any subsequent amendments to the articles of incorporation of a corporation.

(d) Require each corporation to submit an annual written plan of operation.

(e) Review reports from the State Banking Department and inform corporations as to what corrective action is required.

(f) Examine, or cause to be examined, at any reasonable time, all books, records, and documents of every kind, and the physical properties of a corporation. The inspection shall include the right to make copies, extracts, and search records.

SEC. 7.5. Section 14025 of the Corporations Code is amended to read:

14025. The director, as provided for in Section 15335.07 of the Government Code, shall do all of the following:

(a) Administer this part.

(b) In accordance with program resources, stimulate the formation of corporations and the use of branch offices for the purposes making this program accessible to all areas of the state.

(c) Expeditiously approve or disapprove the articles of incorporation and any subsequent amendments to the articles of incorporation of a corporation.

(d) Require each corporation to submit an annual written plan of operation.

(e) Review reports from the Department of Financial Institutions and inform corporations as to what corrective action is required.

(f) Examine, or cause to be examined, at any reasonable time, all books, records, and documents of every kind, and the physical properties of a corporation. The inspection shall include the right to make copies, extracts, and search records.

SEC. 8. Section 14026 of the Corporations Code is amended to read:

14026. The director, following notification to the secretary, may do all of the following:

(a) Contract for services entered into pursuant to this chapter.

(b) Hold public hearings.

(c) Act as liaison between corporations formed under this part, other state and federal agencies, lenders, and the Legislature.

(d) Process and tabulate on a monthly basis all corporate reports.

(e) Attend board meetings.

(f) Attend and participate at corporation meetings. The director, or his or her designee, shall be an ex officio, nonvoting representative on the board of directors and loan committees of each corporation.

(g) Assist corporations in applying for federal grant applications, and in obtaining program support from the business community.

SEC. 9. Section 14028 of the Corporations Code is amended to read:

14028. (a) Upon a finding by the director that irreparable harm may occur if guarantee authority is not temporarily withdrawn from a corporation, the director may temporarily withdraw guarantee authority from a corporation. The notice of temporary withdrawal sent to the corporation shall specify the reasons for the action. As used in this section, "guarantee authority" means the authority to make or

guarantee any loan that encumbers funds in a corporate fund or the expansion fund. The director shall make one of the determinations specified in subdivision (c) within 30 days of the effective date of the temporary withdrawal unless the corporation and the director mutually agree to an extension. The corporation shall have the opportunity to submit written material to the director addressing the items stated in the temporary withdrawal notice. If the director does not make any determinations within 30 days, the temporary withdrawal shall be negated. The corporation's yearly contract shall remain in effect during the period of temporary withdrawal, and the corporation shall continue to receive reimbursement of necessary operating expenses.

(b) Failure of a corporation to substantially comply with the following may result in the suspension of a corporation:

(1) Regulations implementing the Small Business Development Corporation Law.

(2) The plan of operation specified in subdivision (d) of Section 14025.

(3) Fiscal and portfolio requirements, as contained in the fiscal and portfolio audits specified in Section 14027.

(4) Milestones and scope of work as contained in the annual contract between the corporation and the agency.

(c) Pursuant to subdivision (a) or (b), the director may do the following:

(1) Terminate the temporary withdrawal.

(2) Terminate the temporary withdrawal subject to the corporation's adoption of a specified remedial action plan.

(3) Temporarily withdraw, or continue to withdraw, guarantee authority until a specified time. This determination by the director requires a finding that the corporation has failed to comply with the Small Business Development Corporation Law.

(4) Suspend the corporation.

(5) Suspend the corporation, with suspension stayed until the corporation provides a remedial action plan to the director, and the director decides whether to repeal or implement the stayed suspension. The determinations contained in paragraphs (4) and (5) require a finding that irreparable harm will occur unless the corporation is suspended.

(d) In considering a determination regarding the recommended suspension and possible remedial action plans, the director shall consider, along with other criteria as specified in subdivision (b), the corporation's history and past performance.

(e) Upon suspension of a corporation, the director shall transfer all funds, whether encumbered or not, in the corporate account of the suspended corporation into either the expansion fund or temporarily transfer the funds to another corporation.

(f) If the director decides to take any action against the corporation pursuant to paragraphs (2) to (5), inclusive, of

subdivision (c), the corporation shall be notified of the action 10 days before the effective date of the action. The corporation shall have the right to appeal the director's decision to the board within that 10-day period by sending notice to the director and to the chair of the board. Once the director receives notice that the action is being appealed, the director's action shall be stayed except for temporary withdrawal of guarantee authority. Upon receipt of the notice, the director shall schedule a properly noticed board meeting within 30 days. The board may elect to take any of the actions listed in subdivision (g). The temporary withdrawal of corporation guarantee authority shall remain in effect until the board issues its decision.

(g) Pursuant to subdivision (f), the board may do any of the following:

(1) Terminate the action taken by the director.

(2) Modify the action taken by the director subject to the adoption by the corporation of a specified remedial action plan.

(3) Affirm the action taken by the director.

(h) Following suspension, the corporation may continue its existence as a nonprofit corporation pursuant to the Nonprofit Public Benefit Corporation Law, Part 2 (commencing with Section 5110) of Division 2, but shall no longer be registered with the Secretary of State as a small business development corporation. A corporation shall not enjoy any of the benefits of a small business development corporation following suspension.

(i) The funds in the corporate fund of a corporation under temporary withdrawal shall be transferred to the expansion fund. Upon termination of the temporary withdrawal, unless the termination is caused by suspension, the funds of the corporation that were transferred to the expansion fund from the corporate fund shall be returned to the corporation's corporate fund, notwithstanding Section 14037. While the funds of a corporation's corporate fund reside in the expansion fund, use of the principal on the funds shall be governed by the implementing regulations specifying use of funds in the expansion fund. Interest on the funds moved from a corporation's corporate fund upon temporary withdrawal shall be limited to payment of the corporation's administrative expenses, as contained in the contract between the corporation and the agency.

SEC. 10. Section 14029 of the Corporations Code is repealed.

SEC. 11. Section 14030 of the Corporations Code is amended to read:

14030. There is hereby created in the State Treasury the Small Business Expansion Fund. All or a portion of the funds in the expansion fund may be paid out, with the approval of the Department of Finance, to lending institutions or financial companies. This fund shall be used to pay for defaulted loan guarantees issued pursuant to Section 14045, administrative costs of corporations, and those costs necessary to protect a real property interest in a defaulted loan or guarantee. The amount of guarantee

liability outstanding at any one time shall not exceed four times the amount of funds on deposit in the expansion fund, including each of the loan accounts and corporate funds within the expansion fund.

SEC. 12. Section 14030.2 of the Corporations Code is amended to read:

14030.2. (a) The director may establish accounts within the expansion fund for loan guarantees and surety bond guarantees, including loan loss reserves. Each account is a legally separate account, and shall not be used to satisfy loan or surety bond guarantees or other obligations of another corporation. The director shall recommend whether the expansion fund and corporate fund accounts are to be leveraged, and if so, by how much. Upon the request of the corporation, the director's decision may be repealed or modified by a board resolution.

(b) Annually, not later than January 1 of each year commencing January 1, 1996, the director shall prepare a report regarding the loss experience for the expansion fund for loan guarantees and surety bond guarantees for the preceding fiscal year. At a minimum, the report shall also include data regarding numbers of surety bond and loan guarantees awarded through the expansion fund, including ethnicity and gender data of participating contractors and other entities, and experience of surety insurer participants in the bond guarantee program. The director shall submit that report to the secretary of the Trade and Commerce Agency for transmission to the Governor and the Legislature.

SEC. 13. Section 14035 of the Corporations Code is amended to read:

14035. There is hereby continued in the State Treasury in the expansion fund, the Small Business Loan Guarantee Account as part of the expansion fund.

SEC. 14. Section 14037 of the Corporations Code is amended to read:

14037. (a) All money deposited in the loan account is hereby appropriated, without regard to fiscal years for the purposes of this chapter. The state shall not be liable or obligated in any way beyond the state money which is allocated and deposited in the loan account from state money which is appropriated for these purposes.

(b) Funds appropriated to the expansion fund after January 1, 1993, shall remain in the expansion fund and shall not be transferred to any loan accounts or corporate funds. The director shall establish regulations determining the ratio of expansion fund to corporate fund moneys in any guarantee. The percentage of funds guaranteed by the expansion fund shall increase as leveraging increases, and for those corporations maintaining an acceptable default rate.

SEC. 15. Section 14037.6 of the Corporations Code is amended to read:

14037.6. (a) The Director of Finance, with the approval of the Governor, may transfer moneys in the Special Fund for Economic

Uncertainties to the Small Business Expansion Fund for use by the Office of Small Business in the Trade and Commerce Agency, in an amount necessary to make loan guarantees pursuant to Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code.

(b) The Governor should utilize this authority to prevent business insolvencies and loss of employment in an area affected by a state of emergency throughout the state and declared a disaster by the President of the United States, or by the Administrator of the United States Small Business Administration, or by the Governor of California.

(c) This section shall remain in effect until January 1, 2002, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1,2002, deletes or extends that date.

SEC. 16. Section 14040 of the Corporations Code is amended to read:

14040. Each corporate fund shall consist of a loan guarantee account, and, upon recommendation by the director, a bond guarantee account, each of which is a legally separate account, and the assets of one account shall not be used to satisfy loan guarantees or other obligations of another corporation. Not more than one-third of a corporate fund shall be allocated to a bond guarantee account. No corporation shall use corporate funds to secure a corporate indebtedness. Corporate funds are state funds and, with the exception of guarantees established pursuant to this chapter, shall not be subject to liens or encumbrances of the corporation or its creditors.

SEC. 17. Section 14043 of the Corporations Code is amended to read:

14043. The corporation shall not deposit any of its funds in any financial institution unless the financial institution has been designated as a depository by a vote of the majority of all of the directors of the corporations with corporate funds, exclusive of any director who is an officer or director of the institution so designated. The financial institution that is to act as trustee of the corporate fund shall be designated after review by the director. The corporation shall not receive money on deposit.

SEC. 18. Section 14045 of the Corporations Code is amended to read:

14045. Upon approval by the director to become a corporation, the entity shall adopt or amend its articles of incorporation to comply with the following:

(a) The name of the corporation shall include the words "small business development corporation," except for those corporations formed pursuant to this part prior to 1985, which may also be called "rural or urban development corporations."

(b) The purposes for which the corporation is formed, which shall be those specified in Section 14002. This requirement shall not be deemed to preclude a statement of powers.

(c) A geographical description of the corporation's service area.

(d) The name and addresses of seven or more persons who are to act in the capacity of directors until the selection of their successors.

(e) That the corporation is organized pursuant to the California Small Business Development Corporation Law.

SEC. 19. Section 14046 of the Corporations Code is amended to read:

14046. If the board recommends acceptance upon the basis of the facts disclosed by the investigation provided by subdivision (d) of Section 14022 and finds that the proposed incorporation meets all the requirements of this chapter, the director shall approve the articles of incorporation and endorse the approval thereon and forward the same to the Secretary of State for his or her approval and filing. Likewise, the director shall recommend approval or disapproval of all amendments to the articles. The director shall endorse the approval on the amendatory document before the document is forwarded to the Secretary of State for his or her approval and filing.

SEC. 20. Section 14052 of the Corporations Code is amended to read:

14052. For six months following the establishment of a corporation, commencing upon filing of the articles of incorporation with the Secretary of State, a corporation shall be on probation. While on probation, a corporation may be suspended if suspension is recommended by the director. This suspension is nonappealable and not subject to the procedures for suspension applicable to a corporation not on probation.

SEC. 21. Section 14056 of the Corporations Code is amended to read:

14056. A request for proposal for selection of a corporation shall require the winning bidder to adopt or amend its bylaws to state that:

(a) A person may not serve on a board of directors who is not a resident of or person conducting business in the service area described in the articles of incorporation.

(b) Each board of directors shall include representatives from all of the following:

(1) The financial community.

(2) The business community.

(3) The economically disadvantaged.

(c) Not more than one employee of the corporation may serve on the board of directors at any one time.

(d) A person who has a financial interest related to a matter over which the board has authority may not make, participate in making, or in any way attempt to influence that matter.

SEC. 22. Section 14059 of the Corporations Code is amended to read:

14059. Unless delegated to its loan committee, the corporation's board of directors, upon a recommendation from its loan committee:

(a) Shall emphasize consideration to applications that will increase employment of disadvantaged, disabled, or unemployed persons, or increase employment of youth residing in areas of high youth unemployment and high youth delinquency.

(b) Shall not grant a loan or guarantee unless it determines that the conditions of Section 14071 are satisfied.

SEC. 23. Section 14060 of the Corporations Code is amended to read:

14060. (a) A corporation shall establish one or more loan committees, each of which shall be composed of five or more persons, a majority of whom shall be experienced in banking and lending operations.

(b) A loan committee shall review applications to the corporation for a loan or guarantee and shall do each of the following:

(1) Determine the feasibility of the proposed transaction. The loan committee shall recommend approval of the application only upon a determination that there is a reasonable chance that the loan will be repaid.

(2) On the basis of that determination, recommend to the board of directors any action that the loan committee deems appropriate under the circumstances, or, in the event that approval authority has been delegated to the loan committee by the board of directors, approve or disapprove the loan application.

(c) A loan committee shall expeditiously act to accept or reject loan applications.

(d) A person who has a financial interest related to a matter over which the loan committee has authority may not make, participate in making, or in any way attempt to influence that matter.

SEC. 24. Section 14060.5 is added to the Corporations Code, to read:

14060.5. State funds may not be used to finance an expense incurred by a corporation in a location not approved pursuant to a statewide plan. The prohibition against use of state funds also applies to the location of satellite offices, and the area served from a corporation office.

SEC. 25. Section 14061 of the Corporations Code is amended to read:

14061. Every corporation shall provide for and maintain a central staff to perform all administrative requirements of the corporation including all those functions required of a corporation by the director.

SEC. 26. Section 14066 of the Corporations Code is amended to read:

14066. The corporation shall make a report to the director, as of the close of business on June 30, of each year describing the corporation's activities and any additional information requested by the director, on or before August 1 of each year.

SEC. 27. Section 14070 of the Corporations Code is amended to read:

14070. (a) The corporate guarantee shall be backed by funds on deposit in the corporation's corporate fund and the expansion fund established pursuant to Section 14040.

(b) Loan guarantees shall be secured by a reserve of at least 25 percent to be determined by the director.

(c) The expansion fund and corporate accounts shall be used exclusively to guarantee obligations and pay the administrative costs of the corporations. A corporation located in a rural area may utilize the funds for direct lending to farmers as long as at least 90 percent of the corporate fund farm loans, calculated by dollar amount, and all expansion fund farm loans are guaranteed by the United States Farmers Home Administration. The amount of funds available for direct farm lending shall be determined by the executive director. In its capacity as a direct lender, the corporation may sell in the secondary market the guaranteed portion of each loan so as to raise additional funds for direct lending. The agency shall issue regulations governing these direct loans, including the maximum amount of these loans.

(d) In furtherance of the purposes of this part, up to one-half of the corporate funds may be used to guarantee loans utilized to establish a Business and Industrial Development Corporation (BIDCO) under Division 15 (commencing with Section 33000) of the Financial Code.

(e) To execute the direct loan programs established in this chapter, the office may loan trust funds to a corporation located in a rural area for the express purpose of lending those funds to an identified borrower. The loan by the office to the corporation shall be on terms similar to the loan between the corporation and the borrower. The amount of the loan may be in excess of the amount of a loan to any individual farm borrower, but actual disbursements pursuant to the office loan agreement shall be required to be supported by a loan agreement between the farm borrower and the corporation in an amount at least equal to the requested disbursement. The loan between the office and the corporation shall be evidenced by a credit agreement. In the event that any loan between the corporation and borrower is not guaranteed by a governmental agency, the portion of the credit agreement attributable to that loan shall be secured by assignment of any note, executed in favor of the corporation by the borrower to the office. The terms and conditions of the credit agreement shall be similar to the loan agreement between the corporation and the borrower, which shall be collateralized by the note between the corporation and the borrower. In the absence of fraud on the part of the corporation, the liability of the corporation to repay the loan to the office is limited to the repayment received by the corporation from the borrower except in a case where the Farmers Home

Administration requires exposure by the corporation in rule or regulation. The corporation may use trust funds for loan repayment to the office if the corporation has exhausted a loan loss reserve created for this purpose. Interest and principal received by the office from the corporation shall be deposited into the same account from which the funds were originally borrowed.

(f) Upon the approval of the director, a corporation shall be authorized to borrow trust funds from the office for the purpose of relending those funds to small businesses. A corporation shall demonstrate to the director that it has the capacity to administer a direct loan program, and has procedures in place to limit the default rate for loans to startup businesses. Not more than 25 percent of any trust fund shall be used for the direct lending established pursuant to this subdivision. A loan to a corporation shall not exceed the amount of funds likely to be lent to small businesses within three months following the loan to the corporation. The maximum loan amount to a small business is fifty thousand dollars ($50,000). In the absence of fraud on the part of the corporation, the repayment obligation pursuant to the loan to the corporation shall be limited to the amount of funds received by the corporation for the loan to the small business and any other funds received from the office that are not disbursed. The corporation shall be authorized to charge a fee to the small business borrower, in an amount determined by the office pursuant to regulation. The program provided for in this subdivision shall be available in all geographic areas of the state.

SEC. 27.5. Section 14070 of the Corporations Code is amended to read:

14070. (a) The corporate guarantee shall be backed by funds on deposit in the corporation's corporate fund.

(b) Loan guarantees shall be secured by a reserve of at least 25 percent to be determined by the director.

(c) The expansion fund and corporate accounts shall be used exclusively to guarantee obligations and pay the administrative costs of the corporations. A corporation located in a rural area may utilize the funds for direct lending to farmers as long as at least 90 percent of the corporate fund farm loans, calculated by dollar amount, and all expansion fund farm loans are guaranteed by the United States Farmers Home Administration. The amount of funds available for direct farm lending shall be determined by the executive director. In its capacity as a direct lender, the corporation may sell in the secondary market the guaranteed portion of each loan so as to raise additional funds for direct lending. The agency shall issue regulations governing these direct loans, including the maximum amount of these loans.

(d) In furtherance of the purposes of this part, up to one-half of the corporate funds may be used to guarantee loans utilized to establish a Business and Industrial Development Corporation (BIDCO)

under Division 15 (commencing with Section 33000) of the Financial Code.

(e) To execute the direct loan programs established in this chapter, the office may loan trust funds to a corporation located in a rural area for the express purpose of lending those funds to an identified borrower. The loan by the office to the corporation shall be on terms similar to the loan between the corporation and the borrower. The amount of the loan may be in excess of the amount of a loan to any individual farm borrower, but actual disbursements pursuant to the office loan agreement shall be required to be supported by a loan agreement between the farm borrower and the corporation in an amount at least equal to the requested disbursement. The loan between the office and the corporation shall be evidenced by a credit agreement. In the event that any loan between the corporation and borrower is not guaranteed by a governmental agency, the portion of the credit agreement attributable to that loan shall be secured by assignment of any note, executed in favor of the corporation by the borrower to the office. The terms and conditions of the credit agreement shall be similar to the loan agreement between the corporation and the borrower, which shall be collateralized by the note between the corporation and the borrower. In the absence of fraud on the part of the corporation, the liability of the corporation to repay the loan to the office is limited to the repayment received by the corporation from the borrower except in a case where the Farmers Home Administration requires exposure by the corporation in rule or regulation. The corporation may use trust funds for loan repayment to the office if the corporation has exhausted a loan loss reserve created for this purpose. Interest and principal received by the office from the corporation shall be deposited into the same account from which the funds were originally borrowed.

(f) Upon the approval of the director, a corporation shall be authorized to borrow trust funds from the office for the purpose of relending those funds to small businesses. A corporation shall demonstrate to the director that it has the capacity to administer a direct loan program, and has procedures in place to limit the default rate for loans to startup businesses. Not more than 25 percent of any trust fund shall be used for the direct lending established pursuant to this subdivision. A loan to a corporation shall not exceed the amount of funds likely to be lent to small businesses within three months following the loan to the corporation. The maximum loan amount to a small business is fifty thousand dollars ($50,000). In the absence of fraud on the part of the corporation, the repayment obligation pursuant to the loan to the corporation shall be limited to the amount of funds received by the corporation for the loan to the small business and any other funds received from the office that are not disbursed. The corporation shall be authorized to charge a fee to the small business borrower, in an amount determined by the office

pursuant to regulation. The program provided for in this subdivision shall be available in all geographic areas of the state.

SEC. 28. Section 14071 of the Corporations Code is amended to read:

14071. In furtherance of the purposes set forth in Section 14002, a corporation may do any one or more of the following activities, but only to the extent that the activities are authorized pursuant to the contract between the agency and corporation: guarantee, endorse, or act as surety on the bonds, notes, contracts, or other obligations of, or assist financially, any person, firm, corporation, or association, and may establish and regulate the terms and conditions with respect to any such loans or financial assistance and the charges for interest and service connected therewith, except that the corporation shall not make or guarantee any loan unless and until it determines:

(a) There is no probability that the loan or other financial assistance would be granted by a financial company under reasonable terms or conditions, and the borrower has demonstrated a reasonable prospect of repayment of the loan.

(b) The loan proceeds shall be used exclusively in this state.

(c) The loan qualifies as a small business loan or an employment incentive loan.

(d) That the borrower has a minimum equity interest in the business as determined by the director.

(e) As a result of the loan, the jobs generated or retained demonstrate reasonable conformance to the regulations specifying employment criteria.

SEC. 29. Section 14072 of the Corporations Code is amended to read:

14072. A corporation may charge the borrower or financial institution a loan fee on all loans made or guaranteed by the corporation to defray the operating expenses of the corporation. The amount of the fee shall be determined by the director.

SEC. 30. Section 14076 of the Corporations Code is amended to read:

14076. (a) It is the intent of the Legislature that the corporations make maximal use of their statutory authority to guarantee loans and surety bonds, including the authority to secure loans with a minimum loan loss reserve of only 25 percent, so that the financing needs of small business may be met as fully as possible within the limits of corporations' loan loss reserves. The agency shall report annually to the Legislature on the financial status of the corporations and their portfolio of loans and surety bonds guaranteed.

(b) Any corporation that serves an area declared by the Governor or the President to be a disaster area on or after January 1, 1992, or the area affected by the state of emergency declared in Los Angeles on April 29, 1992, shall increase the portfolio of loan guarantees where the dollar amount of the loan is less than one hundred thousand dollars ($100,000), so that at least 15 percent of the dollar value of

loans guaranteed by the corporation is for those loans. The corporation shall comply with this requirement within one year of the date the disaster is declared, or January 1, 1995, whichever is later. Upon application of a corporation, the director may waive or modify the rule for the corporation if the corporation demonstrates that it made a good faith effort to comply and failed to locate lending institutions in the region that the corporation serves that are willing to make guaranteed loans in that amount.

SEC. 31. Section 14085 of the Corporations Code is amended to read:

14085. It shall be unlawful for the director or any person who is an officer, director, or employee of a corporation, or who is a member of a loan committee, or who is an employee of the office to:

(a) Ask for, consent, or agree to receive, any commission, emolument, gratuity, money, property, or thing of value for his or her own use, benefit, or personal advantage, for procuring or endeavoring to procure for any person, partnership, joint venture, association, or corporation, any loan, guarantee, financial, or other assistance from any corporation.

(b) Borrow money, property, or to benefit knowingly, directly or indirectly, from the use of the money, credit, or property of any corporation.

(c) Make, maintain, or attempt to make or maintain, a deposit of the funds of a corporation with any other corporation or association on condition, or with the understanding, expressed or implied, that the corporation or association receiving the deposit shall pay any money or make a loan or advance, directly or indirectly, to any person, partnership, joint venture, association, or corporation, other than to a corporation formed under this part.

SEC. 32. Section 14086 of the Corporations Code is amended to read:

14086. It shall be unlawful for the director or any person who is an officer or director of a corporation, or who is an employee of the office, to purchase or receive, or to be otherwise interested in the purchase or receipt, directly or indirectly, of any asset of a corporation, without paying to the corporation the fair market value of the asset at the time of the transaction.

SEC. 33. Section 7.5 of this bill incorporates amendments to Section 14025 of the Corporations Code proposed by both this bill and AB 3351. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 14025 of the Corporations Code, and (3) this bill is enacted after AB 3351, in which case Section 14025 of the Corporations Code, as amended by Section 7 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 7.5 of this bill shall become operative.

SEC. 34. Section 14 of this bill shall not become operative if (1) both this bill and AB 2581 are enacted and become effective on or

before January 1, 1997, (2) both this bill and AB 2581 amend Section 14037 of the Corporations Code, and (3) this bill is enacted after AB 2581.

SEC. 35. Section 27.5 of this bill incorporates amendments to Section 14070 of the Corporations Code proposed by both this bill and AB 2581. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1997, (2) each bill amends Section 14070 of the Corporations Code, and (3) this bill is enacted after AB 2581, in which case Section 27 of this bill shall not become operative.

CHAPTER 1047

An act to amend Section 42239.5 of, and repeal Section 62000.11 of, the Education Code, relating to education.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 42239.5 of the Education Code is amended to read:

42239.5. (a) For the 1989–90 fiscal year and each fiscal year thereafter, average daily attendance generated by elementary and secondary school pupils in voluntary Saturday school programs shall be eligible for summer school apportionments calculated pursuant to Section 42239 if those programs meet the following conditions:

(1) The instruction is in core academic areas specified in paragraph (2) of subdivision (d) of Section 42239, or as specified for summer school in Section 37252 and subdivision (a) of Section 37253, or in a course that provides credit toward high school graduation.

(2) The instruction is provided on Saturday and does not exceed 180 minutes.

(3) The average pupil/teacher ratio does not exceed 20:1.

(4) Attendance by the pupils is not required by the participating schools and districts.

(b) Any minor pupil whose parent or guardian informs the school district that the pupil is unable to attend a Saturday school program established pursuant to this section for religious reasons, or any pupil 18 years of age or older who states that he or she is unable to attend a Saturday school program established pursuant to this section for religious reasons, shall be given priority over pupils who have attended the Saturday school program for enrollment in the regular summer school program if he or she chooses to enroll in the regular summer school program.

(c) Participating districts shall encourage the participation of elementary and secondary schools with low academic performance.

(d) The Superintendent of Public Instruction shall develop and distribute a program advisory to school districts on this program option.

(e) This section shall become inoperative on June 30, 2000, and, as of January 1, 2001, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2001, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 62000.11 of the Education Code is repealed.

SEC. 2. Every five years, commencing in 2002, the adult education program shall be reviewed for effectiveness by the State Department of Education. The department shall submit a report of its findings to the chairs of the appropriate policy and fiscal committees of the Legislature, the Director of Finance, and the Legislative Analyst.

SEC. 3. Regardless of when this act becomes effective, it is the intent of the Legislature that the changes in Section 42239.5 of the Education Code made by Section 1 of this act shall operate retroactively, and, therefore, shall apply to apportionments calculated under Section 42239.5 of the Education Code for the entire 1996–97 fiscal year.

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

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

CHAPTER 1048

An act to amend Sections 113750, 113780, 113785, 113815, 113905, and 114160 of, to amend and renumber Sections, 27531, 27601, 27623, 27625, 27677, and 27791 of, to add Sections 113844, 114021, 114022, 114057, 114366, 114367, and 114367.5 to, to repeal Section 27675 of, to repeal and add Sections 113900 and 114020 of, and to repeal and add Article 11 (commencing with Section 114250) of Chapter 4 of Part 7 of Division 104 of, the Health and Safety Code, relating to food facilities.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 27531 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113845. "Potentially hazardous food" means food that is in a form capable of (1) supporting rapid and progressive growth of infectious or toxigenic microorganisms that may cause food infections or food intoxications, or (2) supporting the growth or toxin production of Clostridium botulinum. "Potentially hazardous food" does not include foods that have a pH level of 4.6 or below, foods that have a water activity (a_w) value of 0.85 or less under standard conditions, food products in hermetically sealed containers processed to meet the commercial sterility standard, as defined in Section 113.3(e) of Title 21 of the Code of Federal Regulations, or food that has been shown by appropriate microbial challenge studies approved by the enforcement agency not to support the rapid and progressive growth of infectious or toxigenic microorganisms that may cause food infections or food intoxications, or the growth and toxin production of Clostridium botulinum.

SEC. 2. Section 27601 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended and renumbered to read:

113995. (a) Except as otherwise provided in this section, all potentially hazardous food, excluding raw shell eggs, shall be held at or below 7 degrees Celsius (45 degrees Fahrenheit) or shall be kept at or above 60 degrees Celsius (140 degrees Fahrenheit) at all times. Storage and display of raw shell eggs shall be governed by Sections 113997 and 114351.

(b) (1) Commencing January 1, 1997, all potentially hazardous food shall be held at or below 5 degrees Celsius (41 degrees Fahrenheit) or shall be kept at or above 60 degrees Celsius (140 degrees Fahrenheit) at all times, except for the following:

(A) Unshucked live molluscan shellfish shall not be stored or displayed at a temperature above 7 degrees Celsius (45 degrees Fahrenheit).

(B) Frozen potentially hazardous foods shall be stored and displayed in their frozen state unless being thawed in accordance with Section 114085.

(C) Potentially hazardous foods held for dispensing in serving lines and salad bars during periods not to exceed 12 hours in any 24-hour period or held in vending machines may not exceed 7 degrees Celsius (45 degrees Fahrenheit). For purposes of this subdivision, a display case shall not be deemed to be a serving line.

(D) Pasteurized milk and pasteurized milk products in original, sealed containers shall not be held at a temperature above 7 degrees Celsius (45 degrees Fahrenheit).

(2) Nothing in this subdivision shall be deemed to require any person to replace or modify any existing refrigeration equipment owned by that person on January 1, 1997, until January 1, 2002. For purposes of this paragraph, neither a simple adjustment of temperature controls nor a needed repair shall constitute a modification.

(c) Potentially hazardous foods may be held at temperatures other than those specified in this section when being heated or cooled, or when the food facility operates pursuant to a HACCP plan adopted pursuant to Section 114055 or 114056. If it is necessary to remove potentially hazardous food from specified holding temperatures to facilitate preparations, this preparation shall be diligent, and in no case shall the period of an ambient-temperature preparation step exceed two hours without a return to the specified holding temperatures. The total ambient-temperature holding of a potentially hazardous food for the purposes of preparation shall not exceed a total cumulative time of four hours. For purposes of this subdivision, preparation shall be deemed to be "diligent" with respect to raw shell eggs held for the preparation of egg-containing foods that are prepared to the specific order of the customer as long as the total ambient-temperature holding of these eggs does not exceed a total time of four hours.

(d) A thermometer accurate to plus or minus 1 degree Celsius (2 degrees Fahrenheit) shall be provided for each refrigeration unit, shall be located to indicate the air temperature in the warmest part of the unit and, except for vending machines, shall be affixed to be readily visible. Except for vending machines, an accurate easily readable metal probe thermometer suitable for measuring the temperature of food shall be readily available on the premises.

SEC. 3. Section 27623 of the Health and Safety Code is amended and renumbered to read:

114090. (a) All utensils and equipment shall be scraped, cleaned, or sanitized as circumstances require.

(b) All food establishments in which food is prepared or in which multiservice kitchen utensils are used shall have a sink with at least three compartments with two integral metal drainboards. Additional drainage space may be provided that is not necessarily attached to the sink. The sink compartments and drainage facilities shall be large enough to accommodate the largest utensil or piece of equipment to be cleaned therein. A one-compartment or two-compartment sink that is in use on January 1, 1996, may be continued in use until replaced. The enforcement officer may approve the continued use of a one-compartment or two-compartment sink even upon replacement if the installation of a three-compartment sink would not be readily achievable and where other approved sanitation methods are used.

(c) All food establishments in which multiservice consumer utensils are used shall clean the utensils in one of the following ways:

(1) Handwashing of utensils using a three-compartment metal sink with dual integral metal drainboards where the utensils are first washed by hot water and a cleanser until they are clean, then rinsed in clear, hot water before being immersed in a final warm solution meeting the requirements of Section 114060.

(2) Machine washing of utensils in machines using a hot water or chemical sanitizing rinse shall meet or be equivalent to sanitation standards approved pursuant to Section 114065 and shall be installed and operated in accordance with those standards. The machines shall be of a type, and shall be installed and operated as approved by the department. The velocity, quantity, and distribution of the washwater, type and concentration of detergent used therein, and the time the utensils are exposed to the water, shall be sufficient to clean the utensils.

(3) A two-compartment metal sink, having metal drainboards, equipped for hot water sanitization, that is in use on January 1, 1985, may be continued in use until replaced.

(4) Other methods may be used after approval by the department.

(d) Hot and cold water under pressure shall be provided through a mixing valve to each sink compartment in all food establishments constructed on or after January 1, 1985.

(e) All utensil washing equipment, except undercounter dish machines, shall be provided with two integral metal drainboards of adequate size and construction. One drainboard shall be attached at the point of entry for soiled items and one shall be attached at the point of exit for cleaned and sanitized items. Where an undercounter dish machine is used, there shall be two metal drainboards, one for soiled utensils and one for clean utensils, located adjacent to the machine. The drainboards shall be sloped and drained to an approved waste receptor. This requirement may be satisfied by using the drainboards appurtenant to sinks as required in subdivision (b) and paragraph (1) of subdivision (c), if the facilities are located adjacent to the machine.

(f) The handling of cleaned and soiled utensils, equipment, and kitchenware shall be undertaken in a manner that will preclude possible contamination of cleaned items with soiled items.

(g) All utensils, display cases, windows, counters, shelves, tables, refrigeration units, sinks, dishwashing machines, and other equipment or utensils used in the preparation, sale, service, and display of food shall be made of nontoxic, noncorrosive materials, shall be constructed, installed, and maintained to be easily cleaned, and shall be kept clean and in good repair.

(h) Utensils and equipment shall be handled and stored so as to be protected from contamination. Single-service utensils shall be obtained only in sanitary containers or approved sanitary dispensers, stored in a clean, dry place until used, handled in a sanitary manner, and used once only.

(i) Equipment food-contact surfaces and utensils shall be cleaned and sanitized as follows:

(1) Each time there is a change in processing between types of animal products except when products are handled in the following order: any cooked ready-to-eat products first; raw beef and lamb products second; raw fish products third; and raw pork or poultry products last.

(2) Each time there is a change from working with raw foods of animal origin to working with ready-to-eat foods.

(3) Between uses with raw fruits or vegetables and with potentially hazardous food.

(4) Before each use of a food temperature measuring device.

(5) At any time during the food handling operation when contamination may have occurred.

(j) (1) Except as provided in paragraphs (2) and (3) of this subdivision, if used with potentially hazardous food, equipment food-contact surfaces and utensils shall be cleaned throughout the day at least every four hours.

(2) Equipment food-contact surfaces and utensils may be cleaned less frequently than every four hours if the utensils and equipment are used to prepare food in a refrigerated room, at or below 13 degrees Celsius (55 degrees Fahrenheit), and the utensils and equipment are cleaned at least every 24 hours.

(3) Equipment food-contact surfaces and utensils may be cleaned less frequently than every four hours if the enforcement agency approves the cleaning schedule utilized based on a consideration of the following factors:

(A) Characteristics of the equipment and its use.

(B) The type of food involved.

(C) The amount of food residue accumulation.

(D) The temperature at which the food is maintained during the operation and the potential for the rapid and progressive growth of infectious or toxigenic microorganisms that may cause food infections or food intoxications.

(k) Nonfood contact surfaces of equipment shall be cleaned at a frequency necessary to prevent accumulation of residue.

SEC. 4. Section 27625 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended to read:

114100. All plumbing and plumbing fixtures shall be installed in compliance with local plumbing ordinances, shall be maintained so as to prevent any contamination, and shall be kept clean, fully operative, and in good repair.

All liquid wastes shall be disposed of through the plumbing system that shall discharge into the public sewerage or into an approved private sewage disposal system.

All steam tables, ice machines and bins, food preparation sinks, utensil washing sinks, display cases, and other similar equipment that discharge liquid waste shall be drained by means of indirect waste

pipes, and all wastes drained by them shall discharge through an airgap into an open floor sink or other approved type of receptor that is properly connected to the drainage system. Drainage from refrigeration units shall be conducted in a sanitary manner to a floor sink or other approved device by an indirect connection or to a properly installed and functioning evaporator. Indirect waste receptors shall be located to be readily accessible for inspection and cleaning. Dishwashing machines may be connected directly to the sewer immediately downstream from a floor drain or they may be drained through an approved indirect connection. Utensil washing sinks in use on January 1, 1996, that are directly plumbed may be continued in use. This section does not require utensil washing sinks to be indirectly plumbed when the local building official determines that the sink should be directly plumbed.

SEC. 5. Section 27675 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is repealed.

SEC. 6. Section 27677 of the Health and Safety Code is amended and renumbered to read:

114282. Mobile food facilities that are occupied during normal business operations shall have a clear, unobstructed height over the aisle-way portion of the unit of at least 188 centimeters (74 inches) from floor to ceiling, and a minimum of 76 centimeters (30 inches) of unobstructed horizontal aisle space. This section shall not apply to vehicles under permit prior to January 1, 1996.

SEC. 7. Section 27791 of the Health and Safety Code, as amended by Chapter 852 of the Statutes of 1995, is amended to read:

114290. (a) All mobile food preparation units, stationary mobile food preparation units, commissaries, and other approved facilities shall meet the applicable requirements in Article 6 (commencing with Section 113975), Article 7 (commencing with Section 113990), and Article 8 (commencing with Section 114075), unless specifically exempted from any of these provisions as provided in this article, and shall meet the provisions of Article 10 (commencing with Section 13600) of, and Article 10.1 (commencing with Section T17-13611) of Subchapter 2 of Chapter 5 of Part 1 of Title 17 of the California Code of Regulations, except that the following shall apply:

(1) Hoses used for filling water tanks and used for cleaning the interior of a mobile food preparation unit from a commissary that services mobile food preparation units is not required to be kept at least four feet above the ground at all times if the hose is equipped with a quick disconnect device, retrofitted on the end of the hose so that it seals the opening when not in use.

(2) Hoses inside the mobile preparation unit and potable water tank connectors shall have matching connecting devices. Devices for external cleaning may not be used inside the mobile preparation unit for potable water purposes.

(3) Hoses and faucets equipped with quick connect and disconnect devices for these purposes shall be deemed to meet the

requirements of Section T17-13613 of Title 17 of the California Code of Regulations.

(4) Mechanical refrigeration shall conform to the requirements of Section 113860.

(5) Potentially hazardous foods shall be maintained in accordance with Section 113995.

(b) Mobile food preparation units and stationary mobile food preparation units shall be exempt from the requirements of Sections 114105 and 114135, and subdivision (b) of Section 114165.

(c) Each stationary mobile food preparation unit shall be certified pursuant to Article 10 (commencing with Section 13600) of Subchapter 2 of Chapter 5 of Part 1 of Title 17 of the California Code of Regulations before commencing operation each calendar year. The local enforcement agency shall address all applicable construction standards and submit proof of certification to the state department. Construction recertification within a calendar year shall not be required unless either of the following occurs:

(1) Where structural modifications are made.

(2) Where otherwise required by the state department.

The state department may issue an annual certificate of compliance for each certified mobile food facility, as required by regulation.

SEC. 8. Section 113750 of the Health and Safety Code is amended to read:

113750. "Commissary" means a food establishment in which food, containers, equipment, or supplies are stored or handled for use in mobile food facilities, mobile food preparation units, stationary mobile food preparation units, or vending machines.

SEC. 9. Section 113780 of the Health and Safety Code is amended to read:

113780. "Food establishment" means any room, building, or place, or portion thereof, maintained, used, or operated for the purpose of storing, preparing, serving, manufacturing, packaging, transporting, salvaging, or otherwise handling food at the retail level. "Food establishment" includes a restricted food service transient occupancy establishment, as defined in Section 113870.

"Food establishment" does not include a commercial food processing establishment as defined in Section 111955, at the wholesale level, a mobile food facility, vending machine, satellite food distribution facility, temporary food facility, open-air barbecue, certified farmers' market, stationary mobile food preparation unit, or mobile food preparation unit.

SEC. 10. Section 113785 of the Health and Safety Code is amended to read:

113785. (a) "Food facility" means all of the following:

(1) Any food establishment, mobile food facility, vending machine, produce stand, swap meet prepackaged food stand,

temporary food facility, satellite food distribution facility, stationary mobile food preparation unit, and mobile food preparation unit.

(2) Any place used in conjunction with the operations described in paragraph (1), including, but not limited to, storage facilities for food-related utensils, equipment, and materials.

(3) A certified farmers' market, for purposes of permitting and enforcement.

(b) "Food facility" does not include any of the following:

(1) A cooperative arrangement wherein no permanent facilities are used for storing or handling food, or a private home, church, private club, or other nonprofit association that gives or sells food to its members and guests at occasional events, as defined in Section 113825, or a for-profit entity that gives or sells food at occasional events, as defined in Section 113825, for the benefit of a nonprofit association, if the for-profit entity receives no monetary benefit, other than that resulting from recognition for participating in the event.

(2) Premises set aside for winetasting, as that term is used in Section 23356.1 of the Business and Professions Code and in the regulations adopted pursuant to that section, if no food or beverage is offered for sale for onsite consumption.

SEC. 11. Section 113815 of the Health and Safety Code is amended to read:

113815. "Mobile food preparation unit" means any mobile food facility or portable food service unit upon which food is prepared for service, sale, or distribution at retail. Mobile food preparation unit shall not include mobile food facilities from which prepackaged food or approved unpackaged food is sold or offered for sale as prescribed by Article 11 (commencing with Section 114250).

SEC. 12. Section 113844 is added to the Health and Safety Code, to read:

113844. "Potable water" means water that complies with the standards for transient noncommunity water systems pursuant to the California Safe Drinking Water Act (Chapter 4 (commencing with Section 116275) of Part 12), to the extent permitted by federal law.

SEC. 12.5. Section 113900 of the Health and Safety Code is repealed.

SEC. 13. Section 113900 is added to the Health and Safety Code, to read:

113900. "Mobile food facility" means any conveyance, used in conjunction with the service of a commissary or other approved facility upon which prepackaged food or approved nonprepackaged food is sold or offered for sale at retail. "Mobile food facility" does not include a mobile food preparation unit or a stationary mobile food preparation unit.

SEC. 14. Section 113905 of the Health and Safety Code is amended to read:

113905. "Swap meet prepackaged food stand" means a food facility, other than a mobile food facility, operated at a swap meet, by a swap meet operator or its lessee, that offers for sale, or gives away, only prepackaged foods.

SEC. 15. Section 114020 of the Health and Safety Code is repealed.

SEC. 16. Section 114020 is added to the Health and Safety Code, to read:

114020. (a) No employee shall commit any act that may result in the contamination or adulteration of food, food contact surfaces, or utensils.

(b) All employees preparing, serving, or handling food or utensils shall wear clean, washable outer garments, or other clean uniforms. All employees shall wear hairnets, caps, or other suitable coverings to confine all hair when required to prevent the contamination of food, equipment, or utensils.

(c) All employees shall thoroughly wash their hands and arms by vigorously rubbing them with cleanser and warm water, paying particular attention to areas between the fingers and around and under the nails, rinsing with clean water. Employees shall wash their hands:

(1) Immediately before engaging in food preparation, including working with unpackaged food, clean equipment and utensils, and unwrapped single-service food containers and utensils.

(2) Before dispensing or serving food or handling clean tableware and serving utensils in the food service area.

(3) As often as necessary, during food preparation, to remove soil and contamination and to prevent cross-contamination when changing tasks.

(4) When switching between working with raw foods and working with ready-to-eat foods.

(5) After touching bare human body parts other than clean hands and clean, exposed portions of arms.

(6) After using the toilet room.

(7) After caring for or handling any animal allowed in a food facility pursuant to Section 114040.

(8) After coughing, sneezing, using a handkerchief or disposable tissue, using tobacco, eating, or drinking.

(9) After handling soiled equipment or utensils.

(10) After engaging in any other activities that contaminate the hands.

(d) No employee shall expectorate or use tobacco in any form in any area where food is prepared, served, or stored, or where utensils are cleaned or stored.

(e) Employees serving ready-to-eat foods shall use gloves, tongs, or other implements to place food on tableware or in other containers.

(f) Gloves shall be worn when contacting food and food contact surfaces if the employee has any cuts, sores, rashes, artificial nails, nail polish, rings (other than a plain ring, such as a wedding band), uncleanable orthopedic support devices, or finger nails that are not clean, neatly trimmed, and smooth.

(g) Whenever gloves are worn, they shall be changed, replaced, or washed as often as handwashing is required in subdivision (c). When single-use gloves are used, they shall be replaced after removal.

SEC. 17. Section 114021 is added to the Health and Safety Code, to read:

114021. The employer shall post and maintain legible signs to prevent food contamination, including, but not limited to, all of the following:

(a) A conspicuous sign in each toilet room directing attention to the need to thoroughly wash hands after using the toilet.

(b) "No Smoking" signs in food preparation, food storage, utensil cleaning, and utensil storage areas.

SEC. 18. Section 114022 is added to the Health and Safety Code, to read:

114022. When information as to the possibility of disease transmission is presented to an enforcement officer, he or she shall investigate the conditions and take appropriate action. The enforcement officer may, after investigation and for reasonable cause, require any or all of the following measures to be taken:

(a) The immediate exclusion of any employee from the affected food facility.

(b) The immediate closing of the food facility until, in the opinion of the enforcement officer, no further danger of disease outbreak exists. Any appeal of the closure shall be made in writing within five days to the applicable enforcement agency.

(c) A medical examination of any employee, with any laboratory examination which may be indicated. Should a medical examination be refused by an employee, the enforcement officer may require the immediate exclusion of the refusing employee from that or any other food facility until an acceptable medical or laboratory examination shows that the employee is not affected with a disease in a communicable form.

SEC. 19. Section 114057 is added to the Health and Safety Code, to read:

114057. (a) Potentially hazardous foods that are packed by the food facility in oxygen-reduced atmosphere or have been partially cooked and sealed in any container or configuration that creates anaerobic conditions shall be plainly date coded. The date coding shall state "Use By" followed by the appropriate month, day, and year.

(b) For purposes of this section, "partially cooked" means potentially hazardous foods that have not been sufficiently cooked to

assure commercial sterility or fail to have barriers to prevent the growth of or toxin formation by Clostridium botulinum.

SEC. 20. Section 114160 of the Health and Safety Code is amended to read:

114160. (a) Adequate and suitable space shall be provided for the storage of clean linens, including apparel, towels, and cleaning cloths.

(b) Soiled linens, apparel, towels, tablecloths, and cleaning cloths shall be kept in cleanable containers provided only for this purpose and shall not be reused until they have been laundered.

(c) Cleaning cloths used to wipe customer tables and seats shall not be used to wipe any other surfaces.

(d) Cleaning cloths used to wipe service counters, scales, and other surfaces that may directly or indirectly contact food shall be used only once until laundered, or, if held in a sanitizing solution of a concentration as stated in Section 114060 when not wiping, may be used repeatedly. Whenever a sanitizing solution becomes turbid or heavily permeated with food particles and juices, or no longer meets a concentration as stated in Section 114060, it shall be replaced.

SEC. 21. Article 11 (commencing with Section 114250) of Chapter 4 of Part 7 of Division 104 of the Health and Safety Code is repealed.

SEC. 22. Article 11 (commencing with Section 114250) is added to Chapter 4 of Part 7 of Division 104 of the Health and Safety Code, to read:

Article 11. Mobil Food Facilities

114250. This article governs sanitation requirements for mobile food facilities as defined in Section 113900.

114255. In addition to complying with the applicable provisions of this article as set forth in Section 114260, all mobile food facilities shall meet the applicable requirements of Article 6 (commencing with Section 113975) and Article 7 (commencing with Section 113990).

114260. (a) Mobile food facilities that are limited to the handling of prepackaged nonpotentially hazardous food and produce shall comply with subdivisions (a) to (i), inclusive, of Section 114265.

(b) Mobile food facilities that handle prepackaged potentially hazardous food, whole fish and whole aquatic invertebrates, or the bulk dispensing of nonpotentially hazardous beverages shall comply with subdivisions (a) to (m), inclusive, of Section 114265. For purposes of this section, tamales shall be considered prepackaged if dispensed to the customer in its original, labeled, inedible wrapper.

(c) Mobile food facilities that handle any of the following foods shall comply with subdivisions (a) to (s), inclusive, of Section 114265:

(1) Nonprepackaged nonpotentially hazardous food requiring no preparation other than heating, baking, popping, blending, assembly, portioning, or dispensing.

(2) Preparation of nonpotentially hazardous ingredients into a nonpotentially hazardous food.

(3) Hot dogs, cappuccino and other coffee-based or cocoa-based beverages that may contain cream, milk, or similar dairy products, and frozen ice cream bars that meet the requirements of subdivision (b) of Section 114270.

(d) Only those foods described in this section may be prepared or dispensed on a mobile food facility.

(e) Cooking processes, including, but not limited to, barbecuing, broiling, frying, and grilling are not permitted on a mobile food facility.

114265. (a) The name, address, and telephone number of the owner, operator, permittee, business name, or commissary shall be legible, clearly visible, and permanently indicated on at least two sides of the exterior of the mobile food facility. The name shall be in letters at least 8 centimeters (3 inches) high and shall have strokes at least 1 centimeter ($^3/_8$ inch) wide, and shall be of a color contrasting with the mobile food facility exterior. Letters and numbers for address and telephone numbers shall not be less than 2.5 centimeters (one inch) high.

(b) Mobile food facility equipment, including, but not limited to, the interior of cabinet units and compartments, shall be designed so as to, and made of materials that, result in smooth, readily accessible, and easily cleanable surfaces. Unfinished wooden surfaces are prohibited. Construction joints shall be tightly fitted and sealed so as to be easily cleanable. Equipment and utensils shall be constructed of durable, nontoxic materials and shall be easily cleanable.

(c) During operation, no food intended for retail shall be conveyed, held, stored, displayed, or served from any place other than a mobile food facility except for the restocking of product in a manner approved by the enforcement agency.

(d) Notwithstanding subdivision (k), food products remaining after each day's operation shall be stored only in an approved commissary or other approved facility.

(e) During transportation, storage, and operation of a mobile food facility, food, food contact surfaces, and utensils shall be protected from contamination. Single-service utensils shall be individually wrapped or in sanitary containers or approved sanitary dispensers, stored in a clean, dry place until used, handled in a sanitary manner, and used only once. Food contact surfaces and utensils shall be cleaned and sanitized in accordance with subdivisions (i), (j), and (k) of Section 114090.

(f) All food displayed, sold, or offered for sale from a mobile food facility shall be obtained from an approved source.

(g) Food condiments shall be protected from contamination and, where available for customer self-service, be prepackaged or available only from approved dispensing devices.

(h) Mobile food facilities shall be operated within 60 meters (200 feet) of approved and readily available toilet and hand washing facilities or as otherwise approved by the enforcement agency to ensure restroom facilities are available to facility employees.

(i) All mobile food facilities shall operate out of a commissary or other approved facility. Mobile food facilities shall report to the commissary or other approved facility at least once each operating day for cleaning and servicing operations. Mobile food facilities shall be properly stored, cleaned, and services at, or within, a commissary or other facility as approved by the enforcement agency so as to provide protection from unsanitary conditions.

(j) Potentially hazardous food shall be maintained at or below 5 degrees Celsius (41 degrees Fahrenheit) or at or above 60 degrees Celsius (140 degrees Fahrenheit) at all times in accordance with Section 113995.

(k) Potentially hazardous food held at or above 60 degrees Celsius (140 degrees Fahrenheit) on a mobile food facility shall be destroyed at the end of the operating day.

(*l*) All waste water from a mobile food facility shall be drained to an approved waste water receptor at the commissary or other approved facility.

(m) All new and replacement gas-fired appliances shall meet applicable American Gas Association standards. All new and replacement electrical appliances shall meet applicable Underwriters Laboratory standards.

(n) Bulk beverage dispensers shall only be filled at the commissary or other facility approved by the enforcement agency unless a hand washing sink as described in paragraph (1) of subdivision (p) is provided.

(o) Where nonprepackaged food is handled for display or sale, the mobile food facility shall be equipped with a food compartment that completely encloses all food, food contact surfaces, and the handling of ready-to-eat food. The opening to the food compartment shall be sized as appropriate to the food handling activity without compromising the intended protection from contamination, and shall be provided with tight-fitting doors that, when closed, protect interior surfaces from dust, debris, insects, and other vermin.

(p) Mobile food facilities, not under a valid public health permit as of January 1, 1997, on which nonprepackaged ready-to-eat food is sold or offered for sale shall be constructed and equipped in compliance with all of the following:

(1) A minimum of a one-compartment metal sink, hand washing cleanser and single-service towels in approved dispensers shall be provided. The sink shall be furnished with hot running water that is at least 49 degrees Celsius (120 degrees Fahrenheit) and cold

running water that is less than 38 degrees Celsius (101 degrees Fahrenheit) through a mixing-type faucet that permits both hands to be free for washing. The sink shall be large enough to accommodate the largest utensils washed. The sink, hand washing cleanser, and single-service towels shall be located as to be easily accessible and unobstructed for use by the operator in the working area. The minimum water heater capacity shall be one-half gallon.

(2) The potable water tank and delivery system shall be constructed of approved materials, provide protection from contamination, and shall be of a capacity commensurate with the level of food handling activity on the mobile food facility. The capacity of the system shall be sufficient to furnish enough hot and cold water for the following: steam table, utensil washing and sanitizing, hand washing, and equipment cleaning. At least 18 liters (5 gallons) of water shall be provided exclusively for hand washing. Any water needed for other purposes shall be in addition to the 18 liters (5 gallons) for hand washing.

(3) (i) The waste water tank or tanks shall have a minimum capacity that is 50 percent greater than the potable water tank or tanks supplying the hand and utensil washing sink. In no case shall this waste water capacity be less than 28 liters (7.5 gallons).

(ii) Mobile food facilities utilizing ice in the storage, display, or service or food or beverages shall provide an additional minimum waste water holding tank capacity equal to one-third of the volume of the ice cabinet to accommodate the drainage of ice melt.

(iii) Mobile food facilities equipped with a tank supplying product water for the preparation of a food or beverage shall provide an additional waste water tank capacity equal to at least 15 percent of this water supply.

(iv) Additional waste water tank capacity may be required where waste water production or spillage is likely to occur.

(v) Any connection to a waste water tank shall preclude the possibility of contaminating any food, food contact surface, or utensil.

(4) A mobile food facility's potable water tank inlet shall be provided with a connection of a size and type that will prevent its use for any other service and shall be constructed so that backflow and other contamination of the water supply is prevented. Hoses used to fill potable water tanks shall be made of food grade materials and handled in a sanitary manner.

(5) Mobile food facilities limited to the portioning and dispensing of nonprepackaged, nonpotentially hazardous food are exempt from the hand washing and utensil washing sink requirements of this subdivision if there is an approved supply of gloves or utensils, or both, on the facility that preclude any hand contact with the food products being dispensed. This exemption does not extend to the scooping of ice.

(q) Mobile food facilities selling unpackaged frozen ice cream bars or holding cream, milk, or similar dairy products pursuant to

Section 114270 shall be equipped with refrigeration units as described in Section 113860.

(r) Operators of mobile food facilities handling nonprepackaged food shall develop and follow written operational procedures for food handling and the cleaning and sanitizing of food contact surfaces and utensils. The enforcement agency shall review and approve the procedures prior to implementation and an approved copy shall be kept on the mobile food facility during periods of operation.

(s) All potentially hazardous food shall be prepackaged in an approved food facility except as provided in Sections 114260 and 114270.

114270. (a) Nonprepackaged food may be sold from mobile food facilities in accordance with Sections 114260 and 114265, provided that the storage, display, and dispensing methods are approved by the enforcement agency.

(b) (1) Cappuccino, espresso, cafe latte, cafe macchiato, mocha, hot chocolate, and other coffee-based or cocoa-based beverages that may contain cream, milk, or similar dairy products shall be made to order and immediately served to the consumer.

(2) Frozen ice cream bars may be sold from mobile food facilities in an unpackaged state if the frozen ice cream bars are prepackaged at a facility approved by the enforcement agency and unpackaged for the purpose of adding food condiments.

114275. (a) Mobile food facilities formerly approved as vehicles immediately preceding January 1, 1997, on which nonprepackaged hot dogs, popcorn, or snowcones are sold or offered for sale that operate exclusively on premises wherein approved toilet, hand washing, and utensil washing facilities are readily available and within 60 meters (200 feet) shall be exempt from the requirements of subdivision (p) of Section 114265.

(b) Mobile food facilities as set forth in subdivision (a) that were in operation as of July 1, 1986, need not meet the requirements of this article relating to utensil washing facilities, if an approved supply of gloves or utensils, or both, is maintained on the mobile food facility that would preclude any hand contact with the food products being dispensed.

SEC. 23. Section 114366 is added to the Health and Safety Code, to read:

114366. Under the controls and conditions specified in this article, a satellite food distribution facility as defined in subdivision (b) of Section 113880 may do any of the following:

(a) Hold, portion, and dispense any foods that are prepared or prepackaged by the on-site food establishment or prepackaged by another approved source.

(b) Prepare foods other than potentially hazardous foods, remove the packaging of foods, prepare hot dogs, and coat ice cream bars with chocolate and nuts, if all food preparation and handling are

within a compartment complying with subdivision (o) of Section 114265.

(c) Add condiments, sauces, garnishes, and similar accompaniments to foods at the time of sale, regardless of whether the accompaniments are potentially hazardous foods.

(d) Bake potatoes in enclosed ovens.

SEC. 24. Section 114367 is added to the Health and Safety Code, to read:

114367. A satellite food distribution facility as defined in subdivision (b) of Section 113880 shall do all of the following:

(a) If unpackaged potentially hazardous food is held, portioned, or dispensed, have a two-compartment sink with integral drainboards with hot or cold water for cleaning and sanitizing multi-service utensils, when multi-service utensils are used.

(b) If there is a likelihood that employees may contact unpackaged food or food contact surfaces, have a hand washing sink and supplies as specified for mobile food facilities in subdivision (p) of Section 114265.

(c) If water is required for hand and utensil washing, the facility shall be connected to an approved potable water supply and sewer pursuant to Section 114100.

(d) If electricity is required for mechanical refrigeration or the operation of lights and equipment, the facility shall be connected to an approved power supply.

(e) Provide adequate lighting pursuant to Section 114170.

(f) If applicable, have equipment pursuant to Section 114065.

SEC. 25. Section 114367.5 is added to the Health and Safety Code, to read:

114367.5. (a) The enforcement agency shall review and approve written procedures, schedules, and record exemplars to assure all of the following:

(1) That in-place cleaning procedures for equipment and structures are adequate in frequency, soil removal, sanitizing, and disposal of waste water, wash water, and refuse.

(2) That food transported to and from the onsite food establishment will not be exposed to contamination.

(3) That potentially hazardous food will be held at or below 5 degrees Celsius (41 degrees Fahrenheit) or at or above 60 degrees Celsius (140 degrees Fahrenheit) at all times.

(b) This section shall apply to mobile food facilities that operate within a defined and securable perimeter as prescribed in subdivision (b) of Section 113880.

SEC. 26. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution as a result of costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Moreover, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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

CHAPTER 1049

An act to amend Sections 743, 745, 746, 747, and 748 of the Welfare and Institutions Code, relating to minors, and making an appropriation therefor.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 743 of the Welfare and Institutions Code is amended to read:

743. Contingent upon the appropriation of funds therefor, there is hereby established a three-year pilot project which shall be known as the "Repeat Offender Prevention Project." This project shall operate in a minimum of three counties or regions, each of which shall either design, establish, implement, and evaluate a model program to meet the needs of a juvenile offender population identified as having the potential to become repeat serious offenders or utilize the findings of exploratory studies conducted in Orange County between 1989 and 1993 by the research staff of the Orange County Probation Department and which identified certain minors who were designated as the "8 percent" population. The main goal of this program is to develop and implement a cost-effective multiagency, multidisciplinary program which targets youth displaying behavior that may lead to delinquency and recidivism.

SEC. 2. Section 745 of the Welfare and Institutions Code is amended to read:

745. (a) Of the counties or regions selected for project participation, at least one county or region shall be from northern California, at least one from the bay or central area of California, and at least one shall be another county located in southern California. Of the counties selected for participation, at least one county shall contain a population of 1,000,000 or more, at least one county shall

contain a population of at least 100,000, but less than 1,000,000, and at least one county shall contain a population of less than 100,000.

(b) The Department of the Youth Authority shall establish goals and deadlines against which the success or failure of the program may be measured. The department shall also develop selection criteria and funding schedules for participating counties or regions which shall take into consideration, but not be limited to, all of the following:

(1) Size of the eligible target population as defined in Section 746.

(2) Demonstrated ability to administer the program.

(3) Identification of service delivery area.

(4) Demonstrated ability to provide or develop the key intervention strategies described in Section 748 to the eligible target population and their families.

(5) A formal research component utilizing an experimental research design and random assignment to the program.

SEC. 3. Section 746 of the Welfare and Institutions Code is amended to read:

746. A minor shall be selected for participation in a program established pursuant to this article based upon the following factors:

(a) The minor is 15 years of age or younger and has been declared a ward of the juvenile court for the first time or is to be supervised by a probation department selected for participation in this project.

(b) The minor has been evaluated and at least two of the following factors, which place the minor at a significantly greater risk of becoming a chronic juvenile or adult offender, have been identified:

(1) School behavior and performance. This shall include at least one of the following: attendance problems; behavior problems; poor grades; or disciplinary action.

(2) Family problems. These shall include at least one of the following: poor parental supervision or control; domestic violence; trauma; recent financial problems; or marital or family discord.

(3) Substance abuse. This shall include the abuse of alcohol or drugs by the minor, other than experimentation.

(4) Delinquent behavior. This shall include at least one of the following: a pattern of stealing; running away from home; or gang membership or association.

(5) The minor matches the at-risk profile for becoming a chronic and repeat juvenile offender according to the criteria developed by the Multi-Agency At-Risk Youth Committee (MAARYC).

SEC. 4. Section 747 of the Welfare and Institutions Code is amended to read:

747. The Department of the Youth Authority shall adopt written minimum standards for project implementation, operation, and evaluation which shall include a written commitment by a county or region to the following objectives:

(a) Teamwork on the part of all treatment and intervention agents involved in the project including the family, the professionals, and any community volunteers.

(b) Empowerment of the family to recognize and, ultimately, to solve the problems related to their minor's delinquent behavior and their involvement as an integral part of the treatment team and process.

(c) Creation of a multiagency, multidisciplinary, and culturally competent team so that the program can effectively draw on the professional knowledge, skill, and experience of many treatment disciplines in areas including, but not limited to, the following: education; job preparation and search; job skills and vocational training; life skills; psychological counseling; mental health services; drug and alcohol treatment; health care; parenting skills; community service opportunities; building self-esteem and self-confidence; mentoring programs; restitution programs; gang intervention; crime prevention; recreational, social, and cultural activities; and transportation and child care as needed.

SEC. 5. Section 748 of the Welfare and Institutions Code is amended to read:

748. Each county or region shall, in implementing their respective programs, provide the following key intervention strategies to ensure the following:

(a) Adequate levels of supervision, structure, and support to minors and their families both during and after the intervention and treatment process, in order to accomplish the following:

(1) Ensure protection of the community, the minor, and his or her family.

(2) Facilitate the development of new patterns of thinking and behavior.

(3) Eliminate any obvious stumbling blocks to the family's progress.

(4) Facilitate the development of enhanced parenting skills and parent-child relationships.

(b) Accountability on the part of the minor for his or her actions and assistance to the minor in developing a greater awareness and sensitivity to the impact of his or her actions on both people and situations.

(c) Assistance to families in their efforts to ensure that minors are attending school regularly.

(d) Assistance to the minor in developing strategies for attaining and reinforcing educational success.

(e) Promotion and development of positive social values, behavior, and relationships by providing opportunities for the minor to directly help people; to improve his or her community; to participate in positive leisure-time activities specially chosen to match his or her individual interests, skills, and abilities; and to have greater access and exposure to positive adult and juvenile role models.

(f) Promotion of partnerships between public and private agencies to develop individualized intervention strategies which shall include, but not be limited to, the following:

(1) Delivery of services in close proximity to the minor's or the minor's family's home.

(2) Community case advocates to assist in building bridges of trust, communication, and understanding between the minor, the family, and all treatment and intervention agents.

(g) Provision of a continuum of care with strong followup services that continue to be available to the minor and family as long as needed, not just on a crisis basis.

SEC. 6. (a) This act shall be funded from moneys appropriated pursuant to Provision 1 of Item 5430-001-0001 of the 1996–97 Budget Act for support of the Repeat Offender Prevention Project.

(b) Notwithstanding Provision 1 of Item 5430-001-0001 of the 1996–97 Budget Act, the Board of Corrections shall employ the goals and criteria established in Article 18.5 (commencing with Section 743) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, as amended by this act, in the implementation of this section.

CHAPTER 1050

An act to amend Section 42238.18 of the Education Code, relating to school finance.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 42238.18 of the Education Code is amended to read:

42238.18. (a) Notwithstanding any other provision of law, only those pupils enrolled in county office of education programs while detained in a juvenile hall, juvenile home, day center, juvenile ranch, juvenile camp, or regional youth educational facility established pursuant to Article 14 (commencing with Section 850), Article 15 (commencing with Section 880), and Article 24.5 (commencing with Section 894) of Chapter 2 of Division 2 of the Welfare and Institutions Code shall be counted as juvenile court school pupils. For purposes of apportionments, those pupils in any group home housing 25 or more children placed pursuant to Sections 362, 727, and 730 of the Welfare and Institutions Code or in any group home housing 25 or more children and operating one or more additional sites under a central administration for children placed pursuant to Section 362, 727, or 730 of the Welfare and Institutions Code shall be reported as

county group home and institutions pupils to the Superintendent of Public Instruction and shall be counted as juvenile court school pupils for purposes of apportionments.

(b) Notwithstanding any other provision of law, any county superintendent of schools operating juvenile court schools, county group home and institutions schools, or community schools, or any combination of these schools shall maintain an account in their general fund to be known as the juvenile court and community school account, and shall deposit all funds derived from the operation of juvenile court, county group home and institutions schools, and community schools into that account. Expenditures from the juvenile court and community school account shall be limited to the following:

(1) Those expenditures defined as direct costs of instructional programs by the California State School Accounting Manual, except that facility costs, including the costs of renting, leasing, purchasing, remodeling, constructing, or improving buildings and the costs of purchasing or improving land, shall be allowed as an instructional cost in the juvenile court and community school fund.

(2) Expenditures that are defined as documented direct support costs by the California State School Accounting Manual, however, costs charged for probation officers shall be limited to not more than the number of full-time equivalent probation officers paid for by the county office of education during the 1988–89 fiscal year.

(3) Expenditures that are defined as allocated direct support costs by the California State School Accounting Manual.

(4) Other expenditures for support and indirect charges. However, these charges may not exceed 10 percent of the sum of the expenditures in paragraphs (1), (2), and (3).

Expenditures that represent contract payments to other agencies for the operation of juvenile court and community school programs shall be included in the juvenile court and community school account and the contract costs distributed to the cost categories defined in paragraphs (1), (2), (3), and (4). At the end of any given school year the net ending balance in the juvenile court and community school account may be distributed to a reserved account for economic contingencies or to a reserved account for capital outlay, provided that the combined total transferred does not exceed 15 percent of the previous year's authorized expenditures as specified above and also provided that funds placed in the reserved accounts shall only be expended for juvenile court, county group home and institutions, or community school programs. The net ending balance, except for those funds placed in a capital outlay fund, shall not exceed the greater of 15 percent of the previous year's expenditures or twenty-five thousand dollars ($25,000). A county may accumulate over a period of two or more given school years a net ending balance in the capital outlay reserved account of more than 15 percent of the previous fiscal year's expenditures under provisions of a resolution of the governing board. Funds in the capital outlay reserve are to be

used for capital outlay only. The Superintendent of Public Instruction shall require an annual certification by county superintendents of schools beginning in the 1989–90 fiscal year that juvenile court, county group home and institutions, and community school funds have been expended as provided in this section and shall withhold from the subsequent year's apportionment an amount equal to any ending balance in the juvenile court and community school account in excess of the transfers to reserves for economic contingencies and capital outlay as described in this section.

(c) Notwithstanding any other provision of law, only pupils, except those permitted pursuant to subdivisions (a), (b), and (d) of Section 1981, who are referred by the county probation department under Section 601 or 654 of the Welfare and Institutions Code, after an individualized review and certification of the appropriateness of enrollment in the county group home and institution's school or county community school, shall be enrolled and eligible for apportionments in county community schools. The individualized review shall include representatives of the court, the county department of education, the county probation department, and either the school district of residence or, in cases in which the pupil resides in a group home or institution, the school district in which the group home or institution is located, and, in each case, the school district representative shall agree to the appropriateness of the proposed placement and pupils so placed shall have a probation officer assigned to their case.

CHAPTER 1051

An act to amend Section 12654 of the Government Code, relating to state actions.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 12654 of the Government Code is amended to read:

12654. (a) A civil action under Section 12652 may not be filed more than three years after the date of discovery by the official of the state or political subdivision charged with responsibility to act in the circumstances or, in any event, no more than 10 years after the date on which the violation of Section 12651 is committed.

(b) A civil action under Section 12652 may be brought for activity prior to January 1, 1988, if the limitations period set in subdivision (a) has not lapsed.

(c) In any action brought under Section 12652, the state, the political subdivision, or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other provision of law, a guilty verdict rendered in a criminal proceeding charging false statements or fraud, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, except for a plea of nolo contendere made prior to January 1, 1988, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subdivision (a), (b), or (c) of Section 12652.

(e) Subdivision (b) of Section 47 of the Civil Code shall not be applicable to any claim subject to this article.

CHAPTER 1052

An act to amend Section 48915 of the Education Code, relating to expulsion.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 48915 of the Education Code is amended to read:

48915. (a) Except as provided in subdivisions (c) and (e), the principal or the superintendent of schools shall recommend the expulsion of a pupil for any of the following acts committed at school or at a school activity off school grounds, unless the principal or superintendent finds that expulsion is inappropriate, due to the particular circumstance:

(1) Causing serious physical injury to another person, except in self-defense.

(2) Possession of any knife, explosive, or other dangerous object of no reasonable use to the pupil.

(3) Unlawful possession of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.

(4) Robbery or extortion.

(5) Assault or battery, as defined in Sections 240 and 242 of the Penal Code, upon any school employee.

(b) Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed

pursuant to subdivision (d) of Section 48918, the governing board may order a pupil expelled upon finding that the pupil committed an act listed in subdivision (a) or in subdivision (a), (b), (c), (d), or (e) of Section 48900. A decision to expel shall be based on a finding of one or both of the following:

(1) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct.

(2) Due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

(c) The principal or superintendent of schools shall immediately suspend, pursuant to Section 48911, and shall recommend expulsion of a pupil that he or she determines has committed any of the following acts at school or at a school activity off school grounds:

(1) Possessing, selling, or otherwise furnishing a firearm. This subdivision does not apply to an act of possessing a firearm if the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district.

(2) Brandishing a knife at another person.

(3) Unlawfully selling a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(d) The governing board shall order a pupil expelled upon finding that the pupil committed an act listed in subdivision (c), and shall refer that pupil to a program of study that meets all of the following conditions:

(1) Is appropriately prepared to accommodate pupils who exhibit discipline problems.

(2) Is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school.

(3) Is not housed at the schoolsite attended by the pupil at the time of suspension.

(e) Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board may order a pupil expelled upon finding that the pupil, at school or at a school activity off of school grounds violated subdivision (f), (g), (h), (i), (j), (k), (*l*), or (m) of Section 48900, or Section 48900.2 , 48900.3, or 48900.4, and either of the following:

(1) That other means of correction are not feasible or have repeatedly failed to bring about proper conduct.

(2) That due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

(f) The governing board shall refer a pupil who has been expelled pursuant to subdivision (b) or (e) to a program of study that meets

all of the conditions specified in subdivision (d). Notwithstanding this subdivision, with respect to a pupil expelled pursuant to subdivision (e), if the county superintendent of schools certifies that an alternative program of study is not available at a site away from a comprehensive middle, junior, or senior high school, or an elementary school, and that the only option for placement is at another comprehensive middle, junior, or senior high school, or another elementary school, the pupil may be referred to a program of study that is provided at a comprehensive middle, junior, or senior high school, or at an elementary school.

(g) As used in this section, "knife" means any dirk, dagger, or other weapon with a fixed, sharpened blade fitted primarily for stabbing, a weapon with a blade fitted primarily for stabbing, a weapon with a blade longer than $3^1/_2$ inches, a folding knife with a blade that locks into place, or a razor with an unguarded blade.

SEC. 2. Section 48915 of the Education Code is amended to read:

48915. (a) Except as provided in subdivisions (c) and (e), the principal or the superintendent of schools shall recommend the expulsion of a pupil for any of the following acts committed at school or at a school activity off school grounds, unless the principal or superintendent finds that expulsion is inappropriate, due to the particular circumstance:

(1) Causing serious physical injury to another person, except in self-defense.

(2) Possession of any knife, explosive, or other dangerous object of no reasonable use to the pupil.

(3) Unlawful possession of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.

(4) Robbery or extortion.

(5) Assault or battery, as defined in Sections 240 and 242 of the Penal Code, upon any school employee.

(b) Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board may order a pupil expelled upon finding that the pupil committed an act listed in subdivision (a) or in subdivision (a), (b), (c), (d), or (e) of Section 48900. A decision to expel shall be based on a finding of one or both of the following:

(1) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct.

(2) Due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

(c) The principal or superintendent of schools shall immediately suspend, pursuant to Section 48911, and shall recommend expulsion

of a pupil that he or she determines has committed any of the following acts at school or at a school activity off school grounds:

(1) Possessing, selling, or otherwise furnishing a firearm. This subdivision does not apply to an act of possessing a firearm if the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district.

(2) Brandishing a knife at another person.

(3) Unlawfully selling a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(4) Committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900.

(d) The governing board shall order a pupil expelled upon finding that the pupil committed an act listed in subdivision (c), and shall refer that pupil to a program of study that meets all of the following conditions:

(1) Is appropriately prepared to accommodate pupils who exhibit discipline problems.

(2) Is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school.

(3) Is not housed at the schoolsite attended by the pupil at the time of suspension.

(e) Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board may order a pupil expelled upon finding that the pupil, at school or at a school activity off of school grounds violated subdivision (f), (g), (h), (i), (j), (k), (*l*), or (m) of Section 48900, or Section 48900.2 , 48900.3, or 48900.4, and either of the following:

(1) That other means of correction are not feasible or have repeatedly failed to bring about proper conduct.

(2) That due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

(f) The governing board shall refer a pupil who has been expelled pursuant to subdivision (b) or (e) to a program of study that meets all of the conditions specified in subdivision (d). Notwithstanding this subdivision, with respect to a pupil expelled pursuant to subdivision (e), if the county superintendent of schools certifies that an alternative program of study is not available at a site away from a comprehensive middle, junior, or senior high school, or an elementary school, and that the only option for placement is at another comprehensive middle, junior, or senior high school, or another elementary school, the pupil may be referred to a program

of study that is provided at a comprehensive middle, junior, or senior high school, or at an elementary school.

(g) As used in this section, "knife" means any dirk, dagger, or other weapon with a fixed, sharpened blade fitted primarily for stabbing, a weapon with a blade fitted primarily for stabbing, a weapon with a blade longer than $3^1/_2$ inches, a folding knife with a blade that locks into place, or a razor with an unguarded blade.

SEC. 3. Section 48915 of the Education Code is amended to read:

48915. (a) Except as provided in subdivisions (c) and (e), the principal or the superintendent of schools shall recommend the expulsion of a pupil for any of the following acts committed at school or at a school activity off school grounds, unless the principal or superintendent finds that expulsion is inappropriate, due to the particular circumstance:

(1) Causing serious physical injury to another person, except in self-defense.

(2) Possession of any knife, explosive, or other dangerous object of no reasonable use to the pupil.

(3) Unlawful possession of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.

(4) Robbery or extortion.

(5) Assault or battery, as defined in Sections 240 and 242 of the Penal Code, upon any school employee.

(b) Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board may order a pupil expelled upon finding that the pupil committed an act listed in subdivision (a) or in subdivision (a), (b), (c), (d), or (e) of Section 48900. A decision to expel shall be based on a finding of one or both of the following:

(1) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct.

(2) Due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

(c) The principal or superintendent of schools shall immediately suspend, pursuant to Section 48911, and shall recommend expulsion of a pupil that he or she determines has committed any of the following acts at school or at a school activity off school grounds:

(1) Possessing, selling, or otherwise furnishing a firearm. This subdivision does not apply to an act of possessing a firearm if the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district.

(2) Brandishing a knife at another person.

(3) Unlawfully selling a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(d) The governing board shall order a pupil expelled upon finding that the pupil committed an act listed in subdivision (c), and shall refer that pupil to a program of study that meets all of the following conditions:

(1) Is appropriately prepared to accommodate pupils who exhibit discipline problems.

(2) Is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school.

(3) Is not housed at the schoolsite attended by the pupil at the time of suspension.

(e) Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board may order a pupil expelled upon finding that the pupil, at school or at a school activity off of school grounds violated subdivision (f), (g), (h), (i), (j), (k), (*l*), or (m) of Section 48900, or Section 48900.2, 48900.3, or 48900.4, and either of the following:

(1) That other means of correction are not feasible or have repeatedly failed to bring about proper conduct.

(2) That due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

(f) The governing board shall refer a pupil who has been expelled pursuant to subdivision (b) or (e) to a program of study that meets all of the conditions specified in subdivision (d). If, pursuant to Section 48661, the governing board has established a community day school on the same site as a comprehensive middle, junior, or senior high school, or at any elementary school, then paragraph (2) of subdivision (d) is not applicable to a referral by the governing board to the community day school of a pupil who has been expelled pursuant to subdivision (b) or (e). Notwithstanding this subdivision, with respect to a pupil expelled pursuant to subdivision (e), if the county superintendent of schools certifies that an alternative program of study is not available at a site away from a comprehensive middle, junior, or senior high school, or an elementary school, and that the only option for placement is at another comprehensive middle, junior, or senior high school, or another elementary school, the pupil may be referred to a program of study that is provided at a comprehensive middle, junior, or senior high school, or at an elementary school.

(g) As used in this section, "knife" means any dirk, dagger, or other weapon with a fixed, sharpened blade fitted primarily for stabbing, a weapon with a blade fitted primarily for stabbing, a

weapon with a blade longer than $3^1/_2$ inches, a folding knife with a blade that locks into place, or a razor with an unguarded blade.

SEC. 4. Section 48915 of the Education Code is amended to read:

48915. (a) Except as provided in subdivisions (c) and (e), the principal or the superintendent of schools shall recommend the expulsion of a pupil for any of the following acts committed at school or at a school activity off school grounds, unless the principal or superintendent finds that expulsion is inappropriate, due to the particular circumstance:

(1) Causing serious physical injury to another person, except in self-defense.

(2) Possession of any knife, explosive, or other dangerous object of no reasonable use to the pupil.

(3) Unlawful possession of any controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code, except for the first offense for the possession of not more than one avoirdupois ounce of marijuana, other than concentrated cannabis.

(4) Robbery or extortion.

(5) Assault or battery, as defined in Sections 240 and 242 of the Penal Code, upon any school employee.

(b) Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board may order a pupil expelled upon finding that the pupil committed an act listed in subdivision (a) or in subdivision (a), (b), (c), (d), or (e) of Section 48900. A decision to expel shall be based on a finding of one or both of the following:

(1) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct.

(2) Due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

(c) The principal or superintendent of schools shall immediately suspend, pursuant to Section 48911, and shall recommend expulsion of a pupil that he or she determines has committed any of the following acts at school or at a school activity off school grounds:

(1) Possessing, selling, or otherwise furnishing a firearm. This subdivision does not apply to an act of possessing a firearm if the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district.

(2) Brandishing a knife at another person.

(3) Unlawfully selling a controlled substance listed in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(4) Committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900.

(d) The governing board shall order a pupil expelled upon finding that the pupil committed an act listed in subdivision (c), and shall refer that pupil to a program of study that meets all of the following conditions:

(1) Is appropriately prepared to accommodate pupils who exhibit discipline problems.

(2) Is not provided at a comprehensive middle, junior, or senior high school, or at any elementary school.

(3) Is not housed at the schoolsite attended by the pupil at the time of suspension.

(e) Upon recommendation by the principal, superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board may order a pupil expelled upon finding that the pupil, at school or at a school activity off of school grounds violated subdivision (f), (g), (h), (i), (j), (k), (*l*), or (m) of Section 48900, or Section 48900.2, 48900.3, or 48900.4, and either of the following:

(1) That other means of correction are not feasible or have repeatedly failed to bring about proper conduct.

(2) That due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

(f) The governing board shall refer a pupil who has been expelled pursuant to subdivision (b) or (e) to a program of study that meets all of the conditions specified in subdivision (d). If, pursuant to Section 48661, the governing board has established a community day school on the same site as a comprehensive middle, junior, or senior high school, or at any elementary school, then paragraph (2) of subdivision (d) is not applicable to a referral by the governing board to the community day school of a pupil who has been expelled pursuant to subdivision (b) or (e). Notwithstanding this subdivision, with respect to a pupil expelled pursuant to subdivision (e), if the county superintendent of schools certifies that an alternative program of study is not available at a site away from a comprehensive middle, junior, or senior high school, or an elementary school, and that the only option for placement is at another comprehensive middle, junior, or senior high school, or another elementary school, the pupil may be referred to a program of study that is provided at a comprehensive middle, junior, or senior high school, or at an elementary school.

(g) As used in this section, "knife" means any dirk, dagger, or other weapon with a fixed, sharpened blade fitted primarily for stabbing, a weapon with a blade fitted primarily for stabbing, a weapon with a blade longer than $3^1/_2$ inches, a folding knife with a blade that locks into place, or a razor with an unguarded blade.

SEC. 5. (a) Section 2 of this bill incorporates amendments to Section 48915 of the Education Code proposed by both this bill and Assembly Bill 692. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 48915 of the Education Code, (3) Assembly Bill 2834 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 692, in which case Sections 1, 3, and 4 of this bill shall not become operative.

(b) Section 3 of this bill incorporates amendments to Section 48915 of the Education Code proposed by both this bill and AB 2834. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 48915 of the Education Code, (3) AB 692 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2834, in which case Section 48915 of the Education Code, as amended by AB 2834, shall remain operative only until the operation date of this bill, at which time Section 3 of this bill shall become operative, and Sections 1, 2, and 4 of this bill shall not become operative.

(c) Section 4 of this bill incorporates amendments to Section 48915 of the Education Code proposed by this bill, AB 692, and AB 2834. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1997, (2) all three bills amend Section 48915 of the Education Code, and (3) this bill is enacted after AB 692 and AB 2834, in which case Section 48915 of the Education Code, as amended by AB 2834, shall remain operative only until the operation date of this bill, at which time Section 3 of this bill shall become operative, and Sections 1, 2, and 3 of this bill shall not become operative.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

CHAPTER 1053

An act to amend Sections 8706, 8817, and 8909 of, and to add Section 9202.5 to, the Family Code, relating to family law.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 8706 of the Family Code is amended to read:

8706. (a) An agency may not place a child for adoption unless a written report on the child's medical background and, if available, the medical background of the child's biological parents so far as ascertainable, has been submitted to the prospective adoptive parents and they have acknowledged in writing the receipt of the report.

(b) The report on the child's background shall contain all known diagnostic information, including current medical reports on the child, psychological evaluations, and scholastic information, as well as all known information regarding the child's developmental history and family life.

(c) (1) The biological parents may provide a blood sample at a clinic or hospital approved by the State Department of Health Services. The biological parents' failure to provide a blood sample shall not affect the adoption of the child.

(2) The blood sample shall be stored at a laboratory under contract with the State Department of Health Services for a period of 30 years following the adoption of the child.

(3) The purpose of the stored sample of blood is to provide a blood sample from which DNA testing can be done at a later date after entry of the order of adoption at the request of the adoptive parents or the adopted child. The cost of drawing and storing the blood samples shall be paid for by a separate fee in addition to the fee required under Section 8716. The amount of this additional fee shall be based on the cost of drawing and storing the blood samples but at no time shall the additional fee be more than one hundred dollars ($100).

(d) (1) The blood sample shall be stored and released in such a manner as to not identify any party to the adoption.

(2) Any results of the DNA testing shall be stored and released in such a manner as to not identify any party to the adoption.

SEC. 2. Section 8817 of the Family Code is amended to read:

8817. (a) A written report on the child's medical background, and if available, the medical background of the child's biological parents so far as ascertainable, shall be made by the department or delegated county adoption agency as part of the study required by Section 8806.

(b) The report on the child's background shall contain all known diagnostic information, including current medical reports on the child, psychological evaluations, and scholastic information, as well as all known information regarding the child's developmental history and family life.

(c) The report shall be submitted to the prospective adoptive parents who shall acknowledge its receipt in writing.

(d) (1) The biological parents may provide a blood sample at a clinic or hospital approved by the State Department of Health Services. The biological parents' failure to provide a blood sample shall not affect the adoption of the child.

(2) The blood sample shall be stored at a laboratory under contract with the State Department of Health Services for a period of 30 years following the adoption of the child.

(3) The purpose of the stored sample of blood is to provide a blood sample from which DNA testing can be done at a later date after entry of the order of adoption at the request of the adoptive parents or the adopted child. The cost of drawing and storing the blood samples shall be paid for by a separate fee in addition to the fee required under Section 8810. The amount of this additional fee shall be based on the cost of drawing and storing the blood samples but at no time shall the additional fee be more than one hundred dollars ($100).

(e) (1) The blood sample shall be stored and released in such a manner as to not identify any party to the adoption.

(2) Any results of the DNA testing shall be stored and released in such a manner as to not identify any party to the adoption.

SEC. 3. Section 8909 of the Family Code is amended to read:

8909. (a) An agency may not place a child for adoption unless a written report on the child's medical background and, if available, the medical background of the child's biological parents so far as ascertainable, has been submitted to the prospective adoptive parents and they have acknowledged in writing the receipt of the report.

(b) The report on the child's background shall contain all known diagnostic information, including current medical reports on the child, psychological evaluations, and scholastic information, as well as all known information regarding the child's developmental history and family life.

(c) (1) The biological parents may provide a blood sample at a clinic or hospital approved by the State Department of Health Services. The biological parents' failure to provide a blood sample shall not affect the adoption of the child.

(2) The blood sample shall be stored at a laboratory under contract with the State Department of Health Services for a period of 30 years following the adoption of the child.

(3) The purpose of the stored sample of blood is to provide a blood sample from which DNA testing can be done at a later date after entry of the order of adoption at the request of the adoptive parents or the adopted child. The cost of drawing and storing the blood samples shall be paid for by a separate fee in addition to any fee required under Section 8907. The amount of this additional fee shall be based on the cost of drawing and storing the blood samples but at

no time shall the additional fee be more than one hundred dollars ($100).

(d) (1) The blood sample shall be stored and released in such a manner as to not identify any party to the adoption.

(2) Any results of the DNA testing shall be stored and released in such a manner as to not identify any party to the adoption.

SEC. 4. Section 9202.5 is added to the Family Code, to read:

9202.5. (a) Notwithstanding any other law, the laboratory that is storing a blood sample pursuant to Section 8706, 8817, or 8909 shall provide access to the blood sample to only the following persons upon the person's request:

(1) A person who has been adopted pursuant to this part.

(2) The adoptive parent of a person under the age of 18 years who has been adopted pursuant to this part. The adoptive parent may receive access to the blood sample only after entry of the order of adoption.

(b) The birth parent or parents shall be given access to any DNA test results related to the blood sample on request.

(c) Except as provided in subdivision (b), no person other than the adoptive parent and the adopted child shall have access to the blood sample or any DNA test results related to the blood sample, unless the adoptive parent or the child authorizes another person or entity to have that access.

CHAPTER 1054

An act to amend Section 653k of the Penal Code, relating to weapons.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 653k of the Penal Code is amended to read:

653k. Every person who possesses in the passenger's or driver's area of any motor vehicle in any public place or place open to the public, carries upon his or her person, and every person who sells, offers for sale, exposes for sale, loans, transfers, or gives to any other person a switchblade knife having a blade two or more inches in length is guilty of a misdemeanor.

For the purposes of this section, "switchblade knife" means a knife having the appearance of a pocketknife and includes a spring-blade knife, snap-blade knife, gravity knife or any other similar type knife, the blade or blades of which are two or more inches long and which can be released automatically by a flick of a button, pressure on the handle, flip of the wrist or other mechanical device, or is released by

the weight of the blade or by any type of mechanism whatsoever. "Switchblade knife" does not include a knife that is designed to open with one hand utilizing thumb pressure applied solely to the blade of the knife or a thumb stud attached to the blade.

For purposes of this section, "passenger's or driver's area" means that part of a motor vehicle which is designed to carry the driver and passengers, including any interior compartment or space therein.

CHAPTER 1055

An act to amend Section 47 of the Civil Code, relating to defamation.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. In amending Section 47 of the Civil Code by this act, it is the intent of the Legislature to abrogate the decision in Shahvar v. Superior Court (1994), 25 Cal. App. 4th 653, to preserve the scarce resources of California's courts, to avoid using the courts for satellite litigation, and to increase public participation in the political, legislative, and judicial processes. It is not the intent of the Legislature to limit in any manner the application of subdivision (b) or (d) of Section 47 of the Civil Code. Specifically, it is not the intent of the Legislature to affect case law holding that certain prelitigation statements are privileged as described in, for example, Lerette v. Dean Witter Organization, Inc., 60 Cal. App. 3d 573; Martin v. Kearney, 51 Cal. App. 3d 309; Ascherman v. Natanson, 23 Cal. App. 3d 861; and the Second Restatement of Torts, Section 586.

SEC. 2. Section 47 of the Civil Code is amended to read:

47. A privileged publication or broadcast is one made:

(a) In the proper discharge of an official duty.

(b) In any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law and reviewable pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure, except as follows:

(1) An allegation or averment contained in any pleading or affidavit filed in an action for marital dissolution or legal separation made of or concerning a person by or against whom no affirmative relief is prayed in the action shall not be a privileged publication or broadcast as to the person making the allegation or averment within the meaning of this section unless the pleading is verified or affidavit sworn to, and is made without malice, by one having reasonable and probable cause for believing the truth of the allegation or averment

and unless the allegation or averment is material and relevant to the issues in the action.

(2) This subdivision does not make privileged any communication made in furtherance of an act of intentional destruction or alteration of physical evidence undertaken for the purpose of depriving a party to litigation of the use of that evidence, whether or not the content of the communication is the subject of a subsequent publication or broadcast which is privileged pursuant to this section. As used in this paragraph, "physical evidence" means evidence specified in Section 250 of the Evidence Code or evidence that is property of any type specified in Section 2031 of the Code of Civil Procedure.

(3) This subdivision does not make privileged any communication made in a judicial proceeding knowingly concealing the existence of an insurance policy or policies.

(4) A recorded lis pendens is not a privileged publication unless it identifies an action previously filed with a court of competent jurisdiction which affects the title or right of possession of real property, as authorized or required by law.

(c) In a communication, without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information. This subdivision applies to and includes a communication concerning the job performance or qualifications of an applicant for employment, based upon credible evidence, made without malice, by a current or former employer of the applicant to, and upon request of, the prospective employer. This subdivision shall not apply to a communication concerning the speech or activities of an applicant for employment if the speech or activities are constitutionally protected, or otherwise protected by Section 527.3 of the Code of Civil Procedure or any other provision of law.

(d) (1) By a fair and true report in, or a communication to, a public journal, of (A) a judicial, (B) legislative, or (C) other public official proceeding, or (D) of anything said in the course thereof, or (E) of a verified charge or complaint made by any person to a public official, upon which complaint a warrant has been issued.

(2) Nothing in paragraph (1) shall make privileged any communication to a public journal that does any of the following:

(A) Violates Rule 5-120 of the State Bar Rules of Professional Conduct.

(B) Breaches a court order.

(C) Violates any requirement of confidentiality imposed by law.

(e) By a fair and true report of (1) the proceedings of a public meeting, if the meeting was lawfully convened for a lawful purpose

and open to the public, or (2) the publication of the matter complained of was for the public benefit.

CHAPTER 1056

An act to amend Sections 89502 and 89503 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 89502 of the Government Code is amended to read:

89502. (a) No elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept any honorarium.

(b) (1) No candidate for elective state office, for judicial office, or for elective office in a local government agency shall accept any honorarium. A person shall be deemed a candidate for purposes of this subdivision when the person has filed a statement of organization as a committee for election to a state or local office, a declaration of intent, or a declaration of candidacy, whichever occurs first. A person shall not be deemed a candidate for purposes of this subdivision after he or she is sworn into the elective office, or, if the person lost the election after the person has terminated his or her campaign statement filing obligations for that office pursuant to Section 84214 or after certification of the election results, whichever is earlier.

(2) Paragraph (1) shall not apply to any person who is a candidate as described in paragraph (1) for judicial office on or before December 31, 1996.

(c) No member of a state board or commission and no designated employee of a state or local government agency shall accept an honorarium from any source if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

(d) This section shall not apply to a person in his or her capacity as judge. This section shall not apply to a person in his or her capacity as a part-time member of the governing board of any public institution of higher education unless that position is an elective office.

SEC. 2. Section 89503 of the Government Code is amended to read:

89503. (a) No elected state officer, elected officer of a local government agency, or other individual specified in Section 87200

shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars ($250).

(b) (1) No candidate for elective state office, for judicial office, or for elective office in a local government agency shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars ($250). A person shall be deemed a candidate for purposes of this subdivision when the person has filed a statement of organization as a committee for election to a state or local office, a declaration of intent, or a declaration of candidacy, whichever occurs first. A person shall not be deemed a candidate for purposes of this subdivision after he or she is sworn into the elective office, or, if the person lost the election, after the person has terminated his or her campaign statement filing obligations for that office pursuant to Section 84214 or after certification of the election results, whichever is earlier.

(2) Paragraph (1) shall not apply to any person who is a candidate as described in paragraph (1) for judicial office on or before December 31, 1996.

(c) No member of a state board or commission or designated employee of a state or local government agency shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars ($250) if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

(d) This section shall not apply to a person in his or her capacity as judge. This section shall not apply to a person in his or her capacity as a part-time member of the governing board of any public institution of higher education unless that position is an elective office.

(e) This section shall not prohibit or limit the following:

(1) Payments, advances, or reimbursements for travel and related lodging and subsistence permitted by Section 89506.

(2) Wedding gifts and gifts exchanged between individuals on birthdays, holidays, and other similar occasions, provided that the gifts exchanged are not substantially disproportionate in value.

(f) Beginning on January 1, 1993, the commission shall adjust the gift limitation in this section on January 1 of each odd-numbered year to reflect changes in the Consumer Price Index, rounded to the nearest ten dollars ($10).

(g) The limitations in this section are in addition to the limitations on gifts in Section 86203.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government

Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

SEC. 4. The Legislature finds and declares that the provisions of this act further the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 1057

An act to amend Section 66010.4 of the Education Code, and to amend Sections 15379.20, 15379.25, and 15379.80 of, and to add Sections 15379.26 and 15379.28 to, the Government Code, relating to postsecondary education, and making an appropriation therefor.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 30, 1996.]

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

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

(1) The California Community College system, composed of 106 community colleges throughout the state, is a primary provider in meeting the educational and training needs of California business and industry.

(2) The October 1993 report of the Commission on Innovation, which was entitled "Choosing the Future," outlined an action agenda for the California Community Colleges. Among the recommendations contained in that report was a recommendation that California's Community Colleges, as decentralized institutions located in communities across the state, should play a more active, and even an entrepreneurial, role in the economic development of regional and local businesses and communities.

(3) A variety of efforts are currently underway directed toward regionalization of economic development, vocational education, and training programs within the state, including programs administered at the federal, state, and local levels. Those regionalization activities include, but are not limited to, all of the following:

(A) Regional technology alliances established in accordance with Chapter 446 of the Statutes of 1993.

(B) Regional economic and work force development data collection activities, including, but not necessarily limited to, identification and analysis of regional industry clusters through the

California Economic Strategy Panel, created by Chapter 864 of the Statutes of 1993.

(C) State, local, and regional coordination of work force development and training programs in accordance with Chapter 819 of the Statutes of 1994.

(b) It is, therefore, the intent of the Legislature in enacting this act to do both of the following:

(1) Facilitate and enhance the capacity of the California Community Colleges Economic Development Program, as defined in Section 15379.20 of the Government Code, and the California Community College system, to effectively deliver, in collaboration with other regional educational and training institutions and regional economic development entities, work force development and training resources responsive to the regional needs of business and industry.

(2) To add to the list of primary missions of the California Community College system a role in advancing California's growth and global competitiveness through education and training.

SEC. 2. Section 66010.4 of the Education Code is amended to read:

66010.4. The missions and functions of California's public and independent segments, and their respective institutions of higher education shall be differentiated as follows:

(a) (1) The California Community Colleges shall, as a primary mission, offer academic and vocational instruction at the lower division level for both younger and older students, including those persons returning to school. Public community colleges shall offer instruction through but not beyond the second year of college. These institutions may grant the associate in arts and the associate in science degree.

(2) In addition to the primary mission of academic and vocational instruction, the community colleges shall offer instruction and courses to achieve all of the following:

(A) The provision of remedial instruction for those in need of it and, in conjunction with the school districts, instruction in English as a second language, adult noncredit instruction, and support services which help students succeed at the postsecondary level are reaffirmed and supported as essential and important functions of the community colleges.

(B) The provision of adult noncredit education curricula in areas defined as being in the state's interest is an essential and important function of the community colleges.

(C) The provision of community services courses and programs is an authorized function of the community colleges so long as their provision is compatible with an institution's ability to meet its obligations in its primary missions.

(3) A primary mission of the California Community Colleges is to advance California's economic growth and global competitiveness

through education, training, and services that contribute to continuous work force improvement.

(4) The community colleges may conduct to the extent that state funding is provided, institutional research concerning student learning and retention as is needed to facilitate their educational missions.

(b) The California State University shall offer undergraduate and graduate instruction through the master's degree in the liberal arts and sciences and professional education, including teacher education. Presently established two-year programs in agriculture are authorized, but other two-year programs shall be permitted only when mutually agreed upon by the Trustees of the California State University and the Board of Governors of the California Community Colleges. The doctoral degree may be awarded jointly with the University of California, as provided in subdivision (c) and pursuant to Section 66904. The doctoral degree may also be awarded jointly with one or more independent institutions of higher education, provided that the proposed doctoral program is approved by the California Postsecondary Education Commission. Research, scholarship, and creative activity in support of its undergraduate and graduate instructional mission is authorized in the California State University and shall be supported by the state. The primary mission of the California State University is undergraduate and graduate instruction through the master's degree.

(c) The University of California may provide undergraduate and graduate instruction in the liberal arts and sciences and in the professions, including the teaching professions. It shall have exclusive jurisdiction in public higher education over instruction in the profession of law and over graduate instruction in the professions of medicine, dentistry, and veterinary medicine. It has the sole authority in public higher education to award the doctoral degree in all fields of learning, except that it may agree with the California State University to award joint doctoral degrees in selected fields. The University of California shall be the primary state-supported academic agency for research.

(d) The independent institutions of higher education shall provide undergraduate and graduate instruction and research in accordance with their respective missions.

SEC. 3. Section 15379.20 of the Government Code is amended to read:

15379.20. The following definitions govern the construction of this chapter:

(a) "California Community Colleges Economic Development Program," "economic development program," and "ED>Net Program" mean the program, the mission of which is described in Section 15379.21.

(b) For the purposes of this chapter, "California Community College regions" shall be designated by the Board of Governors of the

California Community Colleges based on factors, including, but not limited to, all of the following:

(1) Regional economic development and training needs of business and industry.

(2) Regional collaboration, as appropriate, among community colleges and districts and existing economic development organizations and training programs, to meet ongoing demands to support work force training and economic development.

(3) A community college district within each region shall be designated by the board of governors as the lead agency for receiving and allocating grants in accordance with Section 15379.21.

(4) The board of governors shall consult with the Economic Development Strategy Panel to define regional boundaries compatible with existing and emerging economic development regions.

(c) "Phase I award" means federal SBIR awards of between twenty thousand dollars ($20,000) and fifty thousand dollars ($50,000) in support of approximately a six-month research effort that will demonstrate to the federal funding agency all of the following:

(1) That the proposing firm can perform high quality research and development.

(2) That the proposed effort is technically feasible.

(3) That sufficient progress had been made to justify a much larger agency investment in Phase II.

(d) "Phase II award" means federal SBIR awards, ranging between two hundred thousand dollars ($200,000) and five hundred thousand dollars ($500,000), funding the principal research and development effort with a duration normally not exceeding two years.

(e) "Small business" means a corporation, partnership, sole proprietorship, or individual operating a business for profit with 500 employees or less, including employees employed in any subsidiary or affiliated corporation which otherwise meets the requirements of the federal SBIR program.

(f) "Small Business Innovation Research Program (SBIR)" means that program enacted pursuant to the Small Business Innovation Development Act of 1982 (Public Law 97-219) that provides funds to small businesses to conduct innovative research having commercial application.

SEC. 4. Section 15379.25 of the Government Code is amended to read:

15379.25. The California Community Colleges Economic Development Program Executive Committee shall serve the California Community Colleges in the following capacity:

(a) Perform advisory functions to the board of governors regarding the California Community Colleges Economic Development Program.

(b) Guide overall program development and implementation and recommend resource development and deployment strategies.

(c) Develop and recommend to the Board of Governors of the California Community Colleges, strategies for implementation and coordination of regional business resource, assistance, and innovation network infrastructure plans for each community college region, as designated by the board of governors in accordance with subdivision (b) of Section 15379.20, to support the mission of the economic development program, as described in Section 15379.21, including an assessment of human resource needs in critical high growth industrial sectors. The plans shall integrate all economic development programs and services in the region. The objectives of the plans shall be to provide a full range of services to the region, to coordinate service delivery with other service providers, and to identify gaps in services needed by the region. The plans shall provide a resource inventory of service providers for clients in the region. Regional infrastructure plans shall be developed in collaboration with local cities and counties, economic development entities, private industry councils, institutions of higher education, regional occupational programs, and other regional education and training providers, as appropriate.

(d) Recommend vocational education priorities and explore new avenues for expanding the vocational and technical training role of the California Community Colleges, including strategies to provide access by culturally and ethnically disadvantaged individuals to program resources.

(e) Establish an effective liaison with business, industry, and labor to further define the mission of the California Community Colleges Economic Development Program.

(f) Establish connections with other institutions of higher education including the California State University and the University of California to coordinate resources for economic development activities, vocational education, training, and cooperative and compatible network development.

(g) Recommend incentives to strengthen economic development programs within local community college districts, including identification of policy, procedural, and political barriers to that development.

(h) Review published reports and documents relating to the role of community colleges in economic development, as described in Section 15379.21. Upon review of these reports and documents, develop and recommend to the Chancellor of the California Community Colleges and the Board of Governors of the California Community Colleges the actions necessary to implement the role of the California Community Colleges in California's economic development.

(i) Review and update the strategic plan of the California Community Colleges Economic Development Program as deemed

necessary to maintain the community college support of California's work force and economic competitiveness pursuant to Section 15379.21.

(j) Develop for implementation a resource development plan to expand the services of the economic development program to business and employers pursuant to Section 15379.21 and Article 3 (commencing with Section 15379.40).

SEC. 5. Section 15379.26 is added to the Government Code, to read:

15379.26. In addition to the grants authorized by subdivision (b) of Section 15379.21, the Board of Governors and the Chancellor of the California Community Colleges may also award grants to California Community College regions, as defined in Section 15379.20, for purposes of meeting regional economic development and training needs, as identified in accordance with regional business resource, assistance, and innovation network infrastructure plans, as specified in Section 15379.25. A California Community College region designated pursuant to Section 15379.20 may carry out any activity authorized by this chapter in collaboration with another region, or other regions.

SEC. 6. Section 15379.28 is added to the Government Code, to read:

15379.28. (a) The chancellor's office shall oversee auditing, and provide systemwide oversight, for the economic development program. In carrying out these functions, the board of governors and the chancellor's office shall perform both of the following activities:

(1) Review and assess whether competitive awards were utilized for economic development grants and contracts in accordance with board policy.

(2) Review economic development program expenditures to determine the extent to which regional economic development and training needs are being met, including the needs of emerging industries.

(b) (1) As a condition of receiving economic development funds, each community college or community college district shall agree to complete an audit of the funds received.

(2) An audit performed pursuant to this section shall adhere to generally accepted accounting principles, and shall include, but not necessarily be limited to, activities to ensure compliance with all state laws and regulations concerning each of the following:

(A) Procedures for subcontracts or grant amendments, including appropriate authorization by the chancellor's office.

(B) Procurement procedures.

(C) Travel authorization.

(D) Hiring procedures.

(E) Appropriate use of fiscal agents.

(c) An audit performed pursuant to this section may be completed either by the chancellor's office or by a certified public accountant.

(d) (1) Notwithstanding any other provision of law, the Director of Finance is authorized to increase the reimbursement authority of schedule (e) of Item 6870-001-0001 of Section 2.00 of the Budget Act of 1996 by up to two hundred fifty thousand dollars ($250,000) to allow the chancellor's office to contract with community colleges or community college districts for the performance of audits pursuant to this section.

(2) Audits may not be conducted nor staff hired by the chancellor's office pursuant to this section unless and until the Director of Finance certifies that a sufficient number of community colleges or community college districts have entered into service agreements with the chancellor's office to fully offset the estimated cost of conducting audits of economic development program pursuant to this section.

SEC. 7. Section 15379.80 of the Government Code is amended to read:

15379.80. (a) This chapter shall become inoperative on June 30, 1998, and as of January 1, 1999, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1999, deletes or extends the dates on which it becomes operative and is repealed.

(b) The Legislative Analyst, in conjunction with the Bureau of State Audits, shall conduct a review of the effectiveness of this chapter for submission to the Governor, the Legislature, and the Board of Governors of the California Community Colleges as part of the Legislative Analyst's analysis of the Budget Bill to be issued in February 1998. In evaluating the program, the Legislative Analyst shall consider the matters specified in paragraphs (1) and (2) and, in conjunction with the Bureau of State Audits, shall consider the matter specified in paragraph (3):

(1) The findings of the report required by Section 15379.70.

(2) An assessment of whether any identified problems are issues that affect the implementation of this chapter or issues that warrant revisions of statutes or regulations. The assessment shall include recommendations to improve the California Community Colleges Economic Development Program while maintaining its basic purposes, including the program mission as established by Section 15379.21.

(3) The extent to which the recommendations of the Bureau of State Audits, as contained in Audit Report #94123 dated January 1996, have been implemented, or to which appropriate justification for nonimplementation has been provided by the board of governors.

CHAPTER 1058

An act to amend Section 97.36 of the Revenue and Taxation Code, relating to local government finance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 97.36 of the Revenue and Taxation Code is amended to read:

97.36. (a) Notwithstanding any other provision of this chapter, for the designated fiscal year, the amount of the revenue allocation reduction with respect to a qualified county that is attributable in that fiscal year to the reduction determined for that county for the 1993–94 fiscal year pursuant to paragraph (1) of subdivision (a) of Section 97.3 or its predecessor section shall be reduced by the amount of any increased revenues, allocated in the designated fiscal year in that county to a "qualifying school entity" as defined in paragraph (5) of subdivision (a) of Section 97.3 or its predecessor section, that would not have been so allocated but for that county being a qualified county.

(b) For purposes of this section:

(1) A "qualified county" means a county or city or county that has first implemented for the 1994–95 or any subsequent fiscal year the alternative procedure for the distribution of property tax levies that is authorized by Chapter 2 (commencing with Section 4701) of Part 8.

(2) For purposes of this section,"designated fiscal year" means the fiscal year in which the relevant qualified county first implemented the alternative method for the distribution of property tax levies that is authorized by Chapter 2 (commencing with Section 4701) of Part 8.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, within the meaning of Section 17556 of the Government Code.

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

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

In order to provide timely and essential fiscal relief to counties that have not received equal treatment with respect to the annual allocation of ad valorem property tax revenues, it is necessary that this act take effect immediately.

CHAPTER 1059

An act to amend Sections 1986, 17716, and 17742 of, and to add Sections 17717.2, 17732.5, and 17747.6 to, the Education Code, relating to school facilities.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 1986 of the Education Code is amended to read:

1986. (a) The Legislature hereby recognizes that community schools are a permissive educational program.

(b) If a county superintendent of schools elects to operate a community school pursuant to this chapter, he or she shall do one or more of the following:

(1) Utilize available school facilities that conform to the requirements of Part 2 (commencing with Section 2-101), Part 3 (commencing with Section 3-089-1), Part 4 (commencing with Section 4-403), and Part 5 (commencing with Section 5-102), of Title 24 of the California Code of Regulations.

(2) Apply for emergency portable classrooms pursuant to Section 17717.2 or Chapter 25 (commencing with Section 17785) of Part 10.

(3) Enter into lease agreements provided that the facilities are limited to one of the following:

(A) Single story, wood-framed structure.

(B) Single story, light steel frame structure.

(C) A structure where a structural engineer has submitted a report that determines substantial structural hazards do not exist. The county board of education shall review the report prior to approval of the lease and may reject the report if there is any evidence of fraud regarding the facts in the report.

(c) Before entering into any lease pursuant to paragraph (3) of subdivision (b), the county superintendent of schools shall certify that all reasonable efforts have been made to locate community schools in facilities that conform to the structural safety standards listed in paragraph (1) of subdivision (b).

(d) On or before September 1, 1993, and every three years thereafter, each county superintendent of schools shall report to the State Allocation Board on the facilities utilized for the operation of

community schools and efforts to place community school programs in facilities that conform with the requirements of Part 2 (commencing with Section 2-101), Part 3 (commencing with Section 3-089-1), Part 4 (commencing with Section 4-403), and Part 5 (commencing with Section 5-102), of Title 24 of the California Code of Regulations.

(e) This section shall become operative on July 1, 1990.

SEC. 2. Section 17716 of the Education Code is amended to read:

17716. (a) The board, by the adoption of rules, may establish priorities for the construction and leasing of projects to those school districts the pupils of which will benefit most. The board may make exceptions from established priorities when it determines that to do so will benefit the pupils affected.

(b) The board may adopt rules establishing priorities for the acquisition and leasing of portable classrooms to county superintendents of schools that will most benefit pupils needing a county community school. The board shall require each county superintendent of schools who leases portable classrooms pursuant to Section 17717.2 to demonstrate that the portable classrooms are utilized solely for operation of a county community school.

SEC. 3. Section 17717.2 is added to the Education Code, to read:

17717.2. (a) The board may own, have maintained, and lease portable classrooms to any county superintendent of schools who provides a county community school program, as defined in Section 1986. These portable classrooms shall be adequately equipped to meet the educational needs of these pupils, including, but not limited to, sinks and restroom facilities.

(b) The board, with the advice of the Superintendent of Public Instruction, may have portable classrooms constructed, furnished, or equipped, and may otherwise require whatever work is necessary to place portable classrooms for county community schools where needed, including the acquisition and preparation of sites. The board shall, in consultation with the Superintendent of Public Instruction, establish standards for the acquisition of land, with land acquisition limited to no more than 10,000 square feet per portable classroom, waivable by the board only as needed to meet local zoning and land use requirements or health and safety considerations.

(c) A county superintendent of schools who desires to lease portable classrooms shall have prepared for the board's use performance specifications for portable classrooms and bids for their construction that can be solicited from more than one responsible bidder.

(d) No portable classroom shall be made available to a county superintendent of schools unless the county superintendent of schools furnishes evidence, satisfactory to the board, that the county superintendent of schools has no other facility available for rental, lease, or purchase in the geographic service area that is economically or otherwise feasible.

(e) If at any time the board determines that a lessee's need for particular portable classrooms that were made available to the lessee pursuant to this chapter has ceased, the board may take possession of the portable classrooms and may lease them to other county superintendents of schools or, if there is no longer a need for portable classrooms, the board may dispose of them to public or private parties in the manner it deems to be in the best interest of the state.

(f) This section does not limit the authority of a county superintendent of schools to provide facilities without assistance from the board for pupils who are enrolled in a county community school.

SEC. 4. Section 17732.5 is added to the Education Code, to read:

17732.5. The board shall establish the annual rent and conditions to be met by the lessee of a portable classroom leased pursuant to Section 17717.2 and shall require lessees to undertake all necessary maintenance, repairs, renewals, and replacements to ensure that a project is at all times kept in good repair, working order, and condition. All costs incurred for this purpose shall be borne by the lessee.

SEC. 5. Section 17742 of the Education Code, as amended by Chapter 164 of the Statutes of 1996, is amended to read:

17742. (a) The board, by the adoption of rules, shall provide for the manner of determining the area of adequate school construction existing in an applicant school district at the time of application. Those rules shall define and provide for the method of determining building areas that are to be included in, in whole or in part, or to be excluded from, the area of existing adequate school construction. Any building to which Article 3 (commencing with Section 39140) of Chapter 1 of Part 23 of Division 3 of Title 2 does not apply shall not be considered adequate school construction for the purpose of determining the maximum total building area per attendance unit.

The board may make exceptions to the provisions of this section, or to the rules adopted pursuant thereto, if it determines that the exception or exceptions will be for the benefit of pupils affected.

(b) For the purposes of this chapter, the area of adequate school construction existing in an applicant school district does not include any of the following:

(1) Any portable classroom made available to the district under Chapter 25 (commencing with Section 17785).

(2) In any school operated on a year-round schedule, any building area that has been in continuous use during the preceding five-year period primarily for the operation of any preschool program or programs.

(3) Any building area, not to exceed the area that is equivalent to one classroom per schoolsite, used to provide support services pursuant to Chapter 5 (commencing with Section 8800) of Part 6 or to provide integrated children's services pursuant to Section 18986.40 of the Welfare and Institutions Code. A school shall meet the

definition of a "qualifying school" under paragraph (1) of subdivision (h) of Section 8802 to qualify for this exemption from the area of adequate school construction.

(4) Any classroom acquired or constructed and continuously used by the school district primarily for the purpose of reducing class size in kindergarten or in any of grades 1 to 3, inclusive, pursuant to the school district's participation in the Class Size Reduction Program contained in Chapter 6.10 (commencing with Section 52120) of Part 28.

(5) Any classroom acquired or constructed for the purpose of operating a community day school pursuant to Section 48660, if the classroom is not located on a regular elementary, middle, junior high, or senior high school site.

(c) The board may make exceptions to this section, or to the rules adopted pursuant thereto, if it determines that the exception or exceptions will be for the benefit of pupils affected.

SEC. 6. Section 17747.6 is added to the Education Code, to read:

17747.6. The board, with the advice of the Superintendent of Public Instruction, may determine the eligibility of county superintendents of schools to lease portable classrooms provided that a county superintendent of schools is eligible to receive one portable classroom pursuant to this section and Section 17717.2 for each 15 units of average daily attendance at county community schools in excess of the amount of average daily attendance claimed by the county superintendent of schools in the prior fiscal year except that, for pupils who are enrolled in a county community school and on independent study, only time spent in the classroom shall be included in the calculation of average daily attendance.

CHAPTER 1060

An act to add Section 4024.4 to the Penal Code, relating to crime, and making an appropriation therefor.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 4024.4 is added to the Penal Code, to read:

4024.4. (a) The board of supervisors of each county, with the concurrence of the county sheriff before implementation, and the city council of each city, with the concurrence of the chief of police before implementation, may establish a notification procedure to provide notice of the release of any person incarcerated at, or arrested and released on bail from, a local detention facility under its jurisdiction to victims of crime who have requested to be so notified.

A county or city and two or more counties or cities jointly may contract with a private entity to implement this procedure.

(b) Notwithstanding any other law, the sheriff, chief of police, or other official in charge of a local detention facility shall make available to any private entity under contract pursuant to subdivision (a) all information necessary to implement the notification procedure in a timely manner. The private entity under contract shall be responsible for retrieving the information and notifying the requester through computer or telephonic means and, if unable to notify the person requesting the information by these means, shall send written notification by mail.

(c) The sheriff, chief of police, or other official in charge of a local detention facility shall work cooperatively with law enforcement agencies within the county or city and local victim centers established under Section 13835 to implement the program.

(d) As used in this section, "local detention facility" means a facility specified in subdivision (a) or (b) of Section 6031.4.

(e) Notwithstanding any other provision of law, no public or private officer, employee, or entity may be held liable for any action or duty undertaken pursuant to this section.

SEC. 2. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the General Fund to the Board of Corrections for the purpose of providing grants to counties and cities to implement a victim notification program pursuant to Section 1 of this act. Applications for grant funds shall be submitted to the board no later than July 1, 1997. The board shall allocate funds to the counties and cities no later than September 1, 1997. Grant applications shall specify a system or method by which ongoing costs are to be funded from nonstate sources. Each sheriff, chief of police, or other official in charge of a local detention facility may develop a system to fund ongoing costs of the victim notification program.

CHAPTER 1061

An act to amend Section 664.5 of, and to add Section 1278.5 to, the Code of Civil Procedure, and to amend Sections 2021, 2060, 2080, 2081, 2105, and 2106 of the Family Code, relating to family law.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 664.5 of the Code of Civil Procedure is amended to read:

664.5. (a) In any contested action or special proceeding other than a small claims action or an action or proceeding in which a

prevailing party is not represented by counsel, the party submitting an order or judgment for entry shall prepare and mail a copy of the notice of entry of judgment to all parties who have appeared in the action or proceeding and shall file with the court the original notice of entry of judgment together with the proof of service by mail. This subdivision does not apply in a proceeding for dissolution of marriage, for nullity of marriage, or for legal separation.

(b) Promptly upon entry of judgment in a contested action or special proceeding in which a prevailing party is not represented by counsel, the clerk of the court shall mail notice of entry of judgment to all parties who have appeared in the action or special proceeding and shall execute a certificate of such mailing and place it in the court's file in the cause.

(c) For purposes of this section, "judgment" includes any judgment, decree, or signed order from which an appeal lies.

(d) Upon order of the court in any action or special proceeding, the clerk shall mail notice of entry of any judgment or ruling, whether or not appealable.

SEC. 2. Section 1278.5 is added to the Code of Civil Procedure, to read:

1278.5. In any proceeding pursuant to this title in which a petition has been filed to change the name of a minor, and both parents, if living, do not join in consenting thereto, the court may deny the petition in whole or in part if it finds that any portion of the proposed name change is not in the best interest of the child.

SEC. 3. Section 2021 of the Family Code is amended to read:

2021. (a) Subject to subdivision (b), the court may order that a person who claims an interest in the proceeding be joined as a party to the proceeding in accordance with rules adopted by the Judicial Council pursuant to Section 211.

(b) An employee benefit plan may be joined as a party only in accordance with Chapter 6 (commencing with Section 2060).

SEC. 4. Section 2060 of the Family Code is amended to read:

2060. (a) Upon written application by a party, the clerk shall enter an order joining as a party to the proceeding any employee benefit plan in which either party to the proceeding claims an interest that is or may be subject to disposition by the court.

(b) An order or judgment in the proceeding is not enforceable against an employee benefit plan unless the plan has been joined as a party to the proceeding.

SEC. 5. Section 2080 of the Family Code is amended to read:

2080. In a proceeding for dissolution of marriage or for nullity of marriage, but not in a proceeding for legal separation of the parties, the court, upon the request of a party, shall restore the birth name or former name of that party, regardless of whether or not a request for restoration of the name was included in the petition.

SEC. 6. Section 2081 of the Family Code is amended to read:

2081. The restoration of a former name or birth name requested under Section 2080 shall not be denied (a) on the basis that the party has custody of a minor child who bears a different name or (b) for any other reason other than fraud.

SEC. 7. Section 2105 of the Family Code is amended to read:

2105. (a) Except by court order for good cause or as provided in subdivision (c), before or at the time the parties enter into an agreement for the resolution of property or support issues other than pendente lite support, or, in the event the case goes to trial, no later than 45 days before the first assigned trial date, each party, or the attorney for the party in this matter, shall serve on the other party a final declaration of disclosure and a current income and expense declaration, executed under penalty of perjury on a form prescribed by the Judicial Council. The commission of perjury on the final declaration of disclosure may be grounds for setting aside the judgment, or any part or parts thereof, pursuant to Chapter 10 (commencing with Section 2120), in addition to any and all other remedies, civil or criminal, that otherwise are available under law for the commission of perjury.

(b) The final declaration of disclosure shall include all of the following information:

(1) All material facts and information regarding the characterization of all assets and liabilities.

(2) All material facts and information regarding the valuation of all assets that are contended to be community property or in which it is contended the community has an interest.

(3) All material facts and information regarding the amounts of all obligations that are contended to be community obligations or for which it is contended the community has liability.

(4) All material facts and information regarding the earnings, accumulations, and expenses of each party that have been set forth in the income and expense declaration.

(c) The parties may stipulate to a mutual waiver of the requirements of subdivision (a) concerning the final declaration of disclosure by execution of a waiver in a marital settlement agreement or by stipulated judgment or a stipulation entered into in open court. The waiver shall include all of the following representations:

(1) Both parties have complied with Section 2104 and the preliminary declarations of disclosure have been completed and exchanged.

(2) Both parties have completed and exchanged a current income and expense declaration.

(3) The waiver is knowingly, intelligently, and voluntarily entered into by each of the parties.

(4) Each party understands that by signing the waiver, he or she may be affecting his or her ability to have the judgment set aside as provided by law.

(d) Whether execution of a mutual waiver of the final declaration of disclosure requirements pursuant to subdivision (c) will affect the rights of either party to have the judgment set aside or will affect the fiduciary obligations of each to the other shall be decided by a court based on the law and the facts of each particular case. The authority to execute a mutual waiver provided by this section is not intended, in and of itself, to affect the law regarding the fiduciary obligations owed by the parties, the parties' rights with respect to setting aside a judgment, or any other rights or responsibilities of the parties as provided by law.

SEC. 8. Section 2106 of the Family Code is amended to read:

2106. Except as provided in subdivision (c) of Section 2105, absent good cause, no judgment shall be entered with respect to the parties' property rights without each party, or the attorney for that party in this matter, having executed and served a copy of the final declaration of disclosure and current income and expense declaration. Each party shall execute and file with the court a declaration signed under penalty of perjury stating that service of the final declaration of disclosure and current income and expense declaration was made on the other party or that service of the final declaration of disclosure has been waived pursuant to subdivision (c) of Section 2105.

CHAPTER 1062

An act to amend Sections 3750, 3767, 5283, 7571, 7572, and 7644 of, to add Sections 3751.5, 7573, and 7577 to, and to repeal and add Sections 7574, 7575, and 7576 of, the Family Code, to amend Section 22825.14 of the Government Code, to amend Sections 1357, 1357.50, 1374.3, and 102425 of, and to add Article 4 (commencing with Section 102766) to Chapter 5 of Part 1 of Division 102 of, the Health and Safety Code, to amend Sections 10119, 10121.6, 10198.6, 10702.1, 10711, 10719.1, 10731.2, and 11516.1 of the Insurance Code, to amend Section 2803.5 of the Labor Code, and to amend Sections 11350.3, 11350.4, 11476, 11478.8, 15200.1, 15200.2, 15200.3, 15200.7, 15200.8, 15200.85, 15200.9, and 15200.95 of, to add Sections 14124.94 and 15200.91 to, and to repeal Section 14124.93 of, the Welfare and Institutions Code, relating to family law, and making an appropriation therefor.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 3750 of the Family Code is amended to read:

3750. "Health insurance coverage" as used in this article includes all of the following:

(a) Vision care and dental care coverage whether the vision care or dental care coverage is part of existing health insurance coverage or is issued as a separate policy or plan.

(b) Provision for the delivery of health care services by a fee for service, health maintenance organization, preferred provider organization, or any other type of health care delivery system under which medical services could be provided to a dependent child of an absent parent.

SEC. 2. Section 3751.5 is added to the Family Code, to read:

3751.5. (a) Notwithstanding any other provision of law, an employer or insurer shall not deny enrollment of a child under the health insurance coverage of a child's parent on any of the following grounds:

(1) The child was born out of wedlock.

(2) The child is not claimed as a dependent on the parent's federal income tax return.

(3) The child does not reside with the parent or in the insurer's service area.

(b) Notwithstanding any other provision of law, in any case in which a parent is required by a court or administrative order to provide health insurance coverage for a child and the parent is eligible for family health coverage through an employer doing business in the state or an insurer, the employer or insurer shall do all of the following, as applicable:

(1) Permit the parent to enroll under health insurance coverage any child who is otherwise eligible to enroll for that coverage, without regard to any enrollment period restrictions.

(2) If the parent is enrolled in health insurance coverage but fails to apply to obtain coverage of the child, enroll that child under the health coverage upon presentation of the court order or request by the district attorney, the other parent or person having custody of the child, or the Medi-Cal program.

(3) The employer or insurer shall not disenroll or eliminate coverage of a child unless either of the following applies:

(A) The employer has eliminated family health insurance coverage for all of the employer's employees.

(B) The employer or insurer is provided with satisfactory written evidence that either of the following apply:

(i) The court order or administrative order is no longer in effect or is terminated pursuant to Section 3770.

(ii) The child is or will be enrolled in comparable health insurance coverage through another insurer that will take effect not later than the effective date of the child's disenrollment.

(c) For purposes of this section, "insurer" includes every health care service plan, self-insured welfare benefit plan, including those regulated pursuant to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001, et seq.), self-funded employer plan, disability insurer, nonprofit hospital service plan, labor union trust

fund, employer, and any other similar plan, insurer, or entity offering a health coverage plan.

(d) For purposes of this section, "person having custody of the child" is defined as a legal guardian, a caregiver who is authorized to enroll the child in school or to authorize medical care for the child pursuant to Section 6550, or a person with whom the child resides.

SEC. 3. Section 3767 of the Family Code is amended to read:

3767. The employer or other person providing health insurance shall do all of the following:

(a) Notify the applicant for the assignment order of the commencement date of the coverage of the child.

(b) Provide evidence of coverage and any information necessary for the child to obtain benefits through the coverage to both parents or the person having custody of the child and to the district attorney when requested by the district attorney.

(c) Upon request by the parents or person having custody of the child, provide all forms and other documentation necessary for the purpose of submitting claims to the insurance carrier which the employer or other person providing health insurance usually provides to insureds.

(d) Permit the parent or the person having custody of the child, or a provider with the approval of either the parent or the person having custody of the child, to submit claims for covered services on behalf of the child without the approval of the covered parent.

(e) Make payments on claims submitted in accordance with subdivision (d) directly to either parent or the person having custody, to the provider, or to the State Department of Health Services.

SEC. 3.5. Section 5283 of the Family Code is amended to read:

5283. (a) Upon receipt of a written request from a district attorney enforcing the obligation of parents to support their children pursuant to Section 11475.1 of the Welfare and Institutions Code, every employer shall cooperate with and provide relevant employment and income information, including information on earnings, as specified, in Section 5206, that the employer has in its possession, to the district attorney for the purpose of establishing, modifying, or enforcing the support obligation. No employer shall incur any liability for providing this information to the district attorney.

(b) Relevant employment and income information shall include, but not be limited to, all of the following:

(1) Whether a named person has or has not been employed by an employer.

(2) The full name of the employee or the first and middle initial and last name of the employee.

(3) The employee's last known residence address.

(4) The employee's date of birth.

(5) The employee's social security number.

(6) The dates of employment.

(7) All earnings paid to the employee and reported as W-2 compensation in the prior tax year and the employee's current basic rate of pay.

(8) Whether dependent health insurance coverage is available to the employee through employment.

(c) The district attorney shall notify the employer of the district attorney case file number in making a request pursuant to this section. The written request shall include at least three of the following elements regarding the person who is the subject of the inquiry:

(1) First and last name and middle initial, if known.

(2) Social security number.

(3) Driver's license number.

(4) Birth date.

(5) Last known address.

(6) Spouse's name.

(d) An employer who fails to provide relevant employment information to the district attorney within 30 days of receiving a request pursuant to subdivision (a) may be assessed a civil penalty of a maximum of one thousand dollars ($1,000), plus attorneys' fees and costs. Proceedings to impose the civil penalty shall be commenced by the filing and service of an order to show cause.

SEC. 4. Section 7571 of the Family Code is amended to read:

7571. (a) On and after January 1, 1995, upon the event of a live birth, prior to an unmarried mother leaving any hospital, the person responsible for registering live births under Section 102405 of the Health and Safety Code shall provide to the natural mother and shall attempt to provide, at the place of birth, to the man identified by the natural mother as the natural father, a voluntary declaration of paternity together with the written materials described in Section 7572. The person responsible for registering the birth shall file the declaration, if completed, with the birth certificate, and, if requested, shall transmit a copy of the declaration to the district attorney of the county where the birth occurred. A copy of the declaration shall be made available to each of the attesting parents.

(b) No health care provider shall be subject to any civil, criminal, or administrative liability for any negligent act or omission relative to the accuracy of the information provided, or for filing the declaration with the appropriate state or local agencies.

(c) The district attorney shall pay the sum of ten dollars ($10) to birthing hospitals and other entities that provide prenatal services for each completed declaration of paternity that is filed with the State Office of Vital Records, provided that the district attorney and the hospital or other entity providing prenatal services has entered into a written agreement that specifies the terms and conditions for the payment as required by federal law.

(d) If the declaration is not registered by the person responsible for registering live births at the hospital, it may be completed by the attesting parents, notarized, and mailed to the State Office of Vital Records at any time after the child's birth.

(e) Prenatal clinics may offer prospective parents the opportunity to sign a voluntary declaration of paternity. In order to be paid for their services as provided in subdivision (c), prenatal clinics must ensure that the form is witnessed and forwarded to the State Office of Vital Records.

(f) Declarations shall be made available without charge at all district attorney offices, offices of local registrars of births and deaths, courts, and county welfare departments within this state. Staff in these offices shall witness the signatures of parents wishing to sign a voluntary declaration of paternity and shall be responsible for forwarding the signed declaration to the State Office of Vital Records and Statistics.

(g) The State Department of Social Services and district attorneys shall publicize the availability of the declarations. The district attorney shall make the declaration, together with the written materials described in subdivision (a) of Section 7572, available upon request to any parent. The district attorney shall also provide qualified staff to answer parents' questions regarding the declaration and the process of establishing paternity.

(h) Copies of the declaration filed with the State Office of Vital Records and Statistics shall be made available only to the parents, the child, the district attorney, the county welfare department, the county counsel, and the State Department of Social Services.

SEC. 5. Section 7572 of the Family Code is amended to read:

7572. (a) The State Department of Social Services, in consultation with the State Department of Health Services, the California Association of Hospitals and Health Systems, and other affected health provider organizations, shall work cooperatively to develop written materials to assist providers and parents in complying with this chapter.

(b) The written materials for parents which shall be attached to the form specified in Section 7574 and provided to unmarried parents shall contain the following information:

(1) A signed voluntary declaration of paternity that is filed with the State Office of Vital Records and Statistics legally establishes paternity.

(2) The legal rights and obligations of both parents and the child that result from the establishment of paternity.

(3) An alleged father's constitutional rights to have the issue of paternity decided by a court; to notice of any hearing on the issue of paternity; to have an opportunity to present his case to the court, including his right to present and cross-examine witnesses; to have an attorney represent him; and to have an attorney appointed to

represent him if he cannot afford one in a paternity action filed by the district attorney.

(4) That by signing the voluntary declaration of paternity, the father is voluntarily waiving his constitutional rights.

(c) The State Department of Social Services shall, free of charge, make available to hospitals, clinics, and other places of birth any and all informational and training materials for the program under this chapter, as well as the paternity declaration form. The State Department of Social Services shall make training available to every hospital, clinic, and other place of birth no later than October 31, 1994.

(d) The State Department of Social Services may adopt regulations, including emergency regulations, necessary to implement this chapter.

SEC. 6. Section 7573 is added to the Family Code, to read:

7573. Except as provided in Sections 7575, 7576, and 7577, a completed voluntary declaration of paternity, as described in Section 7574, that has been filed with the State Office of Vital Records shall establish the paternity of a child and shall have the same force and effect as a judgment for paternity issued by a court of competent jurisdiction. The voluntary declaration of paternity shall be recognized as a basis for the establishment of an order for child custody, visitation, or child support.

SEC. 7. Section 7574 of the Family Code is repealed.

SEC. 8. Section 7574 is added to the Family Code, to read:

7574. (a) The voluntary declaration of paternity shall be executed on a form developed by the State Department of Social Services in consultation with the State Department of Health Services, the California Family Support Council, and child support advocacy groups.

(b) The form described in subdivision (a) shall contain, at a minimum, the following:

(1) The name and the signature of the mother.

(2) The name and the signature of the father.

(3) The name of the child.

(4) The date of birth of the child.

(5) A statement by the mother that she has read and understands the written materials described in Section 7572, that the man who has signed the voluntary declaration of paternity is the only possible father, and that she consents to the establishment of paternity by signing the voluntary declaration of paternity.

(6) A statement by the father that he has read and understands the written materials described in Section 7572, that he understands that by signing the voluntary declaration of paternity he is waiving his rights as described in the written materials, that he is the biological father of the child, and that he consents to the establishment of paternity by signing the voluntary declaration of paternity.

(7) The name and the signature of the person who witnesses the signing of the declaration by the mother and the father.

SEC. 9. Section 7575 of the Family Code is repealed.

SEC. 10. Section 7575 is added to the Family Code, to read:

7575. (a) Either parent may rescind the voluntary declaration of paternity by filing a rescission form with the State Office of Vital Records within 60 days of the date of execution of the declaration by the attesting father or attesting mother, whichever signature is later, unless a court order for custody, visitation, or child support has been entered in an action in which the signatory seeking to rescind was a party. The State Department of Social Services shall develop a form to be used by parents to rescind the declaration of paternity and instruction on how to complete and file the rescission with the State Office of Vital Records. The form shall include a declaration under penalty of perjury completed by the person filing the rescission form that certifies that a copy of the rescission form was either hand delivered or mailed to the other person who signed the voluntary declaration of paternity. The form and instructions shall be written in simple, easy to understand language and shall be made available at the local family support office and the office of local registrar of births and deaths.

(b) (1) Notwithstanding Section 7573, if the court finds that the conclusions of all of the experts based upon the results of the blood tests performed pursuant to Chapter 2 (commencing with Section 7550) are that the man who signed the voluntary declaration is not the father of the child, the court may set aside the voluntary declaration of paternity.

(2) The notice of motion for blood tests under this section may be filed not later than two years from the date of the child's birth by either the mother or the man who signed the voluntary declaration as the child's father in an action to determine the existence or nonexistence of the father and child relationship pursuant to Section 7630 or in any action to establish an order for child custody, visitation, or child support based upon the voluntary declaration of paternity.

(3) The notice of motion for blood tests pursuant to this section shall be supported by a declaration under oath submitted by the moving party stating the factual basis for putting the issue of paternity before the court.

(c) (1) Nothing in this chapter shall be construed to prejudice or bar the rights of either parent to file an action or motion to set aside the voluntary declaration of paternity on any of the grounds described in, and within the time limits specified in, Section 473 of the Code of Civil Procedure and Chapter 10 (commencing with Section 2120) of Part 1 of Division 6. If the action or motion to set aside the voluntary declaration of paternity is for fraud or perjury, the act must have induced the defrauded parent to sign the voluntary declaration of paternity. If the action or motion to set aside a judgment is required to be filed within a specified time period under

Section 473 of the Code of Civil Procedure or Section 2122, the period within which the action or motion to set aside the voluntary declaration of paternity must be filed shall commence on the date that the court makes a finding of paternity based upon the voluntary declaration of paternity in an action for custody, visitation, or child support.

(2) The parent seeking to set aside the voluntary declaration of paternity shall have the burden of proof.

(3) Any order for custody, visitation, or child support shall remain in effect until the court determines that the voluntary declaration of paternity should be set aside, subject to the court's power to modify the orders as otherwise provided by law.

(4) Nothing in this section is intended to restrict a court from acting as a court of equity.

(5) If the voluntary declaration of paternity is set aside pursuant to paragraph (1), the court shall order that the mother, child, and alleged father submit to blood or genetic tests pursuant to Chapter 2 (commencing with Section 7550). If the court finds that the conclusions of all the experts, as disclosed by the evidence based upon the blood or genetic tests, are that the person who executed the voluntary declaration of paternity is not the father of the child, the question of paternity shall be resolved accordingly. If the person who executed the declaration as the father of the child is not excluded as a possible father, the question of paternity shall be resolved as otherwise provided by law. If the person who executed the declaration of paternity is ultimately determined to be the father of the child, any child support that accrued under an order based upon the voluntary declaration of paternity shall remain due and owing.

(6) The Judicial Council shall develop the forms and procedures necessary to effectuate this subdivision.

SEC. 11. Section 7576 of the Family Code is repealed.

SEC. 12. Section 7576 is added to the Family Code to read:

7576. The following provisions shall apply for voluntary declarations signed on or before December 31, 1996.

(a) Except as provided in subdivision (d), the child of a woman and a man executing a declaration of paternity under this chapter is conclusively presumed to be the man's child. The presumption under this section has the same force and effect as the presumption under Section 7540.

(b) A voluntary declaration of paternity shall be recognized as the basis for the establishment of an order for child custody or support.

(c) In any action to rebut the presumption created by this section, a voluntary declaration of paternity shall be admissible as evidence to determine paternity of the child named in the voluntary declaration of paternity.

(d) The presumption established by this chapter may be rebutted by any person by requesting blood or genetic tests pursuant to Chapter 2 (commencing with Section 7550). The notice of motion for

blood or genetic tests pursuant to this section shall be supported by a declaration under oath submitted by the moving party stating the factual basis for placing the issue of paternity before the court. The notice of motion for blood tests shall be made within three years from the date of execution of the declaration by the attesting father, or by the attesting mother, whichever signature is later. The two-year statute of limitations specified in subdivision (b) of Section 7541 is inapplicable for purposes of this section.

(e) A presumption under this chapter shall override all statutory presumptions of paternity except a presumption arising under Section 7540 or 7555.

SEC. 13. Section 7577 is added to the Family Code to read:

7577. (a) Notwithstanding Section 7573, a voluntary declaration of paternity that is signed by a minor parent or minor parents shall not establish paternity until 60 days after both parents have reached the age of 18 years or are emancipated, whichever first occurs.

(b) A parent who signs a voluntary declaration of paternity when he or she is a minor may rescind the voluntary declaration of paternity at any time up to 60 days after the parent reaches the age of 18 or becomes emancipated whichever first occurs.

(c) A voluntary declaration of paternity signed by a minor creates a rebuttable presumption of paternity until the date that it establishes paternity as specified in subdivision (a).

(d) A voluntary declaration of paternity signed by a minor shall be admissible as evidence in any civil action to establish paternity of the minor named in the voluntary declaration.

(e) A voluntary declaration of paternity that is signed by a minor shall not be admissible as evidence in a criminal prosecution for violation of Section 261.5 of the Penal Code.

SEC. 14. Section 7644 of the Family Code is amended to read:

7644. (a) Notwithstanding any other law, an action for child custody and support and for other relief as provided in Section 7637 may be filed based upon a voluntary declaration of paternity as provided in Chapter 3 (commencing with Section 7570) of Part 2.

(b) Except as provided in Section 7576, the voluntary declaration of paternity shall be given the same force and effect as a judgment of paternity entered by a court of competent jurisdiction. The court shall make appropriate orders as specified in Section 7637 based upon the voluntary declaration of paternity unless evidence is presented that the voluntary declaration of paternity has been rescinded by the parties or set aside as provided in Section 7575 of the Family Code.

(c) The Judicial Council shall develop the forms and procedures necessary to implement this section.

SEC. 15. Section 22825.14 of the Government Code is amended to read:

22825.14. Any person or entity subject to the requirements of this chapter shall comply with the standards set forth in Chapter 7

(commencing with Section 3750) of Part 1 of Division 9 of the Family Code and Section 14124.94 of the Welfare and Institutions Code.

SEC. 16. Section 1357 of the Health and Safety Code is amended to read:

1357. As used in this article:

(a) "Dependent" means the spouse or child of an eligible employee, subject to applicable terms of the health care plan contract covering the employee, and includes dependents of guaranteed association members if the association elects to include dependents under its health coverage at the same time it determines its membership composition pursuant to subdivision (o).

(b) "Eligible employee" means either of the following:

(1) Any permanent employee who is actively engaged on a full-time basis in the conduct of the business of the small employer with a normal workweek of at least 30 hours, at the small employer's regular places of business, who has met any statutorily authorized applicable waiting period requirements. The term includes sole proprietors or partners of a partnership, if they are actively engaged on a full-time basis in the small employer's business and included as employees under a health care plan contract of a small employer, but does not include employees who work on a part-time, temporary, or substitute basis. It includes any eligible employee as defined in this paragraph who obtains coverage through a guaranteed association. Employees of employers purchasing through a guaranteed association shall be deemed to be eligible employees if they would otherwise meet the definition except for the number of persons employed by the employer.

(2) Any member of a guaranteed association as defined in subdivision (o).

(c) "In force business" means an existing health benefit plan contract issued by the plan to a small employer.

(d) "Late enrollee" means an eligible employee or dependent who has declined enrollment in a health benefit plan offered by a small employer at the time of the initial enrollment period provided under the terms of the health benefit plan and who subsequently requests enrollment in a health benefit plan of that small employer, provided that the initial enrollment period shall be a period of at least 30 days. It also means any member of an association that is a guaranteed association as well as any other person eligible to purchase through the guaranteed association when that person has failed to purchase coverage during the initial enrollment period provided under the terms of the guaranteed association's plan contract and who subsequently requests enrollment in the plan, provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible employee, any other person eligible for coverage through a guaranteed association pursuant to subdivision (o), or dependent shall not be considered a late enrollee if: (1) the individual meets all of the following: (A) he or she was covered under

another employer health benefit plan at the time the individual was eligible to enroll; (B) he or she certified at the time of the initial enrollment that coverage under another employer health benefit plan was the reason for declining enrollment, provided that, if the individual was covered under another employer health plan, the individual was given the opportunity to make the certification required by this subdivision and was notified that failure to do so could result in later treatment as a late enrollee; (C) he or she has lost or will lose coverage under another employer health benefit plan as a result of termination of employment of the individual or of a person through whom the individual was covered as a dependent, change in employment status of the individual or of a person through whom the individual was covered as a dependent, termination of the other plan's coverage, cessation of an employer's contribution toward an employee or dependent's coverage, death of the person through whom the individual was covered as a dependent, or divorce; and (D) he or she requests enrollment within 30 days after termination of coverage or employer contribution toward coverage provided under another employer health benefit plan; (2) the employer offers multiple health benefit plans and the employee elects a different plan during an open enrollment period; (3) a court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan; (4) (A) in the case of an eligible employee as defined in paragraph (1) of subdivision (b), the plan cannot produce a written statement from the employer stating that the individual or the person through whom the individual was eligible to be covered as a dependent, prior to declining coverage, was provided with, and signed, acknowledgment of an explicit written notice in bold type specifying that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the individual's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion, unless the individual meets the criteria specified in paragraph (1), (2), or (3); (B) in the case of an association member who did not purchase coverage through a guaranteed association, the plan cannot produce a written statement from the association stating that the association sent a written notice in bold type to all potentially eligible association members at their last known address prior to the initial enrollment period informing members that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the member's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion unless the member can demonstrate that he or she meets the requirements of subparagraphs (A), (C), and (D) of paragraph (1) or paragraph (2) or (3); or (C) in the case of an employer or person who is not a member of an association, was eligible to purchase coverage through a guaranteed association, and

did not do so, and would not be eligible to purchase guaranteed coverage unless purchased through a guaranteed association, the employer or person can demonstrate that he or she meets the requirements of subparagraphs (A), (C), and (D) of paragraph (1), or paragraph (2) or (3), or that he or she recently had a change in status that would make him or her eligible and that application for enrollment was made within 30 days of the change.

(e) "New business" means a health care service plan contract issued to a small employer that is not the plan's in force business.

(f) "Preexisting condition provision" means a contract provision that excludes coverage for charges or expenses incurred during a specified period following the employee's effective date of coverage, as to a condition for which medical advice, diagnosis, care, or treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

(g) "Qualifying prior coverage" means:

(1) Any individual or group policy, contract, or program that is written or administered by a disability insurer, nonprofit hospital service plan, health care service plan, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital, and surgical coverage not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage but does not include accident only, credit, disability income, Medicare supplement, long-term care, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The federal Medicare program pursuant to Title XVIII of the Social Security Act.

(3) The medicaid program pursuant to Title XIX of the Social Security Act.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital, and surgical care.

(h) "Rating period" means the period for which premium rates established by a plan are in effect, and shall be no less than six months.

(i) "Risk adjusted employee risk rate" means the rate determined for an eligible employee of a small employer in a particular risk category after applying the risk adjustment factor.

(j) "Risk adjustment factor" means the percentage adjustment to be applied equally to each standard employee risk rate for a particular small employer, based upon any expected deviations from standard cost of services. This factor may not be more than 120 percent or less than 80 percent until July 1, 1996. Effective July 1, 1996, this factor may not be more than 110 percent or less than 90 percent.

(k) "Risk category" means the following characteristics of an eligible employee: age, geographic region, and family composition of the employee, plus the health benefit plan selected by the small employer.

(1) No more than the following age categories may be used in determining premium rates:

Under 30
30–39
40–49
50–54
55–59
60–64
65 and over

However, for the 65 and over age category, separate premium rates may be specified depending upon whether coverage under the plan contract will be primary or secondary to benefits provided by the federal Medicare program pursuant to Title XVIII of the federal Social Security Act.

(2) Small employer health care service plans shall base rates to small employers using no more than the following family size categories:

(A) Single.
(B) Married couple.
(C) One adult and child or children.
(D) Married couple and child or children.

(3) (A) In determining rates for small employers, a plan that operates statewide shall use no more than nine geographic regions in the state, have no region smaller than an area in which the first three digits of all its ZIP Codes are in common within a county, and divide no county into more than two regions. Plans shall be deemed to be operating statewide if their coverage area includes 90 percent or more of the state's population. Geographic regions established pursuant to this section shall, as a group, cover the entire state, and the area encompassed in a geographic region shall be separate and distinct from areas encompassed in other geographic regions. Geographic regions may be noncontiguous.

(B) In determining rates for small employers, a plan that does not operate statewide shall use no more than the number of geographic regions in the state than is determined by the following formula: the population, as determined in the last federal census, of all counties that are included in their entirety in a plan's service are divided by the total population of the state, as determined in the last federal census, multiplied by nine. The resulting number shall be rounded to the nearest whole integer. No region may be smaller than an area in which the first three digits of all its ZIP Codes are in common within a county and no county may be divided into more than two regions. The area encompassed in a geographic region shall be separate and distinct from areas encompassed in other geographic

regions. Geographic regions may be noncontiguous. No plan shall have less than one geographic area.

Nothing in this section shall be construed to require a plan to establish a new service area or to offer health coverage on a statewide basis, outside of the plan's existing service area.

(*l*) "Small employer" means either of the following:

(1) Any person, firm, proprietary or nonprofit corporation, partnership, public agency, or association that is actively engaged in business or service, that, on at least 50 percent of its working days during the preceding calendar quarter, employed at least three, but no more than 50, eligible employees, the majority of whom were employed within this state, that was not formed primarily for purposes of buying health care service plan contracts, and in which a bona fide employer-employee relationship exists. However, for purposes of subdivisions (a), (b), and (c) of Section 1357.03, the definition shall include employers with at least five eligible employees until July 1, 1994, four eligible employees until July 1, 1995, and three eligible employees thereafter. In determining the number of eligible employees, companies that are affiliated companies and that are eligible to file a combined tax return for purposes of state taxation shall be considered one employer. Subsequent to the issuance of a health care service plan contract to a small employer pursuant to this article, and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided in this article, provisions of this article that apply to a small employer shall continue to apply until the plan contract anniversary following the date the employer no longer meets the requirements of this definition. It includes any small employer as defined in this paragraph who purchases coverage through a guaranteed association, and any employer purchasing coverage for employees through a guaranteed association.

(2) Any guaranteed association, as defined in subdivision (n), that purchases health coverage for members of the association.

(m) "Standard employee risk rate" means the rate applicable to an eligible employee in a particular risk category in a small employer group.

(n) "Guaranteed association" means a nonprofit organization comprised of a group of individuals or employers who associate based solely on participation in a specified profession or industry, accepting for membership any individual or employer meeting its membership criteria, and that (1) includes one or more small employers as defined in paragraph (1) of subdivision (*l*), (2) does not condition membership directly or indirectly on the health or claims history of any person, (3) uses membership dues solely for and in consideration of the membership and membership benefits, except that the amount of the dues shall not depend on whether the member applies for or purchases insurance offered to the association, (4) is organized and maintained in good faith for purposes unrelated to insurance, (5)

has been in active existence on January 1, 1992, and for at least five years prior to that date, (6) has included health insurance as a membership benefit for at least five years prior to January 1, 1992, (7) has a constitution and bylaws, or other analogous governing documents that provide for election of the governing board of the association by its members, (8) offers any plan contract that is purchased to all individual members and employer members in this state, (9) includes any member choosing to enroll in the plan contracts offered to the association provided that the member has agreed to make the required premium payments, and (10) covers at least 1,000 persons with the health care service plan with which it contracts. The requirement of 1,000 persons may be met if component chapters of a statewide association contracting separately with the same carrier cover at least 1,000 persons in the aggregate.

This subdivision applies regardless of whether a contract issued by a plan is with an association or a trust formed for, or sponsored by, an association to administer benefits for association members.

For purposes of this subdivision, an association formed by a merger of two or more associations after January 1, 1992, and otherwise meeting the criteria of this subdivision shall be deemed to have been in active existence on January 1, 1992, if its predecessor organizations had been in active existence on January 1, 1992, and for at least five years prior to that date and otherwise met the criteria of this subdivision.

(o) "Members of a guaranteed association" means any individual or employer meeting the association's membership criteria if that person is a member of the association and chooses to purchase health coverage through the association. At the association's discretion, it also may include employees of association members, association staff, retired members, retired employees of members, and surviving spouses and dependents of deceased members. However, if an association chooses to include these persons as members of the guaranteed association, the association shall make that election in advance of purchasing a plan contract. Health care service plans may require an association to adhere to the membership composition it selects for up to 12 months.

SEC. 16.5. Section 1357 of the Health and Safety Code is amended to read:

1357. As used in this article:

(a) "Dependent" means the spouse or child of an eligible employee, subject to applicable terms of the health care plan contract covering the employee, and includes dependents of guaranteed association members if the association elects to include dependents under its health coverage at the same time it determines its membership composition pursuant to subdivision (o).

(b) "Eligible employee" means either of the following:

(1) Any permanent employee who is actively engaged on a full-time basis in the conduct of the business of the small employer

with a normal workweek of at least 30 hours, at the small employer's regular places of business, who has met any statutorily authorized applicable waiting period requirements. The term includes sole proprietors or partners of a partnership, if they are actively engaged on a full-time basis in the small employer's business and included as employees under a health care plan contract of a small employer, but does not include employees who work on a part-time, temporary, or substitute basis. It includes any eligible employee as defined in this paragraph who obtains coverage through a guaranteed association. Employees of employers purchasing through a guaranteed association shall be deemed to be eligible employees if they would otherwise meet the definition except for the number of persons employed by the employer.

(2) Any member of a guaranteed association as defined in subdivision (o).

(c) "In force business" means an existing health benefit plan contract issued by the plan to a small employer.

(d) "Late enrollee" means an eligible employee or dependent who has declined enrollment in a health benefit plan offered by a small employer at the time of the initial enrollment period provided under the terms of the health benefit plan and who subsequently requests enrollment in a health benefit plan of that small employer, provided that the initial enrollment period shall be a period of at least 30 days. It also means any member of an association that is a guaranteed association as well as any other person eligible to purchase through the guaranteed association when that person has failed to purchase coverage during the initial enrollment period provided under the terms of the guaranteed association's plan contract and who subsequently requests enrollment in the plan, provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible employee, any other person eligible for coverage through a guaranteed association pursuant to subdivision (o), or dependent shall not be considered a late enrollee if: (1) the individual meets all of the following: (A) he or she was covered under another employer health benefit plan at the time the individual was eligible to enroll; (B) he or she certified at the time of the initial enrollment that coverage under another employer health benefit plan was the reason for declining enrollment, provided that, if the individual was covered under another employer health plan, the individual was given the opportunity to make the certification required by this subdivision and was notified that failure to do so could result in later treatment as a late enrollee; (C) he or she has lost or will lose coverage under another employer health benefit plan as a result of termination of employment of the individual or of a person through whom the individual was covered as a dependent, change in employment status of the individual or of a person through whom the individual was covered as a dependent, termination of the other plan's coverage, cessation of an employer's contribution toward an

employee or dependent's coverage, death of the person through whom the individual was covered as a dependent, or divorce; and (D) he or she requests enrollment within 30 days after termination of coverage or employer contribution toward coverage provided under another employer health benefit plan; (2) the employer offers multiple health benefit plans and the employee elects a different plan during an open enrollment period; (3) a court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan; (4) (A) in the case of an eligible employee as defined in paragraph (1) of subdivision (b), the plan cannot produce a written statement from the employer stating that the individual or the person through whom the individual was eligible to be covered as a dependent, prior to declining coverage, was provided with, and signed, acknowledgment of an explicit written notice in bold type specifying that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the individual's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion, unless the individual meets the criteria specified in paragraph (1), (2), or (3); (B) in the case of an association member who did not purchase coverage through a guaranteed association, the plan cannot produce a written statement from the association stating that the association sent a written notice in bold type to all potentially eligible association members at their last known address prior to the initial enrollment period informing members that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the member's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion unless the member can demonstrate that he or she meets the requirements of subparagraphs (A), (C), and (D) of paragraph (1) or paragraph (2) or (3); or (C) in the case of an employer or person who is not a member of an association, was eligible to purchase coverage through a guaranteed association, and did not do so, and would not be eligible to purchase guaranteed coverage unless purchased through a guaranteed association, the employer or person can demonstrate that he or she meets the requirements of subparagraphs (A), (C), and (D) of paragraph (1), or paragraph (2) or (3), or that he or she recently had a change in status that would make him or her eligible and that application for enrollment was made within 30 days of the change.

(e) "New business" means a health care service plan contract issued to a small employer that is not the plan's in force business.

(f) "Preexisting condition provision" means a contract provision that excludes coverage for charges or expenses incurred during a specified period following the employee's effective date of coverage, as to a condition for which medical advice, diagnosis, care, or

treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

(g) "Qualifying prior coverage" means:

(1) Any individual or group policy, contract, or program that is written or administered by a disability insurer, nonprofit hospital service plan, health care service plan, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital, and surgical coverage not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage but does not include accident only, credit, disability income, Medicare supplement, long-term care, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The federal Medicare program pursuant to Title XVIII of the Social Security Act.

(3) The medicaid program pursuant to Title XIX of the Social Security Act.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital, and surgical care.

(h) "Rating period" means the period for which premium rates established by a plan are in effect, and shall be no less than six months.

(i) "Risk adjusted employee risk rate" means the rate determined for an eligible employee of a small employer in a particular risk category after applying the risk adjustment factor.

(j) "Risk adjustment factor" means the percentage adjustment to be applied equally to each standard employee risk rate for a particular small employer, based upon any expected deviations from standard cost of services. This factor may not be more than 120 percent or less than 80 percent until July 1, 1996. Effective July 1, 1996, this factor may not be more than 110 percent or less than 90 percent.

(k) "Risk category" means the following characteristics of an eligible employee: age, geographic region, and family composition of the employee, plus the health benefit plan selected by the small employer.

(1) No more than the following age categories may be used in determining premium rates:

Under 30
30–39
40–49
50–54
55–59
60–64
65 and over

However, for the 65 and over age category, separate premium rates may be specified depending upon whether coverage under the plan contract will be primary or secondary to benefits provided by the federal Medicare program pursuant to Title XVIII of the federal Social Security Act.

(2) Small employer health care service plans shall base rates to small employers using no more than the following family size categories:

(A) Single.

(B) Married couple.

(C) One adult and child or children.

(D) Married couple and child or children.

(3) (A) In determining rates for small employers, a plan that operates statewide shall use no more than nine geographic regions in the state, have no region smaller than an area in which the first three digits of all its ZIP Codes are in common within a county, and divide no county into more than two regions. Plans shall be deemed to be operating statewide if their coverage area includes 90 percent or more of the state's population. Geographic regions established pursuant to this section shall, as a group, cover the entire state, and the area encompassed in a geographic region shall be separate and distinct from areas encompassed in other geographic regions. Geographic regions may be noncontiguous.

(B) In determining rates for small employers, a plan that does not operate statewide shall use no more than the number of geographic regions in the state than is determined by the following formula: the population, as determined in the last federal census, of all counties that are included in their entirety in a plan's service are divided by the total population of the state, as determined in the last federal census, multiplied by nine. The resulting number shall be rounded to the nearest whole integer. No region may be smaller than an area in which the first three digits of all its ZIP Codes are in common within a county and no county may be divided into more than two regions. The area encompassed in a geographic region shall be separate and distinct from areas encompassed in other geographic regions. Geographic regions may be noncontiguous. No plan shall have less than one geographic area.

Nothing in this section shall be construed to require a plan to establish a new service area or to offer health coverage on a statewide basis, outside of the plan's existing service area.

(*l*) "Small employer" means either of the following:

(1) Any person, firm, proprietary or nonprofit corporation, partnership, public agency, or association that is actively engaged in business or service, that, on at least 50 percent of its working days during the preceding calendar quarter, employed at least two, but no more than 50, eligible employees, the majority of whom were employed within this state, that was not formed primarily for purposes of buying health care service plan contracts, and in which

a bona fide employer-employee relationship exists. However, for purposes of subdivisions (a), (b), and (c) of Section 1357.03, the definition shall include employers with at least three eligible employees until July 1, 1997, and two eligible employees thereafter. In determining the number of eligible employees, companies that are affiliated companies and that are eligible to file a combined tax return for purposes of state taxation shall be considered one employer. Subsequent to the issuance of a health care service plan contract to a small employer pursuant to this article, and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided in this article, provisions of this article that apply to a small employer shall continue to apply until the plan contract anniversary following the date the employer no longer meets the requirements of this definition. It includes any small employer as defined in this paragraph who purchases coverage through a guaranteed association, and any employer purchasing coverage for employees through a guaranteed association.

(2) Any guaranteed association, as defined in subdivision (n), that purchases health coverage for members of the association.

(m) "Standard employee risk rate" means the rate applicable to an eligible employee in a particular risk category in a small employer group.

(n) "Guaranteed association" means a nonprofit organization comprised of a group of individuals or employers who associate based solely on participation in a specified profession or industry, accepting for membership any individual or employer meeting its membership criteria, and that (1) includes one or more small employers as defined in paragraph (1) of subdivision (*l*), (2) does not condition membership directly or indirectly on the health or claims history of any person, (3) uses membership dues solely for and in consideration of the membership and membership benefits, except that the amount of the dues shall not depend on whether the member applies for or purchases insurance offered to the association, (4) is organized and maintained in good faith for purposes unrelated to insurance, (5) has been in active existence on January 1, 1992, and for at least five years prior to that date, (6) has included health insurance as a membership benefit for at least five years prior to January 1, 1992, (7) has a constitution and bylaws, or other analogous governing documents that provide for election of the governing board of the association by its members, (8) offers any plan contract that is purchased to all individual members and employer members in this state, (9) includes any member choosing to enroll in the plan contracts offered to the association provided that the member has agreed to make the required premium payments, and (10) covers at least 1,000 persons with the health care service plan with which it contracts. The requirement of 1,000 persons may be met if

component chapters of a statewide association contracting separately with the same carrier cover at least 1,000 persons in the aggregate.

This subdivision applies regardless of whether a contract issued by a plan is with an association or a trust formed for, or sponsored by, an association to administer benefits for association members.

For purposes of this subdivision, an association formed by a merger of two or more associations after January 1, 1992, and otherwise meeting the criteria of this subdivision shall be deemed to have been in active existence on January 1, 1992, if its predecessor organizations had been in active existence on January 1, 1992, and for at least five years prior to that date and otherwise met the criteria of this subdivision.

(o) "Members of a guaranteed association" means any individual or employer meeting the association's membership criteria if that person is a member of the association and chooses to purchase health coverage through the association. At the association's discretion, it also may include employees of association members, association staff, retired members, retired employees of members, and surviving spouses and dependents of deceased members. However, if an association chooses to include these persons as members of the guaranteed association, the association shall make that election in advance of purchasing a plan contract. Health care service plans may require an association to adhere to the membership composition it selects for up to 12 months.

SEC. 17. Section 1357.50 of the Health and Safety Code is amended to read:

1357.50. For purposes of this article:

(a) "Health benefit plan" means any individual or group, insurance policy or health care service plan contract, that provides medical, hospital, and surgical benefits. The term does not include accident only, credit, disability income, coverage of Medicare services pursuant to contracts with the United States government, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(b) "Late enrollee" means an eligible employee or dependent who has declined health coverage under a health benefit plan offered through employment or sponsored by an employer at the time of the initial enrollment period provided under the terms of the health benefit plan, and who subsequently requests enrollment in a health benefit plan of that employer; provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible employee or dependent shall not be considered a late enrollee if any of the following is applicable:

(1) The individual meets all of the following requirements:

(A) The individual was covered under another employer health benefit plan at the time the individual was eligible to enroll.

(B) The individual certified, at the time of the initial enrollment that coverage under another employer health benefit plan was the reason for declining enrollment provided that, if the individual was covered under another employer health plan, the individual was given the opportunity to make the certification required by this subdivision and was notified that failure to do so could result in later treatment as a late enrollee.

(C) The individual has lost or will lose coverage under another employer health benefit plan as a result of termination of employment of the individual or of a person through whom the individual was covered as a dependent, change in employment status of the individual or of a person through whom the individual was covered as a dependent, termination of the other plan's coverage, cessation of an employer's contribution toward an employee or dependent's coverage, death of a person through whom the individual was covered as a dependent, or divorce.

(D) The individual requests enrollment within 30 days after termination of coverage, or cessation of employer contribution toward coverage provided under another employer health benefit plan.

(2) The individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period.

(3) A court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan. The health benefits plan shall enroll a dependent child within 30 days after receipt of a court order or request from the district attorney, either parent or the person having custody of the child as defined in Section 3751.5 of the Family Code, the employer, or the group administrator. In the case of children who are eligible for medicaid, the State Department of Health Services may also make the request.

(4) The plan cannot produce a written statement from the employer stating that, prior to declining coverage, the individual or the person through whom the individual was eligible to be covered as a dependent was provided with, and signed acknowledgment of, explicit written notice in bold type specifying that failure to elect coverage during the initial enrollment period permits the plan to impose, at the time of the individual's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six-month preexisting condition exclusion, unless the individual meets the criteria specified in paragraph (1), (2), or (3).

(c) "Preexisting condition provision" means a contract provision that excludes coverage for charges or expenses incurred during a specified period following the enrollee's effective date of coverage, as to a condition for which medical advice, diagnosis, care, or

treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

(d) "Qualifying prior coverage" means:

(1) Any individual or group policy, contract or program, that is written or administered by a disability insurance company, nonprofit hospital service plan, health care service plan, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital and surgical coverage not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage but does not include accident only, credit, disability income, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The federal Medicare program pursuant to Title XVIII of the Social Security Act.

(3) The medicaid program pursuant to Title XIX of the Social Security Act.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital and surgical care.

(e) "Waivered condition" means a contract provision that excludes coverage for charges or expenses incurred during a specified period of time for one or more specific, identified, medical conditions.

SEC. 18. Section 1374.3 of the Health and Safety Code is amended to read:

1374.3. Notwithstanding any other provision of this chapter or of a health care service plan contract, every health care service plan shall comply with the requirements of Chapter 7 (commencing with Section 3750) of Part 1 of Division 9 of the Family Code and Section 14124.94 of the Welfare and Institutions Code.

SEC. 19. Section 102425 of the Health and Safety Code is amended to read:

102425. (a) The certificate of live birth for any live birth occurring on or after January 1, 1980, shall contain those items necessary to establish the fact of the birth and shall contain only the following information:

(1) Full name and sex of child.

(2) Date of birth, including month, day, hour, and year.

(3) Planned place of birth and place of birth.

(4) Full name of father, birthplace, and date of birth of father including month, day, and year. If the parents are not married to each other, the father's name shall not be listed on the birth certificate unless the father and the mother sign a voluntary declaration of

paternity at the hospital before the birth certificate is prepared. The birth certificate may be amended to add the father's name at a later date only if paternity for the child has been established by a judgment of a court of competent jurisdiction or by the filing of a voluntary declaration of paternity.

(5) Full birth name of mother, birthplace, and date of birth of mother including month, day, and year.

(6) Multiple births and birth order of multiple births.

(7) Signature, and relationship to child, of a parent or other informant, and date signed.

(8) Name, title, and mailing address of attending physician and surgeon or principal attendant, signature, and certification of live birth by attending physician and surgeon or principal attendant or certifier, date signed, and name and title of certifier if other than attending physician and surgeon or principal attendant.

(9) Date accepted for registration and signature of local registrar.

(10) A state birth certificate number and local registration district and number.

(11) A blank space for entry of date of death with a caption reading "Date of Death."

(b) In addition to the items listed in subdivision (a), the certificate of live birth shall contain the following medical and social information, provided that the information is kept confidential pursuant to Sections 102430 and 102447 and is clearly labeled "Confidential Information for Public Health Use Only:"

(1) Birth weight.

(2) Pregnancy history.

(3) Race and ethnicity of mother and father.

(4) Residence address of mother.

(5) A blank space for entry of census tract for mother's address.

(6) Month prenatal care began and number of prenatal visits.

(7) Date of last normal menses.

(8) Description of complications of pregnancy and concurrent illnesses, congenital malformation, and any complication of labor and delivery, including surgery; provided that this information is essential medical information and appears in total on the face of the certificate.

(9) Mother's and father's occupations and kind of business or industry.

(10) Education level of mother and father.

(11) Principal source of pay for prenatal care, which shall include all of the following: Medi-Cal, health maintenance organization or prepaid health plan, private insurance companies, medically indigent, self-pay, other sources which shall include, Medicare, workers' compensation, Title V, other government or nongovernment programs, no charge, and other categories as determined by the State Department of Health Services.

This paragraph shall become inoperative on January 1, 1999, or on the implementation date of the decennial birth certificate revision due to occur on or about January 1, 1999, whichever occurs first.

(12) Expected principal source of pay for delivery, which shall include all of the following: Medi-Cal, health maintenance organization or prepaid health plan, private insurance companies, medically indigent, self-pay, other sources which shall include, Medicare, workers' compensation, Title V, other government or nongovernment programs, no charge, and other categories as determined by the State Department of Health Services.

This paragraph shall become inoperative on January 1, 1999, or on the implementation date of the decennial birth certificate revision due to occur on or about January 1, 1999, whichever occurs first.

(13) An indication of whether or not the child's parent desires the automatic issuance of a Social Security number to the child.

(14) On and after January 1, 1995, the Social Security numbers of the mother and father, unless subdivision (b) of Section 102150 applies.

(c) Item 8, specified in subdivision (b), shall be completed by the attending physician and surgeon or the attending physician's and surgeon's designated representative. The names and addresses of children born with congenital malformations, who require followup treatment, as determined by the child's physician and surgeon, shall be furnished by the physician and surgeon to the local health officer, if permission is granted by either parent of the child.

(d) The parent shall only be asked to sign the form after both the public portion and the confidential medical and social information items have been entered upon the certificate of live birth.

(e) The State Registrar shall instruct all local registrars to collect the information specified in this section with respect to certificates of live birth. The information shall be transcribed on the certificate of live birth in use at the time and shall be limited to the information specified in this section.

Information relating to concurrent illnesses, complications of pregnancy and delivery, and congenital malformations shall be completed by the physician and surgeon, or physician's and surgeon's designee, inserting in the space provided on the confidential portion of the certificate the appropriate number or numbers listed on the VS-10A supplemental worksheet. The VS-10A supplemental form shall be used as a worksheet only and shall not in any manner be linked with the identity of the child or the mother, nor submitted with the certificate to the State Registrar. All information transferred from the worksheet to the certificate shall be fully explained to the parent or other informant prior to the signing of the certificate. No questions relating to drug or alcohol abuse may be asked.

(f) If the implementation date of the decennial birth certificate revision occurs prior to January 1, 1999, within 30 days of this implementation date the State Department of Health Services shall

file a letter with the Secretary of the Senate and with the Chief Clerk of the Assembly, so certifying.

SEC. 19.5. Article 4 (commencing with Section 102766) is added to Chapter 5 of Part 1 of Division 102 of the Health and Safety Code, to read:

Article 4. Voluntary Declaration of Paternity

102766. (a) When a voluntary declaration of paternity is filed with the State Registrar pursuant to subdivision (d) of Section 7571 of the Family Code, an application may be submitted to the State Registrar requesting that the father's name be added to the child's birth certificate.

(b) Upon receipt of the application and payment of the required fee, the State Registrar shall review the application for acceptance for filing, and if accepted, shall establish a new birth certificate for the child in the manner prescribed in Article 1 (commencing with Section 102625), if the original record of birth is on file in the office of the State Registrar.

102767. (a) When a voluntary declaration of paternity is rescinded pursuant to subdivision (a) of Section 7575 of the Family Code, an application may be submitted to the State Registrar requesting that the father's name be removed from the child's birth certificate.

(b) Upon receipt of the application and payment of the required fee, the State Registrar shall establish a new birth certificate for the child in the manner prescribed in Article 1 (commencing with Section 102625), if the original record of birth is on file in the office of the State Registrar.

102768. All records and information specified in this article, other than the newly established certificate, shall be available only to those persons specified in subdivision (h) of Section 7571 of the Family Code or upon order of a court of record.

102769. The State Registrar shall furnish a certified copy of the new record of birth prepared under authority of this article to the registrant without additional cost.

SEC. 20. Section 10119 of the Insurance Code is amended to read:

10119. On and after the operative date of this section:

(a) No policy of disability insurance which, in addition to covering the insured, also covers members of the insured's immediate family, may be issued or amended in this state if it contains any disclaimer, waiver, or other limitation of coverage relative to the accident and sickness coverage or insurability of newborn infants of an insured from and after the moment of birth or of any minor child placed with an insured for adoption from and after the moment the child is placed in the physical custody of the insured for adoption.

(b) Each such policy of disability insurance shall contain a provision granting immediate accident and sickness coverage to each

newborn infant of, and each minor child placed for adoption with, any insured as required by subdivision (a).

(c) A policy of disability insurance, self-insured care coverage, employee welfare benefit plan, or nonprofit hospital service plan, shall comply with the standards set forth in Chapter 7 (commencing with Section 3750) of Part 1 of Division 9 of the Family Code and Section 14124.94 of the Welfare and Institutions Code.

SEC. 21. Section 10121.6 of the Insurance Code is amended to read:

10121.6. (a) No policy of group disability insurance or self-insured employee welfare benefit plan which provides hospital, medical, or surgical expense benefits for employees, insureds, or policyholders and their dependents shall exclude a dependent child from eligibility or benefits solely because the dependent child does not reside with the employee, insured, or policyholder.

(b) Each policy of group disability insurance or self-insured employee welfare benefit plan which provides hospital, medical, or surgical expense benefits for employees, insureds, or policyholders and their dependents shall enroll, upon application by the employer or group administrator, a dependent child of the noncustodial parent when that parent is the employee, insured, or policyholder at any time either the parent or the person having custody of the child as defined in Section 3751.5 of the Family Code, or the district attorney makes an application for enrollment to the employer or group administrator when a court order for medical support exists. In the case of children who are eligible for medicaid, the State Department of Health Services may also make that application.

SEC. 22. Section 10198.6 of the Insurance Code is amended to read:

10198.6. For purposes of this article:

(a) "Health benefit plan" means any group or individual policy or contract that provides medical, hospital, and surgical benefits. The term does not include accident only, credit, disability income, coverage of Medicare services pursuant to contracts with the United States government, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(b) "Late enrollee" means an eligible employee or dependent who has declined health coverage under a health benefit plan offered through employment or sponsored by an employer at the time of the initial enrollment period provided under the terms of the health benefit plan, and who subsequently requests enrollment in a health benefit plan of that employer; provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible

employee or dependent shall not be considered a late enrollee if any of the following is applicable:

(1) The individual meets all of the following requirements:

(A) The individual was covered under another employer health benefit plan at the time the individual was eligible to enroll.

(B) The individual certified, at the time of the initial enrollment that coverage under another employer health benefit plan was the reason for declining enrollment provided that, if the individual was covered under another employer health plan, the individual was given the opportunity to make the certification required by this subdivision and was notified that failure to do so could result in later treatment as a late enrollee.

(C) The individual has lost or will lose coverage under another employer health benefit plan as a result of termination of employment of the individual or of a person through whom the individual was covered as a dependent, change in employment status of the individual or of a person through whom the individual was covered as a dependent, termination of the other plan's coverage, cessation of an employer's contribution toward an employee or dependent's coverage, death of a person through whom the individual was covered as a dependent, or divorce.

(D) The individual requests enrollment within 30 days after termination of coverage, or cessation of employer contribution toward coverage provided under another employer health benefit plan.

(2) The individual is employed by an employer that offers multiple health benefit plans and the individual elects a different plan during an open enrollment period.

(3) A court has ordered that coverage be provided for a spouse or minor child under a covered employee's health benefit plan.

(4) The carrier cannot produce a written statement from the employer stating that, prior to declining coverage, the individual or the person through whom the individual was eligible to be covered as a dependent was provided with, and signed acknowledgment of, explicit written notice in bold type specifying that failure to elect coverage during the initial enrollment period permits the carrier to impose, at the time of the individual's later decision to elect coverage, an exclusion from coverage for a period of 12 months as well as a six month preexisting condition exclusion, unless the individual meets the criteria specified in paragraph (1), (2), or (3).

(c) "Preexisting condition provision" means a policy provision that excludes coverage for charges or expenses incurred during a specified period following the insured's effective date of coverage, as to a condition for which medical advice, diagnosis, care, or treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

(d) "Qualifying prior coverage" means:

(1) Any individual or group policy, contract or program, that is written or administered by a disability insurance company, nonprofit hospital service plan, health care service plan, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital, and surgical coverage not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage but does not include accident only, credit, disability income, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(2) The federal Medicare program pursuant to Title XVIII of the Social Security Act.

(3) The medicaid program pursuant to Title XIX of the Social Security Act.

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital and surgical care.

SEC. 23. Section 10702.1 of the Insurance Code is amended to read:

10702.1. Any person or entity subject to the requirements of this chapter shall comply with the standards set forth in Chapter 7 (commencing with Section 3750) of Part 1 of Division 9 of the Family Code and Section 14124.94 of the Welfare and Institutions Code.

SEC. 24. Section 10711 of the Insurance Code is amended to read:

10711. No carrier shall be required by the provisions of this chapter:

(a) To offer coverage to, or accept applications from, a small employer as defined in paragraph (1) of subdivision (w) of Section 10700, where the small employer is not physically located in a carrier's approved service areas.

(b) To offer coverage to or accept applications from a small employer as defined in paragraph (2) of subdivision (w) of Section 10700 where the small employer is seeking coverage for eligible employees who do not work or reside in a carrier's approved service areas.

(c) To include in a health benefits plan an otherwise eligible employee or dependent, when the eligible employee or dependent does not work or reside within a carrier's approved service area, except as provided in Section 10702.1.

(d) To offer coverage to, or accept applications from, a small employer for a benefits plan design within an area if the commissioner has found that the carrier will not have the capacity within the area in its network of providers to deliver service adequately to the eligible employees and dependents of that

employee because of its obligations to existing group contractholders and enrollees and that the action is not unreasonable or clearly inconsistent with the intent of this chapter.

A carrier that cannot offer coverage to small employers in a specific service area because it is lacking sufficient capacity may not offer coverage in the applicable area to new employer groups with more than 50 eligible employees until the carrier notifies the commissioner that it has regained capacity to deliver services to small employers, and certifies to the commissioner that from the date of the notice it will enroll all small groups requesting coverage from the carrier until the carrier has met the requirements of subdivision (h) of Section 10705.

(e) To offer coverage to a small employer, or an eligible employee as defined in paragraph (2) of subdivision (g) of Section 10700, who within 12 months of application for coverage terminated from a health benefit plan offered by the carrier.

SEC. 25. Section 10719.1 of the Insurance Code is amended to read:

10719.1. Any person or entity subject to the requirements of this chapter shall comply with the standards set forth in Chapter 7 (commencing with Section 3750) of Part 1 of Division 9 of the Family Code and Section 14124.94 of the Welfare and Institutions Code.

SEC. 26. Section 10731.2 of the Insurance Code is amended to read:

10731.2. Any person or entity subject to the requirements of this chapter shall comply with the standards set forth in Chapter 7 (commencing with Section 3750) of Part 1 of Division 9 of the Family Code and Section 14124.94 of the Welfare and Institutions Code.

SEC. 27. Section 11516.1 of the Insurance Code is amended to read:

11516.1. (a) No group nonprofit hospital service plan which provides hospital, medical, or surgical expense benefits for employees, members, or policyholders and their dependents shall exclude a dependent child from eligibility or benefits solely because the dependent child does not reside with the employee, member, or policyholder.

(b) A group nonprofit hospital service plan which provides hospital, medical, or surgical expense benefits for employees, members, or policyholders and their dependents shall enroll, upon application by the employer or group administrator, a dependent child of the noncustodial parent when that parent is the employee, member, or policyholder of the plan at any time the either parent or the person having custody of the child as defined in Section 3751.5 of the Family Code, or district attorney makes an application for enrollment to the employer or group administrator when a court order for medical support exists. In the case of children who are eligible for medicaid, the State Department of Health Services may also make that application.

SEC. 28. Section 2803.5 of the Labor Code is amended to read:

2803.5. Any employer who offers health care coverage, including employers and insurers, shall comply with the standards set forth in Chapter 7 (commencing with Section 3750) of Part 1 of Division 9 of the Family Code and Section 14124.94 of the Welfare and Institutions Code.

SEC. 29. Section 11350.3 of the Welfare and Institutions Code is amended to read:

11350.3. In any action filed by the district attorney pursuant to Section 11350 or 11350.1, the district attorney shall provide the mother and the alleged father the opportunity to voluntarily acknowledge paternity by signing a paternity declaration as described in Section 7574 of the Family Code prior to a hearing or trial where the paternity of a minor child is at issue. The opportunity to voluntarily acknowledge paternity may be provided either before or after an action pursuant to Section 11350 or 11350.1 is filed and served upon the alleged father. For the purpose of meeting the requirements of this action, the district attorney may afford the defendant an opportunity to enter into a stipulation for judgment of paternity after an action for paternity has been filed in lieu of the voluntary declaration of paternity.

SEC. 30. Section 11350.4 of the Welfare and Institutions Code is amended to read:

11350.4. (a) Notwithstanding any other law, an action for child support may be brought by the district attorney on behalf of a minor child or caretaker parent based upon a voluntary declaration of paternity as provided in Chapter 3 (commencing with Section 7570) of Part 2 of Division 12 of the Family Code.

(b) Except as provided in Sections 7576 and 7577 of the Family Code, the voluntary declaration of paternity shall be given the same force and effect as a judgment for paternity entered by a court of competent jurisdiction. The court shall make appropriate orders for support of the minor child based upon the voluntary declaration of paternity unless evidence is presented that the voluntary declaration of paternity has been rescinded by the parties or set aside by a court as provided in Section 7575 of the Family Code.

(c) The Judicial Council shall develop the forms and procedures necessary to implement this section.

SEC. 31. Section 11476 of the Welfare and Institutions Code is amended to read:

11476. It shall be the duty of the county department to refer all cases where a parent is absent from the home, or where the parents are unmarried and parentage has not been established by the completion and filing of a voluntary declaration of paternity pursuant to Section 7573 of the Family Code or a court of competent jurisdiction, to the district attorney immediately at the time the application for public assistance, including Medi-Cal benefits, or certificate of eligibility, is signed by the applicant or recipient. If an

applicant is found to be ineligible, the applicant shall be notified in writing that the referral of the case to the district attorney may be terminated at the applicant's request. The county department shall cooperate with the district attorney and shall make available to him or her all pertinent information as provided in Section 11478.

Upon referral from the county department, the district attorney shall investigate the question of nonsupport or paternity and shall take all steps necessary to obtain child support for the needy child, enforce spousal support as part of the state plan under Section 11475.2, and determine paternity in the case of a child born out of wedlock. Upon the advice of the county department that a child is being considered for adoption, the district attorney shall delay the investigation and other actions with respect to the case until advised that the adoption is no longer under consideration. The granting of public assistance or Medi-Cal benefits to an applicant shall not be delayed or contingent upon investigation by the district attorney.

In cases where Medi-Cal benefits are the only assistance provided, the district attorney shall provide child and spousal support services unless the recipient of the services notifies the district attorney that only services related to securing Medi-Cal benefits are requested.

Where a court order has been obtained, any contractual agreement for support between the district attorney or the county department and the noncustodial parent shall be deemed null and void to the extent that it is not consistent with the court order.

Whenever a family which has been receiving public assistance, including Medi-Cal, ceases to receive assistance, including Medi-Cal, the district attorney shall, to the extent required by federal regulations, continue to enforce support payments from the noncustodial parent until such time as the individual on whose behalf the enforcement efforts are made sends written notice to the district attorney requesting that enforcement services be discontinued.

The district attorney shall, where appropriate, utilize reciprocal arrangements adopted with other states in securing support from an absent parent. In individual cases where utilization of reciprocal arrangements has proven ineffective, the district attorney may forward to the Attorney General a request to utilize federal courts in order to obtain or enforce orders for child or spousal support. If reasonable efforts to collect amounts assigned pursuant to Section 11477 have failed, the district attorney may request that the case be forwarded to the Treasury Department for collection in accordance with federal regulations. The Attorney General, where appropriate, shall forward these requests to the Secretary of Health and Human Services, or a designated representative.

SEC. 32. Section 11478.8 of the Welfare and Institutions Code is amended to read:

11478.8. (a) Upon receipt of a written request from a district attorney enforcing the obligation of parents to support their children pursuant to Section 11475.1, every employer, as specified in Section

5210 of the Family Code, and every labor organization shall cooperate with and provide relevant employment and income information which they have in their possession to the district attorney for the purpose of establishing, modifying, or enforcing the support obligation. No employer or labor organization shall incur any liability for providing this information to the district attorney.

Relevant employment and income information shall include, but not be limited to, all of the following:

(1) Whether a named person has or has not been employed by an employer or whether a named person has or has not been employed to the knowledge of the labor organization.

(2) The full name of the employee or member or the first and middle initial and last name of the employee or member.

(3) The employee's or member's last known residence address.

(4) The employee's or member's date of birth.

(5) The employee's or member's Social Security number.

(6) The dates of employment.

(7) All earnings paid to the employee or member and reported as W-2 compensation in the prior tax year and the employee's or member's current basic rate of pay.

(8) Other earnings, as specified in Section 5206 of the Family Code, paid to the employee or member.

(9) Whether the dependent health insurance coverage is available to the employee through employment or membership in the labor organization.

The district attorney shall notify the employer and labor organization of the district attorney case file number in making a request pursuant to this section. The written request shall include at least three of the following elements regarding the person who is the subject of the inquiry: (A) first and last name and middle initial, if known; (B) Social Security number; (C) driver's license number; (D) birth date; (E) last known address; or (F) spouse's name.

The district attorney shall send a notice that a request for this information has been made to the last known address of the person who is the subject of the inquiry.

(b) An employer or labor organization which fails to provide relevant employment information to the district attorney within 30 days of receiving a request pursuant to subdivision (a) may be assessed a civil penalty of a maximum of one thousand dollars ($1,000), plus attorneys' fees and costs. Proceedings to impose the civil penalty shall be commenced by the filing and service of an order to show cause.

(c) "Labor organization," for the purposes of this section means a labor organization as defined in Section 1117 of the Labor Code or any related benefit trust fund covered under the federal Employee Retirement Income Security Act of 1974 (Chapter 18 (commencing with Section 1001) of Title 29 of the United States Code).

(d) Any reference to the district attorney in this section shall apply only when the district attorney is otherwise ordered or required to act pursuant to existing law. Nothing in this section shall be deemed to mandate additional enforcement or collection duties upon the district attorney beyond those imposed under existing law on the effective date of this section.

SEC. 33. Section 14124.93 of the Welfare and Institutions Code, as added by Section 24 of Chapter 147 of the Statutes of 1994, is repealed.

SEC. 34. Section 14124.94 is added to the Welfare and Institutions Code, to read:

14124.94. (a) When the rights of a Medi-Cal beneficiary to health care benefits from an insurer have been assigned to the department, an insurer shall not impose any requirement on the department that is different from any requirement applicable to an agent or any assignee of the covered beneficiary.

(b) The department, in the administration of the Medi-Cal program, may garnish the wages, salary, or other employment income of, and withhold amounts from state tax refunds from, any person to whom both of the following apply:

(1) The person is required by a court or administrative order to provide coverage of the costs of health services to a child who is eligible for medical assistance under the Medi-Cal program.

(2) The person has received payment from a third party for the costs of the health services for the child, but he or she has not used the payments to reimburse, as appropriate, either the other parent or the person having custody of the child, or the provider of the health services, to the extent necessary to reimburse the department for expenditures for those costs under the Medi-Cal program. All claims for current or past due child support shall take priority over claims made by the department for the costs of Medi-Cal services.

(c) For purposes of this section, "insurer" includes every health care service plan, self-insured welfare benefit plan, including those regulated pursuant to the Employee Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1001, et. seq.), self-funded employer plan, disability insurer, nonprofit hospital service plan, labor union trust fund, employer, and any other similar plan, insurer, or entity offering a health coverage plan.

SEC. 35. Section 15200.1 of the Welfare and Institutions Code is amended to read:

15200.1. (a) There is hereby appropriated out of any money in the State Treasury not otherwise appropriated, from which the department shall make payments to each county on any support payments collected or distributed, or both, federal incentive funds on the amount received which qualify therefor. In addition, the department shall pay to each county on any support collections distributed, regardless of the date of collection, a state incentive of 7.5 percent. This amount shall be paid on collections used to reduce or repay aid which is paid pursuant to this chapter, on collections paid

to an aided family in the form of income which is not included in determining eligibility for assistance pursuant to federal law (also referred to as "disregards"), on collections paid to an aided family in the form of income which is included in determining eligibility (also referred to as "pass-ons" and "excess"), and for aid which is entitled to federal matching funds.

(b) In addition, a county may qualify for an additional state incentive payment under Section 15200.7.

(c) Where more than one county has participated in the enforcement or collection, the federal and state AFDC incentive payments authorized by this section shall be made to the collecting county except that the federal non-AFDC incentive, and any non-AFDC incentive paid under Section 15200.95, shall be paid to the appropriate jurisdiction as determined by the State Department of Social Services.

(d) Where more than one state has participated in the enforcement or collection, the incentive payment, if any, shall be made in accordance with Section 15200.2.

(e) This section shall become operative on July 1, 1998.

SEC. 36. Section 15200.2 of the Welfare and Institutions Code is amended to read:

15200.2. (a) There is hereby appropriated out of any money in the State Treasury not otherwise appropriated, from which the department shall make payments to California counties, on any interstate support collections collected or distributed, or both, federal incentive funds on the amount received which qualify therefor. In addition, the department shall pay to each county on any support collections distributed, regardless of the date of collection, a state incentive of 7.5 percent. This amount shall be paid on collections used to reduce or repay aid which is paid pursuant to this chapter, on collections paid to an aided family in the form of income which is not included in determining eligibility for assistance pursuant to federal law (also referred to as "disregards"), on collections paid to an aided family in the form of income which is included in determining eligibility (also referred to as "pass-ons" and "excess"), and for aid which is entitled to federal matching funds. In addition, a county may qualify for an additional state incentive payment under Section 15200.7.

(b) The department shall, by regulation, pay the incentive payment to the county distributing the support payment from another state.

(c) Where a county makes a collection for another state, the department shall make the federal incentive payment to the county making the collection. No state incentive shall be paid on collections made by a county on behalf of another state.

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

SEC. 37. Section 15200.3 of the Welfare and Institutions Code is amended to read:

15200.3. (a) There is hereby appropriated out of any money in the General Fund not otherwise appropriated, amounts from which the department shall make federal incentive payments to each county on nonfederally funded foster care support payments collected or distributed.

(b) The department shall pay to counties, in addition to the federal incentive for nonfederally funded foster care, a state incentive on collections used to repay the state's share of aid. The increased state incentive shall be paid to the extent and as specified in subdivision (c).

(c) The state incentive provided in subdivision (b) for nonfederal foster care cases shall only apply to those statewide collections distributed in a fiscal year in excess of the 1982–83 budget projection. From the excess, 7.5 percent, or the increased incentive, of collections for nonfederal foster care cases shall be set aside for payment of these incentives. At the end of the fiscal year payment to each county of the incentive money shall be in proportion to the percentage of the total nonfederal cases support collection for the state which each county has distributed. The percentage incentive specified in subdivision (a) shall not exceed the total incentive provided by the state for federal foster care cases at any time but shall automatically be adjusted for any reductions. Any remaining funds shall be credited to offset expenditures for AFDC-FC.

(d) The Legislature finds and declares that the state incentive provided pursuant to this section is sufficient to reimburse counties for court and all other costs incurred through enforcement of parental liability in nonfederally funded foster care cases.

(e) This section shall become operative on July 1, 1998.

SEC. 38. Section 15200.7 of the Welfare and Institutions Code is amended to read:

15200.7. (a) In addition to funds appropriated pursuant to Sections 15200.1 and 15200.2, there is hereby annually appropriated from the General Fund to the State Department of Social Services beginning in fiscal year 1997–98, and based on the increase in fiscal year 1996–97 Aid to Families with Dependent Children child support collections above Aid to Families with Dependent Children child support collections in fiscal year 1995–96, a sum equal to 50 percent of the state's share of those increased collections. The sum shall be computed after payment of the incentive pursuant to increased collections. The sum shall be computed after payment of the incentive pursuant to Sections 15200.1 and 15200.2 has been taken out of the state share. The sum to be appropriated shall be computed in a similar manner annually thereafter.

(b) The sum appropriated pursuant to subdivision (a) shall be allocated by the department to each county which increased its collections and shall be based on each county's percentage of the total increased collections in those counties.

(c) This section shall become operative on July 1, 1998.

SEC. 39. Section 15200.8 of the Welfare and Institutions Code is amended to read:

15200.8. (a) The department shall establish a performance-based incentive system which will provide federal and state incentive funds to counties based on standards of performance in the child support program. The performance standards established shall determine the incentive rates to be paid on any support collections distributed on or after January 1, 1992.

(b) The performance-based incentive system shall have two levels of incentives.

(1) The first level, hereafter referred to as "Tier I," shall provide counties with a base incentive rate (referred to in this article as the base rate). Tier I also shall provide an increased incentive rate (referred to in this article as the compliance rate) to each county determined by the department to be in compliance with all federal and state child support enforcement program requirements. The compliance incentive rate may also be provided to each county that is in the process of conversion to the Statewide Automated Child Support System, as defined in subdivision (c) of Section 10815, if the department determines that there is a reasonable likelihood that the county would be in full compliance with all federal and state child support enforcement program requirements except for the fact that the county has been required to divert resources to prepare for conversion to the Statewide Automated Child Support System and if the department further determines that the county's efforts will bring the county into full compliance with all federal and state child support enforcement program requirements within a reasonable period of time.

(2) In determining Tier I county compliance, the department shall assess on at least an annual basis the accuracy and effectiveness of case processing based on the federal and state requirements in effect for the time period being reviewed, using a statistically valid sample of cases. The information for the assessment shall be based on reviews conducted by either state or county staff, as determined by the department.

(A) Counties determined not to be in compliance shall be required to develop and submit a corrective action plan to the department.

(B) Counties under a corrective action plan shall be assessed on a quarterly basis until the department determines that they are in compliance with federal and state child support program requirements.

(3) In addition to determining Tier I compliance, the department shall collect information regarding whether cases on behalf of families receiving Aid to Families with Dependent Children are disproportionately represented in the portion of each county's case sample which is not in compliance. In the event disproportionate representation is found in a county's pool of noncompliant cases, the

department shall require corrective action from that county. However, this corrective action shall not affect the county's entitlement to Tier I incentives.

(4) The second level (referred to in this article as Tier II), shall provide an additional incentive rate (referred to in this article as the performance rate), to counties that meet the performance standard levels as established by the department. No county shall qualify for payment of Tier II incentives in any year, month, or quarter in which it was not also eligible for the Tier I compliance rate.

(c) (1) The incentive rates shall be paid as a percentage of total distributed collections.

(2) "Distributed collections" means collections used to reduce or repay aid which is paid pursuant to this chapter; collections paid to an aided family; collections paid to a nonaided family regardless of the date of collection; collections paid to other state child support agencies on behalf of children residing in other states; and any other payments collected which qualify for federal incentives.

(d) Effective January 1, 1992, incentive payments shall be paid to the appropriate county jurisdiction as determined by the department.

(e) Nothing in this section shall preclude the department from adopting regulations pursuant to Section 11479.5.

(f) This section shall become inoperative on June 30, 1998, and as of January 1, 1999, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 40. Section 15200.85 of the Welfare and Institutions Code is amended to read:

15200.85. (a) Effective January 1, 1992, there shall be appropriated from the State Treasury sufficient funds, including federal incentives, from which the department shall pay to each county a base rate of 10 percent on any support collections distributed, regardless of the date of collection. The base incentive rate shall decrease by 1 percent annually each July 1, until July 1, 1995, at which time it shall be 6 percent for that fiscal year and every fiscal year thereafter.

(b) Effective January 1, 1992, the department shall pay to each county that is determined by the department to meet all requirements of Tier I, as described in paragraph (1) of subdivision (b) of Section 15200.8, a compliance incentive rate of 1 percent on any support collections distributed. This compliance rate shall increase by 1 percent annually each July 1, until July 1, 1995, at which time it shall be 5 percent for that fiscal year and every fiscal year thereafter.

(c) Counties which complete their corrective action plans pursuant to subparagraph (B) of paragraph (1) of subdivision (b) of Section 15200.8, shall qualify for the compliance rate incentive at the start of the quarter following completion.

(d) This section shall become inoperative on June 30, 1998, and as of January 1, 1999, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 41. Section 15200.9 of the Welfare and Institutions Code is amended to read:

15200.9. (a) Effective July 1, 1993, there shall be appropriated from the State Treasury sufficient funds, including federal incentives, from which the department shall pay a performance rate to those counties which meet Tier II performance standards, pursuant to paragraph (2) of subdivision (b) of Section 15200.8. The performance rate shall be paid in addition to that provided for under Section 15200.85 and shall be paid on distributed collections, regardless of the date of collection.

(b) The performance rate shall be a graduated scale up to a maximum rate of 1 percent. The maximum performance rate shall increase by 1 percent annually until July 1, 1995, at which time it shall be 3 percent for that fiscal year and every fiscal year thereafter.

(c) This section shall become inoperative on June 30, 1998, and as of January 1, 1999, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 42. Section 15200.91 is added to the Welfare and Institutions Code, to read:

15200.91. The Legislative Analyst's office shall conduct a study of the effectiveness, efficiency, and integrity of the child support performance review and corrective action processes described in Sections 15200.8 to 15200.9, inclusive, the department's regulations, and the operation of these processes at the state and county level and shall report its findings and recommendations for improvement, as appropriate, to the Legislature by March 1, 1997. The study shall be designed by the Legislative Analyst's office in consultation with the department, the State Library Research Bureau, a child support advocate group, and the California Family Support Council.

SEC. 43. Section 15200.95 of the Welfare and Institutions Code, as amended by Section 10 of Chapter 481 of the Statutes of 1995, is amended to read:

15200.95. (a) Each county shall be responsible for its nonfederal share of administrative expenditures for administering the child support program.

(b) Notwithstanding subdivision (a), effective July 1, 1991, to June 30, 1992, inclusive, counties shall pay the nonfederal share of the administrative costs of conducting the reviews required under Section 15200.8 from the savings counties will obtain as a result of the reduction in the maximum aid payments specified in Section 11450. Effective July 1, 1992, to June 30, 1993, inclusive, the state shall pay the nonfederal share of administrative costs of conducting the reviews required under Section 15200.8. Funding for county costs

after June 30, 1993, shall be subject to the availability of funds in the annual Budget Act.

(c) In the event that the federal government does not provide the funding for federal financial participation in administrative costs of the child support program at the scheduled rates of 66 percent for regular federal financial participation and 90 percent for enhanced federal financial participation, the department shall increase the Tier I base incentive rate authorized under Section 15200.85 to supplant the dollar reduction to federal financial participation.

(1) This increase shall be based on the difference between the estimated dollar reimbursement resulting from the scheduled federal financial participation and the estimated dollar reimbursement resulting from the reduced federal financial participation rates. This increase to the base incentive rate, when applied to estimated total collections for the state fiscal year, shall approximately equal the federal reduction.

(2) This increase shall be determined annually, and shall apply to total distributed collections as defined in subdivision (c) of Section 15200.8.

(3) In no event shall the increased incentive rate exceed 4 percent in any fiscal year.

(4) This increase to the base incentive rate shall apply to the period of time in which the federal financial participation rate in administrative expenditures is reduced.

(d) This section shall become inoperative on June 30, 1998, and as of January 1, 1999, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1999, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 44. Section 15200.95 of the Welfare and Institutions Code, as added by Section 11 of Chapter 481 of the Statutes of 1995, is amended to read:

15200.95. (a) Each county shall be responsible for its nonfederal share of administrative expenditures for administering the child support program.

(b) In the event that the federal government does not provide the funding for federal financial participation in scheduled rates of 66 percent for regular federal financial participation and 90 percent for enhanced federal financial participation, the department shall increase the incentive rates authorized under Sections 15200.1, 15200.2, and 15200.3 to supplant the dollar reduction to federal financial participation.

(1) This increase shall be based on the difference between the estimated dollar reimbursement resulting from the scheduled federal financial participation and the estimated dollar reimbursement resulting from the reduced federal financial participation rates. This increase to the base incentive rate, when applied to estimated total collections for the state fiscal year, shall approximately equal the federal reduction.

(2) This increase shall be determined annually, and shall apply to total distributed collections as defined in Section 15200.1.

(3) In no event shall this increase to the incentive rate exceed 4 percent in any fiscal year.

(4) This increase to the incentive rate shall apply to the period of time in which the federal financial participation rate in administrative expenditures is reduced.

(c) This section shall become operative on July 1, 1998.

SEC. 45. Section 16.5 of this bill incorporates amendments to Section 1357 of the Health and Safety Code proposed by this bill, AB 8, and SB 371. It shall only become operative if (1) this bill and either AB 8 or SB 371 or this bill and both AB 8 and SB 371 are enacted and become effective on or before January 1, 1997, (2) this bill and either AB 8 or SB 371 or this bill and both AB 8 and SB 371 amend Section 1357 of the Health and Safety Code, and (3) this bill is enacted last, in which case Section 16 of this bill shall not become operative.

SEC. 46. Section 27 of this act shall not become operative if Senate Bill 1866 is enacted and takes effect on or before January 1, 1997.

SEC. 47. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

CHAPTER 1063

An act to amend Sections 107, 180, 272, 273, 361, 362, 400, 510, 544, 547, 551, 552, 557, 558, 600, 600.2, 754, 757, 771, 776, 1227, 1336, 1667, 1668, 1673, 1678, 1726, 1800.4, 1802, 1805.5, 1807, 1807.5, 1814, 1863.1, 1868, 1900, 3700, 3705, 33600, and 33901 of, and to repeal Sections 508, 553, 554, 555, 556, 601, 856, 1352, 1353, 1354, 1355, 1355.1, 1356, 1357, 1358, 1359, 1360, 1360.1, 1361, 1362, 1363, 1363.1, 1364, 1365, 1366, 1369, 1371, 1372, 1501, 1501.1, 1585, 1903, 1904, 1905, 33760, 33761, and 33762 of, and to add Chapter 9 (commencing with Section 1000) to Division 1 of, to repeal and add Section 1902 of, the Financial Code, to amend Sections 53651.2 and 53657 of the Government Code, to repeal Sections 12392, 12393, and 12395 of the Insurance Code, and to amend Section 12204 of, and to repeal Section 12233 of, the Revenue and Taxation Code, relating to financial institutions.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 107 of the Financial Code is amended to read:

107. "Trust company" means a corporation or a commercial bank which is authorized to engage in the trust business.

SEC. 2. Section 180 of the Financial Code is amended to read:

180. In this chapter, unless the provision or context requires otherwise:

(a) "New General Corporation Law" means Division 1 (commencing with Section 100), Title 1 of the Corporations Code, as in effect on and after January 1, 1977.

(b) "Prior Banking Law" means this division, as in effect on December 31, 1978.

(c) "Prior General Corporation Law" means Division 1 (commencing with Section 100), Title 1 of the Corporations Code, as in effect on December 31, 1976.

(d) "Revised Banking Law" means this division, as in effect on and after January 1, 1979.

(e) "Subject institution" means:

(1) Any corporation incorporated under the laws of this state which is, with the approval of the superintendent, incorporated for the purpose of engaging in, or which is authorized by the superintendent to engage in, the commercial banking business.

(2) Any corporation incorporated under the laws of this state which is, with the approval of the superintendent, incorporated for the purpose of engaging in, or which is authorized by the superintendent to engage in, the trust business.

(3) Any corporation incorporated under the laws of this state which is, with the approval of the superintendent, incorporated for the purpose of engaging in, or which is authorized by the superintendent to engage in, business under Article 1 (commencing with Section 3500), Chapter 19 of this division.

SEC. 2.1. Section 180 of the Financial Code is amended to read:

180. In this chapter, unless the provision or context requires otherwise:

(a) "New General Corporation Law" means Division 1 (commencing with Section 100), Title 1 of the Corporations Code, as in effect on and after January 1, 1977.

(b) "Prior Banking Law" means this division, as in effect on December 31, 1978.

(c) "Prior General Corporation Law" means Division 1 (commencing with Section 100), Title 1 of the Corporations Code, as in effect on December 31, 1976.

(d) "Revised Banking Law" means this division, as in effect on and after January 1, 1979.

(e) "Subject institution" means:

(1) Any corporation incorporated under the laws of this state which is, with the approval of the commissioner, incorporated for the purpose of engaging in, or which is authorized by the commissioner to engage in, the commercial banking business under Division 1 (commencing with Section 99) of the Financial Code.

(2) Any corporation incorporated under the laws of this state which is, with the approval of the commissioner, incorporated for the purpose of engaging in, or which is authorized by the commissioner to engage in, the trust business under Division 1 (commencing with Section 99) of the Financial Code.

(3) Any corporation incorporated under the laws of this state which is, with the approval of the commissioner, incorporated for the purpose of engaging in, or which is authorized by the commissioner to engage in, business under Article 1 (commencing with Section 3500), Chapter 19 of this division.

SEC. 3. Section 272 of the Financial Code is amended to read:

272. The superintendent in addition to the annual assessment shall collect from each bank authorized to engage in the trust business, to defray the cost of examination, a fee not to exceed two hundred dollars ($200) per diem, for each examiner necessarily engaged in the examination of the trust company, trust business, or trust department. The superintendent shall assess the fee upon completion of the examination of the trust company or trust business and shall mail or otherwise deliver an invoice for the fee to the institution. The institution shall pay the fee within 30 days after the invoice is mailed or otherwise delivered to it.

SEC. 3.1. Section 272 of the Financial Code is amended to read:

272. The commissioner in addition to the annual assessment shall collect from each bank authorized to engage in the trust business, to defray the cost of examination, a fee not to exceed two hundred dollars ($200) per diem, for each examiner necessarily engaged in the examination of the trust company, trust business, or trust department. The commissioner shall assess the fee upon completion of the examination of the trust company or trust business and shall mail or otherwise deliver an invoice for the fee to the institution. The institution shall pay the fee within 30 days after the invoice is mailed or otherwise delivered to it.

SEC. 4. Section 273 of the Financial Code is amended to read:

273. If any bank or trust company fails to make timely payment of any assessment made pursuant to Section 270, 271, or 272, the superintendent may cancel the certificate of authority of the bank or trust company to conduct a banking or trust business.

SEC. 4.1. Section 273 of the Financial Code is amended to read:

273. If any bank or trust company fails to make timely payment of any assessment made pursuant to Section 270, 271, or 272, the

commissioner may cancel the certificate of authority of the bank or trust company to conduct a banking or trust business.

SEC. 5. Section 361 of the Financial Code is amended to read:

361. Upon the filing of an application the superintendent shall make or cause to be made a careful investigation and examination relative to the following:

(a) The character, reputation, and financial standing of the organizers or incorporators and their motives in seeking to organize the proposed bank or trust company.

(b) The need for banking or trust facilities or additional banking or trust facilities, as the case may be, giving particular consideration to the adequacy of existing banking or trust facilities and the need for further banking or trust facilities.

(c) The character, financial responsibility, banking or trust experience, and business qualifications of the proposed officers of the bank or trust company.

(d) The character, financial responsibility, business experience, and standing of the proposed stockholders and directors.

(e) Other facts and circumstances bearing on the proposed bank or trust company and its relation to the locality as in the opinion of the superintendent may be relevant.

SEC. 5.1. Section 361 of the Financial Code is amended to read:

361. Upon the filing of an application the commissioner shall make or cause to be made a careful investigation and examination relative to the following:

(a) The character, reputation, and financial standing of the organizers or incorporators and their motives in seeking to organize the proposed bank or trust company.

(b) The need for banking or trust facilities or additional banking or trust facilities, as the case may be, giving particular consideration to the adequacy of existing banking or trust facilities and the need for further banking or trust facilities.

(c) The character, financial responsibility, banking or trust experience, and business qualifications of the proposed officers of the bank or trust company.

(d) The character, financial responsibility, business experience, and standing of the proposed stockholders and directors.

(e) Other facts and circumstances bearing on the proposed bank or trust company and its relation to the locality as in the opinion of the commissioner may be relevant.

SEC. 6. Section 362 of the Financial Code is amended to read:

362. The superintendent may give or withhold approval of the application in his or her discretion, but the superintendent shall not approve the application until he or she has ascertained to his or her satisfaction:

(a) That the public convenience and advantage will be promoted by the establishment of the proposed bank or trust company.

(b) That the proposed bank or trust company will have a reasonable promise of successful operation.

(c) That the bank is being formed for no other purpose than the legitimate objects contemplated by this division.

(d) That the proposed capital structure is adequate.

(e) That the proposed officers and directors have sufficient banking or trust experience, ability, and standing to afford reasonable promise of successful operation.

(f) That the name of the proposed bank or trust company does not resemble, so closely as to be likely to cause confusion, the name of any other bank or trust company transacting business in this state or which had previously transacted business in this state.

(g) That the applicant has complied with all of the applicable provisions of this division.

SEC. 6.1. Section 362 of the Financial Code is amended to read:

362. The commissioner may give or withhold his or her approval of the application in his or her discretion, but he or she shall not approve the application until he or she has ascertained to his or her satisfaction:

(a) That the public convenience and advantage will be promoted by the establishment of the proposed bank or trust company.

(b) That the proposed bank or trust company will have a reasonable promise of successful operation.

(c) That the bank is being formed for no other purpose than the legitimate objects contemplated by this division.

(d) That the proposed capital structure is adequate.

(e) That the proposed officers and directors have sufficient banking or trust experience, ability, and standing to afford reasonable promise of successful operation.

(f) That the name of the proposed bank or trust company does not resemble, so closely as to be likely to cause confusion, the name of any other bank or trust company transacting business in this state or which had previously transacted business in this state.

(g) That the applicant has complied with all of the applicable provisions of this division.

SEC. 7. Section 400 of the Financial Code is amended to read:

400. The articles of incorporation of the proposed bank or trust company shall be submitted to the superintendent for his or her approval before they are filed with the Secretary of State pursuant to the Corporations Code. After the articles have been filed with the Secretary of State the proposed bank or trust company shall:

(a) File with the superintendent a copy of its articles of incorporation, certified by the Secretary of State.

(b) File with the superintendent a statement in the form and with any supporting data as the superintendent may require showing that the entire contributed capital has been fully paid in lawful money, unconditionally, and that the funds representing the contributed capital, less sums spent as authorized by this article for preopening

expenditures are on deposit in a state or national bank in this state, subject to withdrawal on demand.

(c) Pay to the superintendent a fee of two thousand five hundred dollars ($2,500).

SEC. 7.1. Section 400 of the Financial Code is amended to read:

400. The articles of incorporation of the proposed bank or trust company shall be submitted to the commissioner for his or her approval before they are filed with the Secretary of State pursuant to the Corporations Code. After the articles have been filed with the Secretary of State the proposed bank or trust company shall:

(a) File with the commissioner a copy of its articles of incorporation, certified by the Secretary of State.

(b) File with the commissioner a statement in the form and with any supporting data as the commissioner may require showing that the entire contributed capital has been fully paid in lawful money, unconditionally, and that the funds representing the contributed capital, less sums spent as authorized by this article for preopening expenditures are on deposit in a state or national bank in this state, subject to withdrawal on demand.

(c) Pay to the commissioner a fee of two thousand five hundred dollars ($2,500).

SEC. 8. Section 508 of the Financial Code is repealed.

SEC. 9. Section 510 of the Financial Code is amended to read:

510. (a) A bank or trust company may close or discontinue the operation of any branch office if, before the closing or discontinuance, (1) the bank files with the superintendent a notice containing the information specified in subdivision (b), and (2) the superintendent, within 60 days after the filing of the notice or any longer period to which the bank consents, either (A) issues a written statement not objecting to the notice or (B) does not issue a written objection to the notice.

(b) (1) A notice filed under subdivision (a) shall contain all of the following information:

(A) The name of the California state bank.

(B) The location of the branch office proposed to be closed or discontinued.

(C) The location of the office to which the business of the branch office proposed to be closed or discontinued is proposed to be transferred.

(D) The proposed date of closing or discontinuance.

(E) A detailed statement of the reasons for the decision to close the branch office.

(F) Statistical or other information in support of reasons consistent with the institution's written policy for branch office closings.

(G) Any other information that the superintendent may require.

(2) A notice filed under subdivision (a) shall be in the form, shall be signed in the manner, and shall, if the superintendent requires, be verified in the manner that the superintendent may require.

(c) For purposes of subdivision (a), a notice is deemed to be filed with the superintendent at the time when the complete notice, including any amendments or supplements, containing all the information required by the superintendent, and otherwise complying with subdivision (b), is received by the superintendent.

(d) In determining whether or not to object to a notice filed under subdivision (a), except if the superintendent finds that it is necessary in the interests of safety and soundness that the branch office be closed or discontinued, the superintendent shall consider whether the closing or discontinuance of the branch office will have a seriously adverse effect on the public convenience or advantage.

SEC. 9.1. Section 510 of the Financial Code is amended to read:

510. (a) A bank or trust company may close or discontinue the operation of any branch office if, before the closing or discontinuance, (1) the bank files with the commissioner a notice containing the information in subdivision (b), and (2) the commissioner within 60 days after the filing of the notice or any longer period to which the bank consents, either (A) issues a written statement not objecting to the notice or (B) does not issue a written objection to the notice.

(b) (1) A notice filed under subdivision (a) shall contain all of the following information:

(A) The name of the California state bank.

(B) The location of the branch office proposed to be closed or discontinued.

(C) The location of the office to which the business of the branch office proposed to be closed or discontinued is proposed to be transferred.

(D) The proposed date of closing or discontinuance.

(E) A detailed statement of the reasons for the decision to close the branch office.

(F) Statistical or other information in support of the reasons consistent with the institution's written policy for branch office closings.

(G) Any other information that the commissioner may require.

(2) A notice filed under subdivision (a) shall be in the form, shall be signed in the manner, and shall, if the commissioner requires, be verified in the manner that the commissioner may require.

(c) For purposes of subdivision (a), a notice is deemed to be filed with the commissioner at the time when the complete notice, including any amendments or supplements, containing all the information required by the commissioner, and otherwise complying with subdivision (b), is received by the commissioner.

(d) In determining whether or not to object to a notice filed under subdivision (a), except if the commissioner finds that it is necessary

in the interests of safety and soundness that the branch office be closed or discontinued, the commissioner shall consider whether the closing or discontinuance of the branch office will have a seriously adverse effect on the public convenience or advantage.

SEC. 10. Section 544 of the Financial Code is amended to read:

544. When the superintendent has approved an application, the superintendent shall issue a certificate in duplicate authorizing the bank to establish and maintain the place of business. The certificate shall specify the conditions, if any, under which the place of business may be established and maintained and the place where it will be located. The superintendent shall place one copy of the certificate on file with the department. The superintendent shall transmit one copy of the certificate to the applicant bank.

SEC. 10.1. Section 544 of the Financial Code is amended to read:

544. When the commissioner has approved an application, the commissioner shall issue a certificate in duplicate authorizing the bank to establish and maintain the place of business. The certificate shall specify the conditions, if any, under which the place of business may be established and maintained and the place where it will be located. The commissioner shall place one copy of the certificate on file with the department. The commissioner shall transmit one copy of the certificate to the applicant bank.

SEC. 11. Section 547 of the Financial Code is amended to read:

547. (a) A bank may close or discontinue the operation of a place of business provided it files a notice with the superintendent, containing the information in subdivision (b), at least 30 days prior to the closure or discontinuance, and provided further that the superintendent either (1) issues a written statement not objecting to the notice or (2) does not issue a written objection to the notice.

(b) A notice filed by a California state bank of the closure or discontinuance of a place of business shall contain the following information:

(1) The name of the California state bank.

(2) The name and location of the place of business proposed to be closed or discontinued.

(3) The name and location of the office that will assume the business of the place of business proposed to be closed or discontinued.

(4) Any other information that the superintendent may require.

SEC. 11.1. Section 547 of the Financial Code is amended to read:

547. (a) A bank may close or discontinue the operation of a place of business provided it files a notice with the commissioner, containing the information in subdivision (b), at least 30 days prior to the closure or discontinuance, and provided further that the commissioner either (1) issues a written statement not objecting to the notice or (2) does not issue a written objection to the notice.

(b) A notice filed by a California state bank of the closure or discontinuance of a place of business shall contain the following information.

(1) The name of the California state bank.

(2) The name and location of the place of business proposed to be closed or discontinued.

(3) The name and location of the place of business that will assume the business of the place of business proposed to be closed or discontinued.

(4) Any other information that the commissioner may require.

SEC. 12. Section 551 of the Financial Code is amended to read:

551. If the requirements of Section 552 are complied with:

(a) A California state bank may establish or operate one or more automated teller machine branch offices.

(b) A foreign (other nation) bank may establish and operate one or more automated teller machine branch offices in the state.

SEC. 13. Section 552 of the Financial Code is amended to read:

552. A California state bank or a foreign (other nation) bank that intends to establish or operate an automated teller machine branch office in accordance with the authority of Section 551 shall provide the superintendent with notice at least 30 days prior to the establishment of the automated teller machine branch office. The notice shall contain the following information:

(a) The name of the California state bank or foreign (other nation) bank.

(b) The location of each automated teller machine branch office.

(c) A description of the type of functions which each automated teller machine branch office will perform.

(d) The date on which each automated teller machine branch office will commence operations.

The application shall also contain any additional information as the superintendent may, by regulation or order, prescribe.

SEC. 13.1. Section 552 of the Financial Code is amended to read:

552. A California state bank or a foreign (other nation) bank that intends to establish or operate an automated teller machine branch office in accordance with the authority of Section 551 shall provide the commissioner with notice at least 30 days prior to the establishment of the automated teller machine branch office. The notice shall contain the following information:

(a) The name of the California state bank or foreign (other nation) bank.

(b) The location of each automated teller machine branch office.

(c) A description of the type of functions which each automated teller machine branch office will perform.

(d) The date on which each automated teller machine branch office will commence operations.

The application shall also contain any additional information as the commissioner may, by regulation or order, prescribe.

SEC. 14. Section 553 of the Financial Code is repealed.

SEC. 15. Section 554 of the Financial Code is repealed.

SEC. 16. Section 555 of the Financial Code is repealed.

SEC. 17. Section 556 of the Financial Code is repealed.

SEC. 18. Section 557 of the Financial Code is amended to read:

557. Not less than 30 days prior to changing the location of an automated teller machine branch office from one location to another in the same vicinity, a bank shall provide the superintendent with written notice of the change in location containing the following information:

(a) The name of the California state bank or foreign (other nation) bank.

(b) The location of each automated teller machine branch office to be relocated.

(c) The date on which each automated teller machine branch office will terminate operations at its old location and the date on which it will commence operations at the new location.

SEC. 18.1. Section 557 of the Financial Code is amended to read:

557. Not less than 30 days prior to changing the location of an automated teller machine branch office from one location to another in the same vicinity, a bank shall provide the commissioner with written notice of the change in location containing the following information:

(a) The name of the California state bank or foreign (other nation) bank.

(b) The location of each automated teller machine branch office to be relocated.

(c) The date on which each automated teller machine branch office will terminate operations at its old location and the date on which it will commence operations at the new location.

SEC. 19. Section 558 of the Financial Code is amended to read:

558. Not less than 30 days prior to discontinuing the operation of an automated teller machine branch office, a bank shall provide the superintendent with written notice of the discontinuance containing the following information:

(a) The name of the California state bank or foreign (other nation) bank.

(b) The location of each automated teller machine branch office to be discontinued.

(c) The date on which each automated teller machine branch office will discontinue operations.

SEC. 19.1. Section 558 of the Financial Code is amended to read:

558. Not less than 30 days prior to discontinuing the operation of an automated teller machine branch office, a bank shall provide the commissioner with written notice of the discontinuance containing the following information:

(a) The name of the California state bank or foreign (other nation) bank.

(b) The location of each automated teller machine branch office to be discontinued.

(c) The date on which each automated teller machine branch office will discontinue operations.

SEC. 20. Section 600 of the Financial Code is amended to read:

600. The articles of each bank shall contain the applicable one of the following statements:

(a) In case the bank is, or is proposed to be, a commercial bank not authorized to engage in trust business, that the purpose of the corporation is to engage in commercial banking business and any other lawful activities which are not, by applicable laws or regulations, prohibited to a commercial bank.

(b) In case the bank is, or is proposed to be, a commercial bank authorized to engage in trust business, that the purpose of the corporation is to engage in commercial banking business and trust business and any other lawful activities which are not, by applicable laws or regulations, prohibited to a commercial bank authorized to engage in trust business.

(c) In case the bank is, or is proposed to be, a trust company (other than a commercial bank authorized to engage in trust business), that the purpose of the corporation is to engage in trust business and any other lawful activities which are not, by applicable laws or regulations, prohibited to a trust company.

SEC. 21. Section 600.2 of the Financial Code is amended to read:

600.2. The articles of each bank shall provide that the common shares of the bank are subject to assessment by the bank upon order of the superintendent for the purpose of correcting an impairment of contributed capital in the manner and to the extent provided in this division.

SEC. 21.1. Section 600.2 of the Financial Code is amended to read:

600.2. The articles of each bank shall provide that the common shares of the bank are subject to assessment by the bank upon order of the commissioner for the purpose of correcting an impairment of contributed capital in the manner and to the extent provided in this division.

SEC. 22. Section 601 of the Financial Code is repealed.

SEC. 23. Section 754 of the Financial Code is amended to read:

754. A bank or trust company may become a member of the Federal Reserve System, may subscribe for, purchase, and hold the amounts of the capital stock of the Federal Reserve bank serving the district in which the bank or trust company is located as may be required to maintain the membership and, when not in conflict with the laws of this state, may exercise all powers conferred upon the members and may assume and discharge all obligations required of the members.

A bank or trust company may become a member of a federal home loan bank in the manner provided in the Federal Home Loan Bank Act, and, for the purpose of becoming a member, may invest any part

of its shareholders' equity in the capital stock of the federal home loan bank as may be required by the provisions of the Federal Home Loan Bank Act.

SEC. 24. Section 757 of the Financial Code is amended to read:

757. (a) A bank or trust company may engage in the business of renting safe deposit boxes and may receive personal property for safekeeping and storage on its banking premises.

(b) A copy of any safe deposit rental agreement, or personal property safekeeping and storage agreement, which is prepared by the bank or trust company and signed by the customer shall be delivered to the customer at the time the agreement is signed if the agreement is signed at a place of business of the bank or trust company. If the agreement is not signed at a place of business of the bank or trust company, the bank or trust company shall mail or deliver a copy of the agreement to the customer within 10 calendar days after the bank or trust company receives it. The contract shall not contain any blank spaces to be filled in after the customer signs the contract. If more than one customer has signed the agreement, the bank or trust company may comply with this section by mailing or delivering the copy to any one of the customers who reside at the same address. A copy shall also be mailed or delivered to any other customer who has signed the agreement and who does not reside at the same address. As used in this section, "copy" means a reproduction, facsimile, or duplicate. A bank or trust company which fails to comply with this section is liable to its customer for any actual damages suffered by the customer as a result of that failure. The remedy provided by this section is nonexclusive and is in addition to any remedies or penalties available under other laws of this state.

SEC. 25. Section 771 of the Financial Code is amended to read:

771. Two or more banks may invest in the stock of a corporation engaged exclusively in the business of performing for one or more banks such bank services as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a bank; provided that the aggregate investment of any bank in the corporation at any one time shall not exceed 10 percent of the shareholders' equity of the bank; and provided, further, that the corporation shall furnish to the superintendent satisfactory assurances that the performance of services by the corporation will be subject to regulation and examination by the superintendent to the same extent as if the services were being performed by the bank itself on its own premises.

SEC. 25.1. Section 771 of the Financial Code is amended to read:

771. Two or more banks may invest in the stock of a corporation engaged exclusively in the business of performing for one or more banks such bank services as check and deposit sorting and posting, computation and posting of interest and other credits and charges,

preparation and mailing of checks, statements, notices and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a bank; provided that the aggregate investment of any bank in the corporation at any one time shall not exceed 10 percent of the shareholders' equity of the bank; and provided, further, that the corporation shall furnish to the commissioner satisfactory assurances that the performance of services by the corporation will be subject to regulation and examination by the commissioner to the same extent as if the services were being performed by the bank itself on its own premises.

SEC. 26. Section 776 of the Financial Code is amended to read:

776. (a) Every bank and branch shall conduct all of its business in one building or in adjoining buildings except that under special circumstances a bank or branch may conduct a portion of its business at an extension office elsewhere in the same vicinity, provided the notice requirements of subdivision (b) are complied with and provided further that the superintendent either (1) issues a written statement not objecting to the notice or (2) does not issue a written objection to the notice.

(b) The California state bank shall file a notice with the superintendent no fewer than 30 days prior to conducting any portion of its business at an extension office, which notice shall provide the following information:

(1) The name of the California state bank, and, if applicable, the popular name of the branch whose business will be conducted at an extension office.

(2) The address of the proposed extension office.

(3) A description of the proposed business to be conducted at the extension.

(4) The date on which the bank proposes to commence business at the extension.

(5) Any other information that the superintendent may, by regulation or order, require.

SEC. 26.1. Section 776 of the Financial Code is amended to read:

776. (a) Every bank and branch shall conduct all of its business in one building or in adjoining buildings except that under special circumstances a bank or branch may conduct a portion of its business at an extension office elsewhere in the same vicinity provided the notice requirements of subdivision (b) are complied with and provided further that the commissioner either (1) issues a written statement not objecting to the notice or (2) does not issue a written objection to the notice.

(b) The California state bank shall file a notice with the commissioner no fewer than 30 days prior to conducting any portion of its business at an extension office, which notice shall provide the following information:

(1) The name of the California state bank, and, if applicable, the popular name of the branch whose business will be conducted at an extension office.

(2) The address of the proposed extension office.

(3) A description of the proposed business to be conducted at the extension.

(4) The date on which the bank proposes to commence business at the extension.

(5) Any other information that the commissioner may, by regulation or order, require.

SEC. 27. Section 856 of the Financial Code is repealed.

SEC. 28. Chapter 9 (commencing with Section 1000) is added to Division 1 of the Financial Code, to read:

CHAPTER 9. LEGAL INVESTMENTS FOR SAVINGS BANKS

1000. As used in this chapter, unless the context requires otherwise, the following terms have the following meanings:

(a) "Net direct debt" of any public corporation means all indebtedness of every kind after deducting from the indebtedness sinking funds available for the payment thereof, any indebtedness evidenced by tax anticipation notes for the payment of which nondelinquent taxes are pledged, obligations payable only from special assessments, revenue obligations payable only from special revenues pledged for their payment, and such proportion of any indebtedness issued for revenue producing works, properties, or utilities that have been in operation for at least one year as the amount of the annual net revenue therefrom bears to the amount of the annual debt service requirements of those bonds.

(b) "Net overlapping debt" of any public corporation means the proportion of the net direct debt as above defined of any other public corporation (herein called overlapping corporation) that lies wholly or partially within the boundaries of the public corporation as the assessed valuation of the taxable property of the overlapping public corporation lying within the boundaries of the public corporation as shown by the last official equalized county assessment roll bears to the assessed valuation of all taxable property of the overlapping public corporation as shown by the last official equalized county assessment roll.

(c) "Funded debt," as used in this chapter, means all interest-bearing indebtedness of a corporation not maturing within one year of the date the indebtedness was incurred.

1001. Any securities or other assets that are described in Sections 1003 to 1018, inclusive, are legal investments for savings banks.

1002. Where any laws of this state provide that the moneys of any pension fund, retirement plan, trust fund, or the moneys of any special fund the investment of which is governed by law, or the funds of any political subdivision or public corporation may or shall be

invested in securities which are a legal investment for savings banks, that law shall be deemed to authorize or require, as the case may be, that those moneys be invested in securities in which savings banks were authorized to invest their funds by the provisions of the Bank Act as it read prior to January 1, 1949, other than paragraph (f) of subdivision 5 of Section 61 of that act, or in bonds, debentures, and notes legal for investments for savings banks in the State of New York or the State of Massachusetts as of the time the investment is made or in securities in which commercial banks are authorized to invest their funds by the provisions of Sections 1003 to 1018, inclusive.

1003. Gold and silver bullion and United States mint certificates of ascertained value.

1004. Stock of a federal reserve bank or of a federal home loan bank to the extent authorized by Section 754.

1005. Bonds or other interest-bearing notes and obligations of the United States and those for which the faith and credit of the United States are pledged for the payment of principal and interest.

1006. Bonds of the State of California and those for which the faith and credit of the State of California are pledged for the payment of principal and interest and in registered warrants of the State of California.

1007. Bonds of any flood control and water conservation districts, or any zone thereof, having an assessed valuation on taxable real property of not less than one million dollars ($1,000,000), county, city and county, city, metropolitan water district, municipal utility district, special districts established by and within any municipal utility district, transit district, rapid transit district including sales tax revenue bonds of the district, metropolitan transit authority, flood control district, or school district of the State of California (herein referred to generally as public corporation) except the bonds of any particular such public corporation which may be declared ineligible for investment by savings banks by regulations of the superintendent.

1008. Bonds of any other political subdivision, public corporation, or district of the State of California (herein referred to generally as public corporations) having the power, without limit as to rate or amount; to levy taxes to pay the principal and interest of the bonds upon all property within its boundaries subject to taxation by such public corporation, provided the net direct debt of such public corporation together with its net overlapping debt does not exceed 25 percent of the assessed valuation of the taxable property within its boundaries according to the last official equalized county assessment roll.

1009. (a) Any of the following subject to the conditions set forth in subdivision (b) to (d), inclusive.

(1) Bonds or other evidences of indebtedness of, or which are unconditionally guaranteed by the Dominion of Canada, the State of Israel, the United States of Mexico, the Commonwealth of Puerto Rico, or any state of the United States other than California, for the

payment of both principal and interest of which in United States dollars, the faith and credit of the entity is pledged.

(2) Limited obligations of any state of the United States, other than California, or the Commonwealth of Puerto Rico, payable only from special taxes that are pledged to the payment of principal and interest of the limited obligations.

(3) Bonds or other evidences of indebtedness of any city, county, political subdivision, public corporation, or district (herein referred to generally as public corporations) of any state of the United States, other than California, or of the Dominion of Canada, or of the State of Israel, or of the United States of Mexico or of the Commonwealth of Puerto Rico, having the power without limit as to rate or amount to levy taxes to pay the principal and interest of the bonds upon all property within its boundaries subject to taxation by the public corporation.

(b) In the case of bonds constituting general obligations of any such state, commonwealth, dominion, or country, such state, commonwealth, dominion, or country has not within 10 years prior to the investment defaulted for a period of more than 90 days in the payment of any part of either principal or interest of any of its debts.

(c) In the case of limited obligations of any state, or commonwealth, all of the following conditions are met:

(1) The state or commonwealth has not, within 10 years prior to the date of the investment, defaulted for a period of more than 90 days in the payment of either principal or interest of any of its debts.

(2) The special taxes pledged for the payment of the limited obligations shall have been collected for five years and shall have averaged at least one and one-half times the debt service requirements, including those for principal, interest, and sinking fund, on all special obligations existing at the time.

(3) The special taxes for each of the five fiscal years shall have equaled at least the amount of all the debt service requirements on the special obligations.

(d) In the case of bonds or other evidences of indebtedness of any public corporation of any state other than California, or of any commonwealth, all of the following conditions are met:

(1) The public corporation has had a corporate existence or been otherwise established and functioning for at least 10 years prior to the time of the investment.

(2) The public corporation has a population of at least 50,000 inhabitants according to the last federal or state census.

(3) The public corporation for a period of at least 10 years prior to the investment has not defaulted in the payment of any part of the principal or interest of any of its debts for a period of more than 90 days.

(4) The net direct debt together with the net overlapping debt of the public corporation does not exceed 10 percent of the assessed valuation of the property subject to taxation by the public

corporation according to the last official equalized assessment roll or list upon the basis of which taxes for debt service are based.

1010. Bonds of any irrigation district, water storage district, water conservation district, county water district, reclamation district, drainage district, and any district the primary function of which is the irrigation, reclamation or drainage of land within its boundaries, located in California, other than bonds referred to in Section 1007, provided either of the following conditions are met:

(a) The bonds qualify under Section 1008.

(b) The bonds have been certified as legal securities for savings banks pursuant to Chapter 1 (commencing with Section 20000) of Division 10 of the Water Code and the certification remains unrevoked and the total outstanding bonded indebtedness of the district including bonds authorized but not issued, but excluding bonds payable solely from revenues and not directly or indirectly from assessments, does not exceed 50 percent of the aggregate of the assessed value of the lands, exclusive of improvements, subject to assessment by the district, and the value of the property owned by the district or to be acquired or constructed with the proceeds of the bonds under consideration.

1011. (a) Bonds, consolidated bonds, collateral trust debentures, consolidated debentures, or other obligations issued by federal land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended, and the Farm Credit Act of 1971.

(b) Debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended, and the Farm Credit Act of 1971.

(c) Bonds or debentures of the Federal Home Loan Bank Board established under the Federal Home Loan Bank Act.

(d) Bonds of any federal home loan bank established under the Federal Home Loan Bank Act.

(e) Stocks, bonds, debentures, participations and other obligations of or issued by the Federal National Mortgage Association, the Student Loan Marketing Association, the Government National Mortgage Association and the Federal Home Loan Mortgage Corporation.

1012. Bonds, notes or other obligations issued by the Federal Financing Bank, the United States Postal Service, or issued or assumed by the International Bank for Reconstruction and Development, the Tennessee Valley Authority, the Inter-American Development Bank, the Government Development Bank for Puerto Rico, the Asian Development Bank, the International Finance Corporation, or the African Development Bank.

1013. (a) Notes with a maturity not exceeding 15 months after the date of issue, issued in anticipation of uncollected taxes, income, revenue, cash receipts, and other moneys of the State of California

or any city, county, city and county, or school district thereof; provided the notes and warrants and the interest thereon shall be a first lien and charge against, and shall be payable from, the first moneys received by the local agency from such pledged moneys; provided the total amount of the notes issued at any one time or during any specified period does not exceed 85 percent of the receipts or revenues.

(b) Grant anticipation notes issued by the agencies and payable not later than 36 months after the date of issue, provided that the total amount of the notes and interest payable thereon issued at any one time or during any specified period does not exceed 80 percent of the grant funds stated in writing by the granting authority as committed or appropriated, and shall be paid on a specified date or dates within a 36-month period from the dating of the notes.

1014. Revenue securities of any state of the United States, or of the Commonwealth of Puerto Rico, and of any city, county, city and county, political subdivision, public corporation, or district (herein referred to generally as public corporations) of any state or commonwealth and of any department, board, agency, or authority of any state or commonwealth or of any public corporation, if the following conditions are met:

(a) The revenue securities constitute obligations payable out of the revenues from a revenue-producing property owned, controlled, or operated by a state, commonwealth, public corporation, or by a department, board, agency, or authority thereof and are secured by the revenues.

(b) Either of the following paragraphs apply:

(1) (A) The net income from the property available for the payment of the securities for the five fiscal years next preceding any such investment, shall have averaged at least one and one-tenth times all debt service requirements for principal, interest, and sinking fund of all revenue securities payable only out of the revenues from that property during each of those fiscal years, and for each of the five fiscal years shall have equaled at least all debt service requirements for principal, interest, and sinking fund of the securities, and for the last fiscal year shall have amounted to at least the maximum annual debt service requirement for any fiscal year thereafter on all such securities that were outstanding during such last fiscal year and which will be outstanding in any fiscal year thereafter.

(B) The gross income from the property, the net income from which is pledged for the payment of the securities, in the last fiscal year prior to the investment was not less than one million dollars ($1,000,000) if located in California, and was not less than five million dollars ($5,000,000) if located elsewhere.

(C) The issuer is obligated to maintain rates at least sufficient to meet debt service requirements and such obligation is legally enforceable.

(2) (A) The issuer of the securities is entitled to receive under a legally enforceable contract with a corporation any of the securities of which are a legal investment for savings banks under this chapter annual payments averaging not less than nine hundred thousand dollars ($900,000) a year commencing with the completion of a project or projects as fixed in the construction contract therefor and continuing during the maximum term for which said revenue securities are to mature.

(B) The issuer of the securities is obligated to maintain rates to produce revenue, or will receive contract payments, either or both of which will be sufficient to meet debt service requirements and such obligation or contract is legally enforceable.

(c) The public corporation or any department, board, agency, or authority thereof which issues the securities, if existing elsewhere than in California, has not within 10 years prior to such investment defaulted for a period of more than 90 days in the payment of principal or interest on any of its debts.

1015. Bonds of any local public housing agency (as defined in the United States Housing Act of 1937, as amended) that are secured by either of the following:

(a) An agreement between the public housing agency and the Public Housing Administration in which the public housing agency agrees to borrow from the Public Housing Administration, and the Public Housing Administration agrees to lend to the public housing agency, prior to the maturity of the obligations (which obligations shall have a maturity of not more than 18 months), moneys in an amount that (together with any other moneys irrevocably committed to the payment of interest on such obligations) will suffice to pay the principal of the obligations with interest to maturity thereon, which moneys under the terms of the agreement are required to be used for the purpose of paying the principal of and the interest on such obligations at their maturity.

(b) A pledge of annual contributions under an annual contributions contract between such public housing agency and the Public Housing Administration if the contract shall contain the covenant by the Public Housing Administration that is authorized by subsection (b) of Section 22 of the United States Housing Act of 1937, as amended, and if the maximum sum and the maximum period specified in such contract pursuant to that subsection 22(b) shall not be less than the annual amount and the period for payment that are requisite to provide for the payment when due of all installments of principal and interest on the obligations.

1015.5. Bonds secured by an insurance commitment of the Federal Housing Administration.

1016. Evidences of indebtedness of companies incorporated in the United States and, directly or indirectly, engaged in manufacturing, extraction, merchandising, or commercial financing and in bonds of authorities established pursuant to the California

Industrial Development Financing Act (Title 10 (commencing with Section 91500) of the Government Code), to which these companies are obligated with respect to payment subject to the following conditions:

(a) Any unsecured evidences of indebtedness shall be issued by a company substantially all of whose property is free of mortgage and shall carry a covenant by the obligor that they will be secured equally with any mortgage bond, except a purchase money mortgage, which may be later issued.

(b) The company is of a size as to attract at least statewide interest in its publicly held securities and its gross income shall have averaged not less than ten million dollars ($10,000,000) and its net income shall have averaged not less than one million dollars ($1,000,000) for the five fiscal years preceding the investment and its gross income was not less than ten million dollars ($10,000,000) and its net income not less than one million dollars ($1,000,000) for at least three of these five fiscal years.

(c) Working capital, as measured by consolidated current assets less consolidated current liabilities as shown in the latest published balance sheet, shall exceed 150 percent of the total of consolidated debt due in longer than one year and "minority interest." For that purpose, "minority interest" means any outstanding interest in a subsidiary having a prior claim on the earnings of the subsidiary. However, the foregoing ratio requirement shall not apply in the case of evidences of indebtedness of any corporation whose consolidated gross assets less any valuation reserves exceed five hundred million dollars ($500,000,000) and whose consolidated current assets exceed consolidated current liabilities by at least one hundred million dollars ($100,000,000) as shown by the latest published balance sheet. When new financing is involved, the changes in gross assets, capital structure and working capital shall be considered and reliance may be placed on the representations made in the official prospectus prepared under the rules of the Securities and Exchange Commission as to the application of the proceeds of the financing.

(d) The total consolidated debt of the company including current liabilities and "minority interest," as shown on the latest published balance sheet, does not exceed $33^1/_3$ percent of its gross assets less valuation reserves.

(e) The consolidated annual net income for the five fiscal years next preceding the investment, before deduction of state and federal taxes imposed on or measured by income or profits but after deducting all charges, including reserves, regularly recurring charges for amortization of discount, and expense allocable to funded debt (1) shall have averaged not less than six times the annual consolidated interest charges existing at the time the investment is made; (2) in at least three of the five fiscal years shall have been at least four times the annual consolidated interest charges for the same year; and (3) for the fiscal year next preceding the investment shall

have been not less than six times the consolidated interest charges for that year and not less than six times the annual consolidated charges on the funded debt outstanding at the time of the investment.

1017. Fixed interest railroad bonds meeting the requirements of subdivisions (a) and (b); bonds secured by a mortgage on jointly operated railroad facilities meeting the requirements of subdivision (c); and railroad equipment trust certificates meeting the requirements of subdivision (d).

(a) The railroad bonds are issued by or are assumed, guaranteed, or provision made unconditionally for the payment of principal and interest on specified dates, by a solvent railroad company that meets all of the following conditions:

(1) Operates at least 500 miles of standard gauge road within the continental United States and which has had average annual operating revenues of at least ten million dollars ($10,000,000) during the five years next preceding the investment.

(2) Has an average annual balance of income available for fixed charges for the last 15 years for which the necessary statistical data are available, when divided by an amount equal to its fixed charges for the last fiscal year, shall produce a quotient which is at least 15 percent higher than the quotient obtained by dividing the average annual balance of income available for fixed charges of all class 1 railroads for the same one 5-year period by an amount equal to the fixed charges of all class 1 railroads for the last year in the period.

(3) Has an average "balance of net income" (computed by deducting the sum of its fixed charges and contingent interest charges for the latest fiscal year from the average annual balance available for fixed charges for the latest 15 years for which the necessary statistical data are available) when divided by its average annual railroad operating income for the same 15-year period, shall produce a quotient at least 15 percent greater than the quotient obtained by dividing the average balance of income of all class 1 railroads, computed in the same manner, by the average annual railway operating income of all class 1 railroads for the same 15-year period.

(4) Has an average balance of income available for fixed charges for the last three fiscal years preceding the investment that has not been less than one and one-half times its fixed charges for the last fiscal year.

(b) The railroad bonds are secured by any of the following:

(1) A mortgage, either direct or collateral, which shall be a first mortgage on not less than 75 percent of the mileage subject to the mortgage.

(2) A first mortgage on terminal properties comprising the company's principal freight or passenger terminal in a city of not less than 250,000 population according to the latest federal or state census.

(3) A refunding mortgage on not less than 75 percent of the railroad mileage owned or operated by the issuing company under

which bonds may be issued for retirement or refunding of all debts secured by prior liens on all or any part of the property (other than liens on equipment) subject to the mortgage; provided, that the amount of debt senior to the refunding mortgage is not more than 50 percent of the sum of all senior debt and the refunding mortgage, or that underlying mortgage bonds in an amount equal to at least 50 percent of the debt outstanding under the refunding mortgage are pledged as security under the refunding mortgage.

(4) A first mortgage on railroad property leased to and operated by the company where the lease extends beyond the maturity date of the bonds and the company has guaranteed, assumed, or committed itself under the terms of the lease to pay principal and interest on the bonds.

(c) Bonds secured by a mortgage on jointly operated railroad facilities must be secured by a first mortgage on a terminal, depot, tunnel, or bridge used by or leased to two or more railroads which have jointly and severally agreed unconditionally to pay the interest and principal of the bonds or have unconditionally guaranteed or assumed such payment, one of which railroads must meet the requirements set forth in subdivision (a).

(d) Railroad equipment trust certificates must be issued by a solvent class 1 railroad whose average balance of income available for fixed charges for the last three fiscal years preceding the investment shall be not less than one and one-half times its fixed charges for the last fiscal year. The certificates must be issued to provide funds for the construction or acquisition of new standard gauge railroad equipment made with the approval of the Interstate Commerce Commission and be secured by equipment trust, lease, conditional sales contract, or first lien on such equipment. The aggregate principal amount of such obligations shall not exceed 80 percent of the purchase price of the equipment and the certificates shall mature within 15 years from date of issuance in equal annual, semiannual, or monthly installments, beginning not later than one year after the date of issuance.

(e) As used in this section, the terms "balance of income available for fixed charges," "fixed charges," "contingent interest," and "railway operating income" shall have the same meaning as in the accounting reports filed by common carriers by rail pursuant to regulations of the Interstate Commerce Commission except that "balance of income available for payment of fixed charges" shall be computed before deduction of federal income or excess profits taxes, and "fixed charges" and "contingent interest" of the railroad shall be such charges existing as of the time the computation is made excluding charges with respect to debt which has been retired or will be retired within six months and for the payment of which funds have been or are contemporaneously being set aside in trust but including charges with respect to new debt issued or in the process of being issued.

1018. Bonds and debentures of gas, electric, or gas and electric companies meeting the requirements of subdivision (a); bonds and debentures of telephone companies meeting the requirements of subdivision (b); and bonds and debentures of water companies meeting the requirements of subdivision (c).

(a) Bonds or debentures of a gas, electric, or gas and electric company shall be of an issue that originally amounted to not less than one million dollars ($1,000,000) and, if bonds, be secured by a mortgage on substantially all of its physical property, and, if debentures, shall be issued by a company substantially all of whose physical property is free of mortgage and must carry a covenant to be secured equally with any mortgage indebtedness, except a purchase money mortgage, subsequently issued, and both bonds and debentures shall be issued by a public utility corporation that meets all of the following conditions:

(1) Derives more than 50 percent of its gross operating revenue from the business of supplying electricity, artificial gas, or natural gas or all or any of them, and at least 80 percent of its gross operating revenue from all or any of the public utility businesses enumerated in this section.

(2) Shall have had a gross operating revenue of not less than seven million five hundred thousand dollars ($7,500,000) for its most recent fiscal year.

(3) Has a funded debt not exceeding two-thirds of the value of its physical property as shown by the books of the corporation or by a statement of a certified public accountant issued within one year, which statement may be based upon the books of the corporation, less the amount of any reserves for depreciation, retirement, or amortization of that physical property. Physical property of a corporation shall include the physical property of a subsidiary corporation if the corporation owns not less than 90 percent of the outstanding voting shares of the subsidiary corporation.

(4) Shall have had earnings including earnings of subsidiaries mentioned in paragraph (3), available for interest payments, before deduction of state and federal taxes imposed on or measured by income or profits, during four of the five most recent fiscal years and during the most recent fiscal year equal to at least twice the existing annual interest charges on the corporation's total funded debt during those respective fiscal years.

(b) Bonds or debentures of telephone companies shall be of an issue originally amounting to at least one million dollars ($1,000,000) and, if bonds, be secured by a mortgage on substantially all of the physical property of the company, and if debentures shall be issued by a company substantially all of whose physical property is free of mortgage and shall carry a covenant to be secured equally with any mortgage indebtedness, except a purchase money mortgage, subsequently issued, and both bonds and debentures shall be issued by a company that meets all of the following conditions:

(1) During its last fiscal year had gross revenues of at least seven million five hundred thousand dollars ($7,500,000), more than 50 percent of which was derived from owned properties used in furnishing telephone and other communication services and at least 80 percent of its gross revenues from all or any of the public utility businesses enumerated in this section.

(2) Whose funded debt does not exceed two-thirds of the value of its physical property as shown by the books of the corporation or by a statement of a certified public accountant issued within one year, which statement may be based upon the books of the corporation, less the amount of any reserves shown on the statement for depreciation, retirement or amortization of such physical property. Physical property of a corporation shall include the physical property of a subsidiary corporation if the corporation owns not less than 90 percent of the outstanding voting shares of the subsidiary corporation.

(3) Which for four of the five most recent fiscal years and for the last fiscal year had earnings including earnings of subsidiaries mentioned in paragraph (2) available for the payment of interest charges, before deduction of state and federal taxes imposed on or measured by income or profits, at least equal to twice the interest charges on the company's total funded debt during such respective fiscal years.

(c) Water company bonds or debentures shall be of an issue originally amounting to at least one million dollars ($1,000,000) and if bonds, be secured by a first mortgage on the company's property, and if debentures, shall be issued by a company substantially all of whose property is free of mortgage and shall carry a covenant to be secured equally with any mortgage indebtedness, except a purchase money mortgage, subsequently issued, and both bonds and debentures shall be issued by a company that meets all of the following conditions:

(1) Is the supplier of substantially all water for domestic use in a community or communities having a population of not less than 25,000.

(2) Whose funded debt does not exceed two-thirds of the value of its physical property as shown by the published statement of the company for its next preceding fiscal period, less the amount of any reserves shown for depreciation, retirement or amortization of such physical property. Physical property of a corporation shall include the physical property of a subsidiary corporation if the corporation owns not less than 90 percent of the outstanding voting shares of the subsidiary corporation.

(3) Which for four out of the five most recent fiscal years and for the most recent fiscal year shall have had earnings including those of subsidiaries mentioned in paragraph (2) available for the payment of interest charges, before deduction of state and federal taxes imposed on or measured by income or profits, of at least one and

one-half times the interest charges on the company's total funded debt during the respective fiscal years.

SEC. 28.1. Section 1007 of the Financial Code is amended to read:

1007. Bonds of any flood control and water conservation districts, or any zone thereof, having an assessed valuation on taxable real property of not less than one million dollars ($1,000,000), county, city and county, city, metropolitan water district, municipal utility district, special districts established by and within any municipal utility district, transit district, rapid transit district including sales tax revenue bonds of the district, metropolitan transit authority, flood control district, or school district of the State of California (herein referred to generally as public corporation) except the bonds of any particular such public corporation which may be declared ineligible for investment by savings banks by regulations of the commissioner.

SEC. 29. Section 1227 of the Financial Code is amended to read:

1227. A commercial bank may lend on the security of a first lien on real property or a first lien on a leasehold under a lease which does not expire, or which has been extended or renewed so that it does not expire, for at least 10 years beyond the maturity date of the loan, if:

(a) The term of the loan does not exceed 10 years and the amount does not exceed 60 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal.

(b) The term of the loan does not exceed 30 years, is repayable in substantially equal installments not less often than monthly (or a variation therefrom as may be authorized under a loan executed pursuant to Section 1916.5 or 1916.8 of the Civil Code), with payments commencing not later than 60 days from the date of the loan or, in the case of a construction loan, commencing not later than one year from the date of the loan, and the amount does not exceed 90 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal, provided, however, the loan may exceed 90 percent of the sound market value of the property or leasehold if that portion of the loan which is in excess of 90 percent is guaranteed or insured by a private insurer licensed by the Insurance Commissioner.

(c) The loan is made pursuant to and in conformance with regulations adopted under Section 1227.1 of the Financial Code or Section 1916.12 of the Civil Code.

(d) The loan is on a farm or productive agricultural lands, the term does not exceed 30 years, is repayable in substantially equal installments not less often than annually, and the amount does not exceed 90 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal.

(e) The term of the loan does not exceed six months and the amount does not exceed 85 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal.

(f) The term of the loan does not exceed 60 months, the amount does not exceed 85 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal, and the loan is for the purpose of financing building operations under a plan providing for payment of the loan or providing for refinancing by loans otherwise permitted by this chapter.

A commercial bank may make a loan without regard to the above restrictions when necessary to facilitate the sale of real property owned by the bank.

SEC. 29.1. Section 1227 of the Financial Code is amended to read:

1227. A commercial bank may lend on the security of a first lien on real property or a first lien on a leasehold under a lease which does not expire, or which has been extended or renewed so that it does not expire, for at least 10 years beyond the maturity date of the loan, if:

(a) The term of the loan does not exceed 10 years and the amount does not exceed 60 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal.

(b) The term of the loan does not exceed 30 years, is repayable in substantially equal installments not less often than monthly (or a variation therefrom as may be authorized under a loan executed pursuant to Section 1916.5 or 1916.8 of the Civil Code), with payments commencing not later than 60 days from the date of the loan or, in the case of a construction loan, commencing not later than one year from the date of the loan, and the amount does not exceed 90 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal, provided, however, the loan may exceed 90 percent of the sound market value of the property or leasehold if that portion of the loan which is in excess of 90 percent is guaranteed or insured by a private insurer licensed by the Insurance Commissioner.

(c) The loan is made pursuant to and in conformance with regulations adopted under Section 1916.12 of the Civil Code.

(d) The loan is on a farm or productive agricultural lands, the term does not exceed 30 years, is repayable in substantially equal installments not less often than annually, and the amount does not exceed 90 percent of the sound market value of the property or leasehold, together with the improvements located on the property

which are made subject to the lien, as determined by proper appraisal.

(e) The term of the loan does not exceed six months and the amount does not exceed 85 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal.

(f) The term of the loan does not exceed 60 months, the amount does not exceed 85 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal, and the loan is for the purpose of financing building operations under a plan providing for payment of the loan or providing for refinancing by loans otherwise permitted by this chapter.

A commercial bank may make a loan without regard to the above restrictions when necessary to facilitate the sale of real property owned by the bank.

SEC. 30. Section 1336 of the Financial Code is amended to read:

1336. Unless otherwise approved by the superintendent, a commercial bank shall not invest an amount exceeding 15 percent of its shareholders' equity in the securities of any one obligor or maker, except:

(a) Obligations of the United States and those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(b) Bonds, consolidated bonds, collateral trust debentures, or other obligations issued by the Federal Financing Bank, the United States Postal Service, federal land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended; in debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended; in consolidated notes, bonds, debentures and other obligations issued by federal land banks, federal intermediate credit banks, and banks for cooperatives under the Farm Credit Act of 1971; in bonds or debentures of the Federal Home Loan Bank Board established under the Federal Home Loan Bank Act; in the bonds of any federal home loan bank established under said act; and in stock, bonds, debentures, participations, and other obligations of or issued by the Student Loan Marketing Association, the Federal National Mortgage Association, the Government National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

(c) Obligations of the State of California and those for which the credit of the State of California is pledged for the payment of principal and interest.

(d) Obligations of a local agency or district of the State of California having the power, without limit as to rate or amount, to

levy taxes to pay the principal and interest of the bonds upon all property within its boundaries subject to taxation by the local agency or district.

SEC. 30.1. Section 1336 of the Financial Code is amended to read:

1336. Unless otherwise approved by the commissioner, a commercial bank shall not invest an amount exceeding 15 percent of its shareholders' equity in the securities of any one obligor or maker, except:

(a) Obligations of the United States and those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(b) Bonds, consolidated bonds, collateral trust debentures, or other obligations issued by the Federal Financing Bank, the United States Postal Service, federal land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended; in debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended; in consolidated notes, bonds, debentures and other obligations issued by federal land banks, federal intermediate credit banks, and banks for cooperatives under the Farm Credit Act of 1971; in the bonds of any federal home loan bank established under the Federal Home Loan Bank Act; and in stock, bonds, debentures, participations, and other obligations of or issued by the Student Loan Marketing Association, the Federal National Mortgage Association, the Government National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

(c) Obligations of the State of California and those for which the credit of the State of California is pledged for the payment of principal and interest.

(d) Obligations of a local agency or district of the State of California having the power, without limit as to rate or amount, to levy taxes to pay the principal and interest of the bonds upon all property within its boundaries subject to taxation by the local agency or district.

SEC. 31. Section 1352 of the Financial Code is repealed.

SEC. 32. Section 1353 of the Financial Code is repealed.

SEC. 33. Section 1354 of the Financial Code is repealed.

SEC. 34. Section 1355 of the Financial Code is repealed.

SEC. 35. Section 1355.1 of the Financial Code is repealed.

SEC. 36. Section 1356 of the Financial Code is repealed.

SEC. 37. Section 1357 of the Financial Code is repealed.

SEC. 38. Section 1358 of the Financial Code is repealed.

SEC. 39. Section 1359 of the Financial Code is repealed.

SEC. 40. Section 1360 of the Financial Code is repealed.

SEC. 41. Section 1360.1 of the Financial Code is repealed.

SEC. 42. Section 1361 of the Financial Code is repealed.

SEC. 43. Section 1362 of the Financial Code is repealed.

SEC. 44. Section 1363 of the Financial Code is repealed.
SEC. 45. Section 1363.1 of the Financial Code is repealed.
SEC. 46. Section 1364 of the Financial Code is repealed.
SEC. 47. Section 1365 of the Financial Code is repealed.
SEC. 48. Section 1366 of the Financial Code is repealed.
SEC. 49. Section 1369 of the Financial Code is repealed.
SEC. 50. Section 1371 of the Financial Code is repealed.
SEC. 51. Section 1372 of the Financial Code is repealed.
SEC. 52. Section 1501 of the Financial Code is repealed.
SEC. 53. Section 1501.1 of the Financial Code is repealed.
SEC. 54. Section 1585 of the Financial Code is repealed.
SEC. 55. Section 1667 of the Financial Code is amended to read:

1667. From the proceeds of any sale the bank shall deduct the amount set forth in such notice and any further charges which may have accrued since the mailing of the notice and shall record the balance of the proceeds, if any, on its books as a liability payable to the person in whose name the safe-deposit box was rented.

SEC. 56. Section 1668 of the Financial Code is amended to read:

1668. Any documents, letters, or other articles found in a safe-deposit box opened pursuant to Section 1662, which in the judgment of at least two officers of the bank have no intrinsic or marketable value, need not be offered for sale. Any documents, letters, and articles and any other contents which have been offered for sale and for which no purchaser has been found, shall be retained by the bank for not less than one year from the date when the box was opened. At any time thereafter, unless sooner delivered to or on the order of the person in whose name the box stood on the records of the bank, the documents, letters, and articles and also those contents which have been offered for sale and for which no purchaser has been found, may be destroyed in the presence of an officer of the bank, but if no notice of intended sale of the contents of the box has been given pursuant to Section 1664, the bank shall mail a notice of its intention to destroy the documents, letters, and articles at least 30 days before the destruction of the same to the person in whose name the box stood on the records of the bank.

SEC. 57. Section 1673 of the Financial Code is amended to read:

1673. Any documents, letters, or other articles which, in the judgment of an officer of the bank, have no apparent intrinsic or marketable value, need not be offered for sale. The documents, letters, and articles and any other articles which have been offered for sale and for which no purchaser has been found, shall be retained by the bank for not less than one year from the date when notice of sale was mailed. At any time thereafter, unless sooner delivered to or on the order of the person in whose name the receipt was issued, the documents, letters and articles may be destroyed in the presence of an officer of the bank and of a notary public.

SEC. 58. Section 1678 of the Financial Code is amended to read:

1678. (a) Whenever this article requires that notice be sent to a person, and the box stood or stands on the records of the bank or the safekeeping or storage receipt was issued in the names of two or more persons, notice addressed to either or to any one of the two or more persons shall be binding upon and effective as to the remaining person or all remaining persons, and notice addressed to the name of any deceased individual shall be binding upon his or her legal representatives and on his or her heirs and legatees.

(b) Whenever this article requires that notice be published prior to a sale, the notice shall include the name and address of the person in whose name the safe-deposit box stood on the records of the bank or the safekeeping or storage receipt was issued. The names and addresses of all persons whose property is to be sold at the same time and place may be included in a single published notice.

(c) Whenever this article requires that an amount be credited to the account of a person in whose name a safe-deposit box stood on the records of the bank or a safekeeping or storage receipt was issued, and the box stood or the receipt was issued in two or more names, the account shall be in both or all the names, subject to withdrawal by or upon the written order of any one or more of those persons, or by their successors or legal representatives.

(d) Whenever this article requires that a notice shall be mailed to the person in whose name the safe-deposit box stood on the records of the bank or a safekeeping or storage receipt was issued, the notice shall be deemed to have been so mailed if it is enclosed in a sealed envelope addressed to the person in whose name the safe-deposit box stood in the office of the bank at which the records of the safe-deposit box rentals are kept, or to the person in whose name the receipt was issued, as the case may be, addressed to the person at the address or place appearing on the safe-deposit or storage records of the office, and the envelope with postage prepaid has been deposited by at least first-class mail in the United States mail.

SEC. 59. Section 1726 of the Financial Code is amended to read:

1726. (a) (1) No foreign (other nation) bank shall establish or maintain a representative office unless the superintendent shall have first approved the establishment of the office and issued a license authorizing the bank to maintain the office.

(2) Paragraph (1) shall not be deemed to prohibit a foreign (other nation) bank that maintains a federal agency or federal branch in this state from establishing or maintaining one or more representative offices in this state.

(b) If the superintendent finds the following with respect to an application by a foreign (other nation) bank for approval to establish a representative office, the superintendent shall approve the application:

(1) That the bank, any controlling person of the bank, the directors and executive officers of the bank or of any controlling

person of the bank, and the proposed management of the office are each of good character and sound financial standing.

(2) That the financial history and condition of the bank are satisfactory.

(3) That the management of the bank and the proposed management of the office are adequate.

(4) That it is reasonable to believe that, if licensed to maintain the office, the bank will operate the office in compliance with all applicable laws, regulations, and orders.

If the superintendent finds otherwise, the superintendent shall deny the application.

(c) Whenever an application by a foreign (other nation) bank for approval to establish a representative office has been approved and all conditions precedent to the issuance of a license authorizing the bank to maintain the office have been fulfilled, the superintendent shall issue the license.

SEC. 59.1. Section 1726 of the Financial Code is amended to read:

1726. (a) (1) No foreign (other nation) bank shall establish or maintain a representative office unless the commissioner shall have first approved the establishment of the office and issued a license authorizing the bank to maintain the office.

(2) Paragraph (1) shall not be deemed to prohibit a foreign (other nation) bank that maintains a federal agency or federal branch in this state from establishing or maintaining one or more representative offices in this state.

(b) If the commissioner finds the following with respect to an application by a foreign (other nation) bank for approval to establish a representative office, the commissioner shall approve the application:

(1) That the bank, any controlling person of the bank, the directors and executive officers of the bank or of any controlling person of the bank, and the proposed management of the office are each of good character and sound financial standing.

(2) That the financial history and condition of the bank are satisfactory.

(3) That the management of the bank and the proposed management of the office are adequate.

(4) That it is reasonable to believe that, if licensed to maintain the office, the bank will operate the office in compliance with all applicable laws, regulations, and orders.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) bank for approval to establish a representative office has been approved and all conditions precedent to the issuance of a license authorizing the bank to maintain the office have been fulfilled, the commissioner shall issue the license.

SEC. 60. Section 1800.4 of the Financial Code is amended to read:

1800.4. The receipt of money by an incorporated telegraph company, or its agents, for immediate transmission by telegraph to foreign countries shall be exempt from licensure under this chapter until July 1, 1990, provided each of the following conditions is satisfied.

(1) The company has applied before February 1, 1990, to the superintendent for licensure under this chapter.

(2) The company, and its agents, shall comply with and be subject to all applicable provisions of this chapter.

(3) The company directly, or through agents, on or before February 1, 1989, received money for immediate transmission by telegraph to foreign countries.

SEC. 60.1. Section 1800.4 of the Financial Code is amended to read:

1800.4. The receipt of money by an incorporated telegraph company, or its agents, for immediate transmission by telegraph to foreign countries shall be exempt from licensure under this chapter until July 1, 1990, provided each of the following conditions is satisfied:

(a) The company has applied before February 1, 1990, to the commissioner for licensure under this chapter.

(b) The company, and its agents, shall comply with and be subject to all applicable provisions of this chapter.

(c) The company directly, or through agents, on or before February 1, 1989, received money for immediate transmission by telegraph to foreign countries.

SEC. 61. Section 1802 of the Financial Code is amended to read:

1802. (a) An application for a license shall be in writing, under oath, and in a form prescribed by the Superintendent of Banks. It shall contain the name and address of the applicant, and of every officer and director thereof. The application shall also contain any other information the superintendent may require.

(b) No person other than a corporation may apply for or be issued a license.

SEC. 61.1. Section 1802 of the Financial Code is amended to read:

1802. (a) An application for a license shall be in writing, under oath, and in a form prescribed by the commissioner. It shall contain the name and address of the applicant, and of every officer and director thereof. The application shall also contain any other information the commissioner may require.

(b) No person other than a corporation may apply for or be issued a license.

SEC. 62. Section 1805.5 of the Financial Code is amended to read:

1805.5. A licensee shall not change the location of a branch office without notifying the superintendent and the public in the manner as the superintendent directs at least 30 days before the date of the proposed relocation. For purposes of this section, "branch office" has the meaning specified in subdivision (a) of Section 1805.

SEC. 62.1. Section 1805.5 of the Financial Code is amended to read:

1805.5. A licensee shall not change the location of a branch office without notifying the commissioner and the public in the manner as the commissioner directs at least 30 days before the date of the proposed relocation. For purposes of this section, "branch office" has the meaning specified in subdivision (a) of Section 1805.

SEC. 63. Section 1807 of the Financial Code is amended to read:

1807. (a) The superintendent may by order or regulation grant exemptions from this section in cases where the superintendent finds that the requirements of this section are not necessary.

(b) Each licensee shall, within 90 days after the end of each fiscal year, or within such extended time as the superintendent may prescribe, file with the superintendent an audit report for the fiscal year.

(c) The audit report called for in subdivision (b) shall comply with all of the following provisions:

(1) The audit report shall contain such audited financial statements of the licensee for, or as of the end of the fiscal year, prepared in accordance with generally accepted accounting principles and such other information as the superintendent may require.

(2) The audit report shall be based upon an audit of the bank conducted in accordance with generally accepted auditing standards and such other requirements as the superintendent may prescribe.

(3) The audit report shall be prepared by an independent certified public accountant or independent public accountant who is not unsatisfactory to the superintendent.

(4) The audit report shall include or be accompanied by a certificate of opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the superintendent. If the certificate or opinion is qualified, the superintendent may order the licensee to take such action as the superintendent may find necessary to enable the independent or certified public accountant or independent public accountant to remove the qualification.

(d) Each licensee shall, not more than 45 days after the end of each quarter (except the fourth quarter of its fiscal year), or within a longer period as the superintendent may by regulation or order specify, file with the superintendent a report containing all of the following:

(1) Financial statements, including balance sheet, income statement, statement of changes in shareholders' equity, and statement of cash flows, for, or as of the end of, that fiscal quarter, verified by two of the licensee's principal officers. The verification shall state that each of the officers making the verification has a personal knowledge of the matters in the report and that each of them believes that each statement on the report is true.

(2) The current address of the headquarters office and each branch office of the licensee and each agent at which the licensee receives transmission money in this state.

(3) The name and business address of each person who acted as an agent of the licensee during the quarter in this state, and if such person is no longer an agent of the licensee, the date on which such relationship terminated.

(4) Such other information as the superintendent may by regulation or order require.

(e) Each licensee shall file with the superintendent such other reports as and when the superintendent may by regulation or order require.

SEC. 63.1. Section 1807 of the Financial Code is amended to read:

1807. (a) The commissioner may by order or regulation grant exemptions from this section in case where the commissioner finds that the requirements of this section are not necessary.

(b) Each licensee shall, within 90 days after the end of each fiscal year, or within such extended time as the commissioner may prescribe, file with the commissioner an audit report for the fiscal year.

(c) The audit report called for in subdivision (b) shall comply with all of the following provisions:

(1) The audit report shall contain such audited financial statements of the licensee for or as of the end of the fiscal year prepared in accordance with generally accepted accounting principles and such other information as the commissioner may require.

(2) The audit report shall be based upon an audit of the bank conducted in accordance with generally accepted auditing standards and such other requirements as the commissioner may prescribe.

(3) The audit report shall be prepared by an independent certified public accountant or independent public accountant who is not unsatisfactory to the commissioner.

(4) The audit report shall include or be accompanied by a certificate of opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the commissioner. If the certificate or opinion is qualified, the commissioner may order the licensee to take such action as the commissioner may find necessary to enable the independent or certified public accountant or independent public accountant to remove the qualification.

(d) Each licensee shall, not more than 45 days after the end of each quarter (except the fourth quarter of its fiscal year), or within a longer period as the commissioner may by regulation or order specify, file with the commissioner a report containing all of the following:

(1) Financial statements, including balance sheet, income statement, statement of changes in shareholders' equity, and

statement of cash flows, for, or as of the end of, that fiscal quarter, verified by two of the licensee's principal officers. The verification shall state that each of the officers making the verification has a personal knowledge of the matters in the report and that each of them believes that each statement on the report is true.

(2) The current address of the headquarters office and each branch office of the licensee and each agent at which the licensee receives transmission money in this state.

(3) The name and business address of each person who acted as an agent of the licensee during the quarter in this state, and if such person is no longer an agent of the licensee, the date on which such relationship terminated.

(4) Such other information as the commissioner may by regulation or order require.

(e) Each licensee shall file with the commissioner such other reports as and when the commissioner may by regulation or order require.

SEC. 64. Section 1807.5 of the Financial Code is amended to read:

1807.5. (a) Each licensee and each agent of a licensee shall make, keep, and preserve within the United States such books, accounts, and other records in such form, in such manner, and for such time as the superintendent may by regulation or order specify.

(b) All references in this chapter to financial statements, balance sheets, income statements, and statements of changes in financial position of a licensee or agent of a licensee mean financial statements, income statements, and statements of cash flows prepared or determined in conformity with generally accepted accounting principles then applicable, fairly presenting in conformity with generally accepted accounting principles the matters which they purport to present.

SEC. 64.1. Section 1807.5 of the Financial Code is amended to read:

1807.5. (a) Each licensee and each agent of a licensee shall make, keep, and preserve within the United States such books, accounts, and other records in such form, in such manner, and for such time as the commissioner may by regulation or order specify.

(b) All references in this chapter to financial statements, balance sheets, income statements, and statements of changes in financial position of a licensee or agent of a licensee mean financial statements, income statements, and statements of cash flows prepared or determined in conformity with generally accepted accounting principles then applicable, fairly presenting in conformity with generally accepted accounting principles the matters which they purport to present.

SEC. 65. Section 1814 of the Financial Code is amended to read:

1814. (a) Except as provided by subdivision (c), each licensee shall at all times maintain tangible shareholders' equity determined

to be adequate by the superintendent of at least two hundred fifty thousand dollars ($250,000).

(b) "Tangible shareholders' equity" means shareholders' equity minus intangible assets as determined in accordance with generally accepted accounting principles.

SEC. 65.1. Section 1814 of the Financial Code is amended to read:

1814. (a) Except as provided by subdivision (c), each licensee shall at all times maintain tangible shareholders' equity determined to be adequate by the commissioner of at least two hundred fifty thousand dollars ($250,000).

(b) "Tangible shareholders' equity" means shareholders' equity minus intangible assets as determined in accordance with generally accepted accounting principles.

SEC. 66. Section 1863.1 of the Financial Code is amended to read:

1863.1. Each licensee shall, not more than 90 days after the close of each of its fiscal years or within a longer period as the superintendent may by regulation or order specify, file with the superintendent a report containing all of the following:

(a) Financial statements, including balance sheet, statement of income or loss, statement of changes in shareholder's equity, and statement of cash flows, for or as of the end of that fiscal year, prepared with audit by an independent certified public account or an independent public accountant in accordance with generally accepted accounting principles.

(b) A report, certificate, or opinion of the independent certified public accountant or independent public accountant, stating that the financial statements were prepared in accordance with generally accepted accounting principles.

(c) Any other information as the superintendent may by regulation or order require.

SEC. 66.1. Section 1863.1 of the Financial Code is amended to read:

1863.1. Each licensee shall, not more than 90 days after the close of each of its fiscal years or within a longer period as the commissioner may by regulation or order specify, file with the commissioner a report containing all of the following:

(a) Financial statements, including balance sheet, statement of income or loss, statement of changes in shareholder's equity, and statement of cash flows, for or as of the end of that fiscal year, prepared with audit by an independent certified public accountant or an independent public accountant in accordance with generally accepted accounting principles.

(b) A report, certificate, or opinion of the independent certified public accountant or independent public accountant, stating that the financial statements were prepared in accordance with generally accepted accounting principles.

(c) Any other information as the commissioner may by regulation or order require.

SEC. 67. Section 1868 of the Financial Code is amended to read:

1868. Each licensee shall at all times maintain shareholder equity determined to be adequate by the superintendent.

SEC. 67.1. Section 1868 of the Financial Code is amended to read:

1868. Each licensee shall at all times maintain shareholder equity determined to be adequate by the commissioner.

SEC. 68. Section 1900 of the Financial Code is amended to read:

1900. (a) (1) For purposes of this subdivision, an examination made by the superintendent in conjunction with or with assistance from a bank regulatory agency of the United States, of a state of the United States, or of a foreign nation is deemed to be an examination caused by the superintendent.

(2) No provision of this subdivision shall be deemed to require that the superintendent cause an examination to be made onsite at the offices of a bank.

(3) The superintendent shall cause every California state bank, every California state trust company, and the business in this state of every foreign (other nation) bank licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 to be examined to the extent and whenever and as often as the superintendent shall deem it advisable, but in no case less than once every two calendar years.

(b) The superintendent may at any time examine any of the following:

(1) Any foreign (other state) state bank that maintains a branch office in this state.

(2) Any facility (as defined in Section 3800) that a foreign (other state) bank that does not maintain a branch office in this state, maintains in this state.

(3) Any representative office (as defined in Section 1700) that a foreign (other nation) bank is licensed under Article 2 (commencing with Section 1725) of Chapter 13.5 to maintain in this state.

(c) The officers and employees of every California state bank, California state trust company, and foreign bank being examined shall exhibit to the examiners, on request, any or all of its securities, books, records, and accounts and shall otherwise facilitate the examination so far as it may be in their power.

SEC. 68.1. Section 1900 of the Financial Code is amended to read:

1900. (a) (1) For purposes of this subdivision, an examination made by the commissioner in conjunction with or with assistance from a bank regulatory agency of the United States, of a state of the United States, or of a foreign nation is deemed to be an examination caused by the commissioner.

(2) No provision of this subdivision shall be deemed to require that the commissioner cause an examination to be made onsite at the offices of a bank.

(3) The commissioner shall cause every California state bank, every California state trust company, and the business in this state of

every foreign (other nation) bank licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 to be examined to the extent and whenever and as often as the commissioner shall deem it advisable, but in no case less than once every two calendar years.

(b) The commissioner may at any time examine any of the following:

(1) Any foreign (other state) state bank that maintains a branch office in this state.

(2) Any facility (as defined in Section 3800) that a foreign (other state) bank that does not maintain a branch office in this state, maintains in this state.

(3) Any representative office (as defined in Section 1700) that a foreign (other nation) bank is licensed under Article 2 (commencing with Section 1725) of Chapter 13.5 to maintain in this state.

(c) The officers and employees of every California state bank, California state trust company, and foreign bank being examined shall exhibit to the examiners, on request, any or all of its securities, books, records, and accounts and shall otherwise facilitate the examination so far as it may be in their power.

SEC. 69. Section 1902 of the Financial Code is repealed.

SEC. 70. Section 1902 is added to the Financial Code, to read:

1902. (a) The superintendent may by order or regulation grant exemptions from this section in cases where the superintendent finds that the requirements of this section are not necessary.

(b) Each California state bank shall, within 90 days after the end of each fiscal year, or within such extended time as the superintendent may prescribe, file with the superintendent an audit report for the fiscal year.

(c) The audit report called for in subdivision (b) shall comply with all of the following provisions:

(1) The audit report shall contain those audited financial statements of the bank for or as of the end of the fiscal year prepared in accordance with generally accepted accounting principles and any other information that the superintendent may require.

(2) The audit report shall be based upon an audit of the bank conducted in accordance with generally accepted auditing standards and any other requirements that the superintendent may prescribe.

(3) The audit report shall be prepared by an independent certified public accountant or independent public accountant who is not unsatisfactory to the superintendent.

(4) The audit report shall include or be accompanied by a certificate or opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the superintendent. If the certificate or opinion is qualified, the superintendent may order the bank to take such action as the superintendent may find necessary to enable the independent certified public accountant or independent public accountant to remove the qualification.

SEC. 70.1. Section 1902 of the Financial Code is amended to read:

1902. (a) The commissioner may by order or regulation grant exemptions from this section in cases where the commissioner finds that the requirements of this section are not necessary.

(b) Each California state bank shall, within 90 days after the end of each fiscal year, or within such extended time as the commissioner may prescribe, file with the commissioner an audit report for the fiscal year.

(c) The audit report called for in subdivision (b) shall comply with all of the following provisions:

(1) The audit report shall contain those audited financial statements of the bank for or as of the end of the fiscal year prepared in accordance with generally accepted accounting principles and any other information that the commissioner may require.

(2) The audit report shall be based upon an audit of the bank conducted in accordance with generally accepted auditing standards and any other requirements that the commissioner may prescribe.

(3) The audit report shall be prepared by an independent certified public accountant or independent public accountant who is not unsatisfactory to the commissioner.

(4) The audit report shall include or be accompanied by a certificate or opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the commissioner. If the certificate or opinion is qualified, the commissioner may order the bank to take such action as the commissioner may find necessary to enable the independent certified public accountant or independent public accountant to remove the qualification.

SEC. 71. Section 1903 of the Financial Code is repealed.

SEC. 72. Section 1904 of the Financial Code is repealed.

SEC. 73. Section 1905 of the Financial Code is repealed.

SEC. 74. Section 3700 of the Financial Code is amended to read:

3700. "Bank holding company" means:

(a) Any person or company which:

(1) Directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding stock of any domestic bank, or 10 percent or more of the outstanding stock of any domestic bank together with 10 percent or more of the shares or proxy of shares of any national bank located in California.

(2) Controls in any manner whether by the holding of proxy, or otherwise, the election of a majority of the directors of any domestic bank, or of both any domestic bank and any national bank located in California.

(3) The superintendent determines, after reasonable notice and opportunity for hearing, directly or indirectly exercises, or has power to exercise, a controlling influence over the management and policies of any domestic bank, or of both any domestic bank and any national bank located in California.

(b) Any company which controls in any manner any company which is or becomes a bank holding company by virtue of this chapter.

(c) Bank holding company does not include a trust company controlled by or under common control with a title insurance company.

SEC. 74.1. Section 3700 of the Financial Code is amended to read:

3700. "Bank holding company" means:

(a) Any person or company which:

(1) Directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding stock of any domestic bank, or 10 percent or more of the outstanding stock of any domestic bank together with 10 percent or more of the shares or proxy of shares of any national bank located in California.

(2) Controls in any manner whether by the holding of proxy, or otherwise, the election of a majority of the directors of any domestic bank, or of both any domestic bank and any national bank located in California.

(3) The commissioner determines, after reasonable notice and opportunity for hearing, directly or indirectly exercises, or has power to exercise, a controlling influence over the management and policies of any domestic bank, or of both any domestic bank and any national bank located in California.

(b) Any company which controls in any manner any company which is or becomes a bank holding company by virtue of this chapter.

(c) Bank holding company does not include a trust company controlled by or under common control with a title insurance company.

SEC. 75. Section 3705 of the Financial Code is amended to read:

3705. With respect to a trust company controlled by or under common control with a title insurance company, the Superintendent of Banks in cooperation with the Insurance Commissioner shall adopt reasonable rules and regulations for the conduct of the inspection and examination authorized by Sections 3702 and 3704. Any such examination or inspection shall be conducted pursuant to the provisions of Article 4.7 (commencing with Section 1215) of Chapter 2, Part 2, of Division 1 of the Insurance Code.

SEC. 75.1. Section 3705 of the Financial Code is amended to read:

3705. With respect to a trust company controlled by or under common control with a title insurance company, the commissioner in cooperation with the Insurance Commissioner shall adopt reasonable rules and regulations for the conduct of the inspection and examination authorized by Sections 3702 and 3704. Any such examination or inspection shall be conducted pursuant to the provisions of Article 4.7 (commencing with Section 1215) of Chapter 2 of Part 2 of Division 1 of the Insurance Code.

SEC. 76. Section 33600 of the Financial Code is amended to read:

33600. Each fidelity bond required by the superintendent pursuant to this article shall be issued by one or more corporations admitted to engage in the surety business in this state and is satisfactory to the superintendent.

SEC. 76.1. Section 33600 of the Financial Code is amended to read:

33600. Each fidelity bond required by the commissioner pursuant to this article shall be issued by one or more corporations admitted to engage in the surety business in this state and is satisfactory to the commissioner.

SEC. 77. Section 33760 of the Financial Code is repealed.

SEC. 78. Section 33761 of the Financial Code is repealed.

SEC. 79. Section 33762 of the Financial Code is repealed.

SEC. 80. Section 33901 of the Financial Code is amended to read:

33901. Each licensee shall, not more than 90 days after the close of each of its fiscal years or within such longer period as the superintendent may by regulation or order specify, file with the superintendent a report containing:

(a) Financial statements, including balance sheet, statement of income or loss, statement of changes in shareholder's equity, and statement of cash flows, for or as of the end of such fiscal year, prepared with audit by an independent certified public accountant or an independent public accountant in accordance with generally accepted accounting principles.

(b) Report, certificate, or opinion of such independent certified public accountant or independent public accountant, stating that such financial statements were prepared in accordance with generally accepted accounting principles.

(c) Such other information as the superintendent may by regulation or order require.

SEC. 80.1. Section 33901 of the Financial Code is amended to read:

33901. Each licensee shall, not more than 90 days after the close of each of its fiscal years or within such longer period as the commissioner may by regulation or order specify, file with the commissioner a report containing:

(a) Financial statements, including balance sheet, statement of income or loss, statement of changes in shareholder's equity, and statement of cash flows, for or as of the end of such fiscal year, prepared with audit by an independent certified public accountant or an independent public accountant in accordance with generally accepted accounting principles.

(b) Report, certificate, or opinion of such independent certified public accountant or independent public accountant, stating that such financial statements were prepared in accordance with generally accepted accounting principles.

(c) Such other information as the commissioner may by regulation or order require.

SEC. 81. Section 53651.2 of the Government Code is amended to read:

53651.2. (a) To be an eligible security under subdivision (m) of Section 53651, a promissory note placed in a securities pool on or after January 1, 1987, shall comply with all of the following provisions:

(1) Each promissory note shall be secured by a first mortgage or first trust deed on improved 1 to 4 unit residential real property located in California, shall be fully amortized over the term of the note, and shall have a term of no more than 30 years. Any first mortgage or first trust deed which secures a promissory note providing for negative amortization shall be removed from the securities pool and replaced with an eligible security under subdivision (m) of Section 53651 if the loan to value ratio exceeds 85 percent of the original appraised value of the security property as a consequence of negative amortization.

(2) Each promissory note shall be eligible for sale to the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation; provided, however, that up to 25 percent of the total dollar amount of any promissory note securities pool established pursuant to Section 53658 may consist of promissory notes with loan amounts which exceed the maximum amounts eligible for purchase by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, but which do not exceed: (i) five hundred thousand dollars ($500,000) in the case of a single family dwelling; (ii) one million dollars ($1,000,000) in the case of a 2, 3, or 4 unit dwelling.

(b) The following shall not constitute eligible securities under subdivision (m) of Section 53651:

(1) Any promissory note on which any payment is more than 60 days past due.

(2) Any promissory note secured by a mortgage or deed of trust as to which there is a lien prior to the mortgage or deed of trust. For the purposes of this paragraph, no lien specified in Section 766 of the Financial Code shall be considered a prior encumbrance unless any installment or payment thereunder (other than a rental or royalty under a lease) is due and delinquent.

(3) Any promissory note secured by a mortgage or deed of trust as to which a notice of default has been recorded pursuant to Section 2924 of the Civil Code or an action has been commenced pursuant to Section 725a of the Code of Civil Procedure.

(c) The depository may exercise, enforce, or waive any right granted to it by the promissory note, mortgage, or deed of trust.

(d) For purposes of this article, the market value of a promissory note which is an eligible security under subdivision (m) of Section 53651, shall be determined in accordance with the regulations adopted by the Treasurer under paragraph (2) of subdivision (m) of Section 53651, as the regulations and statute were in effect on

December 31, 1986. However, if and when regulations on the subject are adopted by the administrator, the market value shall be determined in accordance with those regulations of the administrator.

SEC. 82. Section 53657 of the Government Code is amended to read:

53657. (a) No person shall act as an agent of depository unless that person is a trust company located in this state, the trust department of a bank located in this state, or the Federal Home Loan Bank of San Francisco, and is authorized by the administrator to act as an agent of depository.

(b) (1) An application for authorization shall be in such form, shall contain such information, shall be signed in such manner, and shall (if the administrator so requires) be verified in such manner, as the administrator may prescribe.

(2) The fee for filing an application for authorization with the administrator shall be five hundred dollars ($500).

(3) If the administrator finds, with respect to an application for authorization, that the applicant is competent to act as an agent of depository and that it is reasonable to believe the applicant will comply with all applicable provisions of this article and of any regulation or order issued under this article, the administrator shall approve the application. If the administrator finds otherwise, the administrator shall deny the application.

(4) When an application for authorization has been approved, the applicant shall file with the administrator an agreement to comply with all applicable provisions of this article and of any regulation or order issued under this article. The agreement shall be in such form, shall contain such provisions, and shall be signed in such manner as the administrator may prescribe.

(5) When an application for authorization has been approved, the applicant has complied with paragraph (4), and all conditions precedent to authorizing the applicant to act as agent of depository have been fulfilled, the administrator shall authorize the applicant to act as agent of depository.

SEC. 83. Section 12392 of the Insurance Code is repealed.

SEC. 84. Section 12393 of the Insurance Code is repealed.

SEC. 85. Section 12395 of the Insurance Code is repealed.

SEC. 86. Section 12204 of the Revenue and Taxation Code is amended to read:

12204. The tax imposed on insurers by this chapter is in lieu of all other taxes and licenses, state, county, and municipal, upon such insurers and their property, except:

(a) Taxes upon their real estate.

(b) Any retaliatory exactions imposed by paragraph (3) of subdivision (f) of Section 28 of Article XIII of the Constitution.

(c) The tax on ocean marine insurance.

(d) Motor vehicle and other vehicle registration license fees and any other tax or license fee imposed by the state upon vehicles, motor vehicles or the operation thereof.

(e) That each corporate or other attorney in fact of a reciprocal or interinsurance exchange shall be subject to all taxes imposed upon corporations or others doing business in the state, other than taxes on income derived from its principal business as attorney in fact.

SEC. 87. Section 12233 of the Revenue and Taxation Code is repealed.

SEC. 88. Section 2.1 of this bill incorporates amendments to Section 180 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 180 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 180 of the Financial Code as amended by Section 2 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 2.1 of this bill shall become operative.

SEC. 89. Section 3.1 of this bill incorporates amendments to Section 272 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 272 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 272 of the Financial Code as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 3.1 of this bill shall become operative.

SEC. 90. Section 4.1 of this bill incorporates amendments to Section 273 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 273 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 273 of the Financial Code as amended by Section 4 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 4.1 of this bill shall become operative.

SEC. 91. Section 5.1 of this bill incorporates amendments to Section 361 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 361 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 361 of the Financial Code as amended by Section 5 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 5.1 of this bill shall become operative.

SEC. 92. Section 6.1 of this bill incorporates amendments to Section 362 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and

become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 362 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 362 of the Financial Code as amended by Section 6 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 6.1 of this bill shall become operative.

SEC. 93. Section 7.1 of this bill incorporates amendments to Section 400 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 400 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 400 of the Financial Code as amended by Section 7 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 7.1 of this bill shall become operative.

SEC. 94. Section 9.1 of this bill incorporates amendments to Section 510 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 510 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 510 of the Financial Code as amended by Section 9 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 9.1 of this bill shall become operative.

SEC. 95. Section 10.1 of this bill incorporates amendments to Section 544 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 544 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 544 of the Financial Code as amended by Section 10 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 10.1 of this bill shall become operative.

SEC. 96. Section 11.1 of this bill incorporates amendments to Section 547 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 547 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 547 of the Financial Code as amended by Section 11 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 11.1 of this bill shall become operative.

SEC. 97. Section 13.1 of this bill incorporates amendments to Section 552 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 552 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section

552 of the Financial Code as amended by Section 13 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 13.1 of this bill shall become operative.

SEC. 98. Section 18.1 of this bill incorporates amendments to Section 557 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 557 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 557 of the Financial Code as amended by Section 18 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 18.1 of this bill shall become operative.

SEC. 99. Section 19.1 of this bill incorporates amendments to Section 558 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 558 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 558 of the Financial Code as amended by Section 19 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 19.1 of this bill shall become operative.

SEC. 100. Section 21.1 of this bill incorporates amendments to Section 600.2 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 600.2 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 600.2 of the Financial Code as amended by Section 21 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 21.1 of this bill shall become operative.

SEC. 101. Section 25.1 of this bill incorporates amendments to Section 771 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 771 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 771 of the Financial Code as amended by Section 25 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 25.1 of this bill shall become operative.

SEC. 102. Section 26.1 of this bill incorporates amendments to Section 776 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 776 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 776 of the Financial Code as amended by Section 26 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 26.1 of this bill shall become operative.

SEC. 103. Section 28.1 of this bill shall become operative if (1) both this bill and AB 3351 are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) this bill adds Section 1007 to the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 1007 of the Financial Code as added by Section 28 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 28.1 of this bill shall become operative.

SEC. 104. Section 29.1 of this bill incorporates amendments to Section 1227 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 1227 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 1227 of the Financial Code as amended by Section 29 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 29.1 of this bill shall become operative.

SEC. 105. Section 30.1 of this bill incorporates amendments to Section 1336 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 1336 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 1336 of the Financial Code as amended by Section 30 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 30.1 of this bill shall become operative.

SEC. 106. Section 59.1 of this bill incorporates amendments to Section 1726 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 1726 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 1726 of the Financial Code as amended by Section 59 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 59.1 of this bill shall become operative.

SEC. 107. Section 60.1 of this bill incorporates amendments to Section 1800.4 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 1800.4 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 1800.4 of the Financial Code as amended by Section 60 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 60.1 of this bill shall become operative.

SEC. 108. Section 61.1 of this bill incorporates amendments to Section 1802 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes

operative first, (2) each bill amends Section 1802 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 1802 of the Financial Code as amended by Section 61 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 61.1 of this bill shall become operative.

SEC. 109. Section 62.1 of this bill incorporates amendments to Section 1805.5 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 1805.5 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 1805.5 of the Financial Code as amended by Section 62 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 62.1 of this bill shall become operative.

SEC. 110. Section 63.1 of this bill incorporates amendments to Section 1807 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 1807 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 1807 of the Financial Code as amended by Section 63 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 63.1 of this bill shall become operative.

SEC. 111. Section 64.1 of this bill incorporates amendments to Section 1807.5 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 1807.5 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 1807.5 of the Financial Code as amended by Section 64 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 64.1 of this bill shall become operative.

SEC. 112. Section 65.1 of this bill incorporates amendments to Section 1814 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 1814 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 1814 of the Financial Code as amended by Section 65 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 65.1 of this bill shall become operative.

SEC. 113. Section 66.1 of this bill incorporates amendments to Section 1863.1 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 1863.1 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 1863.1 of the Financial Code as amended by Section 66 of this bill,

shall remain operative only until the operative date of AB 3351, at which time Section 66.1 of this bill shall become operative.

SEC. 114. Section 67.1 of this bill incorporates amendments to Section 1868 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 1868 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 1868 of the Financial Code as amended by Section 67 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 67.1 of this bill shall become operative.

SEC. 115. Section 68.1 of this bill incorporates amendments to Section 1900 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 1900 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 1900 of the Financial Code as amended by Section 68 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 68.1 of this bill shall become operative.

SEC. 116. Section 70.1 of this bill shall become operative if (1) this bill repeals and adds Section 1902 of the Financial Code, (2) AB 3351 amends Section 1902 of the Financial Code, and (3) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, in which case Section 1902 of the Financial Code as added by Section 70 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 70.1 of this bill shall become operative.

SEC. 117. Section 74.1 of this bill incorporates amendments to Section 3700 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 3700 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 3700 of the Financial Code as amended by Section 74 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 74.1 of this bill shall become operative.

SEC. 118. Section 75.1 of this bill incorporates amendments to Section 3705 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 3705 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 3705 of the Financial Code as amended by Section 75 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 75.1 of this bill shall become operative.

SEC. 119. Section 76.1 of this bill incorporates amendments to Section 33600 of the Financial Code proposed by both this bill and AB

3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 33600 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 33600 of the Financial Code as amended by Section 76 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 76.1 of this bill shall become operative.

SEC. 120. Section 80.1 of this bill incorporates amendments to Section 33901 of the Financial Code proposed by both this bill and AB 3351. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 33901 of the Financial Code, and (3) this bill is enacted after AB 3351, in which case Section 33901 of the Financial Code as amended by Section 80 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 80.1 of this bill shall become operative.

CHAPTER 1064

An act to amend Sections 7500.3, 7522, and 7582.2 of the Business and Professions Code, to amend Sections 1798.3 and 1916.5 of the Civil Code, to amend Sections 995.710 and 1571 of the Code of Civil Procedure, to amend Sections 163, 201, 1001, 1101.1, 5122, 7122, 9122, 12302, 14021, 14025, 25100, 25302, and 31103 of the Corporations Code, to amend Sections 109, 112, 118, 180, 184, 200, 210, 211, 212, 213, 214, 215, 216, 230, 231, 233, 234, 235, 250, 252, 253, 255, 259, 260, 261, 262, 270, 271, 271.5, 272, 273, 274, 275, 350, 360, 360.5, 361, 362, 362.5, 363, 400, 401, 402, 403, 404, 405, 406, 407, 420, 421, 490, 500, 501, 503, 504, 505, 506, 507, 508, 510, 511, 512, 540, 541, 542, 543, 544, 545, 546, 547, 551, 552, 553, 554, 555, 556, 557, 558, 559, 561, 600.2, 600.4, 600.6, 600.8, 600.10, 600.12, 601, 602, 643, 644, 645, 646, 660, 662, 663, 670, 684, 685, 686, 687, 688, 689, 690, 691, 692, 692.1, 693, 694, 696, 696.5, 697, 700, 701, 702, 703, 703.5, 704, 705, 706, 707, 708, 709, 710, 750, 751.3, 752, 753, 754, 756, 758, 759, 761, 763, 771, 772, 774, 775, 775.1, 776, 782, 800, 802, 810, 811, 813, 816, 820, 821, 823, 826, 866.5, 866.6, 866.7, 866.9, 867, 1201, 1202, 1203, 1208, 1220, 1223, 1224, 1225, 1226, 1227, 1228, 1232, 1236, 1336, 1355.1, 1360, 1371, 1500, 1500.1, 1501, 1502, 1540, 1541, 1543, 1544, 1545, 1545.5, 1563, 1564, 1582, 1583, 1584, 1585, 1588, 1589, 1701.5, 1702, 1703, 1704, 1705, 1706, 1710, 1715, 1726, 1727, 1728, 1729, 1753, 1754, 1755, 1757, 1758, 1759, 1761, 1762, 1763, 1775, 1780, 1781, 1782, 1783, 1784, 1785, 1800.3, 1800.4, 1800.7, 1800.9, 1801, 1801.1, 1802, 1802.2, 1802.7, 1802.8, 1803, 1803.5, 1804, 1805, 1805.5, 1807, 1807.5, 1808, 1809, 1811, 1812, 1814, 1817, 1818, 1819, 1820, 1821, 1822, 1824, 1825, 1826, 1827, 1852, 1852.1, 1852.2, 1852.3, 1855, 1856, 1857, 1857.5, 1858, 1859, 1860, 1863, 1863.1, 1864, 1865, 1868, 1869, 1871, 1876.1, 1876.3, 1876.4, 1876.5, 1876.6, 1876.7, 1876.9, 1876.12, 1877, 1880.5, 1881, 1882, 1883, 1884, 1885, 1886,

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8007, 8008, 8009.5, 8038, 14206, 14258, 18206, 18210.5, 18348, 18395, 33063, and 33320 of, and to repeal and add Sections 256, 258, 8037, 18427, 18427.1, 18427.2, 18427.3, and 18427.4 of, and to add Article 4.5 (commencing with Section 265) of Chapter 2 of Division 1 of, and to add and repeal Article 5 (commencing with Section 14380) to Chapter 3 of Division 5 of, the Financial Code, to amend Sections 6254.5, 7465, 7480, 11121, 11501, 11552, 12586, 13975, 53638, and 53661 of the Government Code, to amend Sections 35201 and 44559.2 of the Health and Safety Code, to amend Sections 771, 12393, 12395, 12524, 12527, 12581, 12583, 12603, 14022, 14053, and 15036 of the Insurance Code, to amend Section 830.11 of the Penal Code, to amend Section 25924 of the Public Resources Code, to amend Sections 408 and 24370 of the Revenue and Taxation Code, and to amend Sections 8851, 27154, 30240, 30241, 31172, and 31173 of the Streets and Highways Code, relating to financial institutions, and making an appropriation therefor.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) At present, commercial banks are regulated by the State Banking Department; savings associations, by the Department of Savings and Loan; and credit unions and industrial loan companies, by the Department of Corporations.

(b) In 44 other states of the United States, there is a single state agency that regulates two or more of the following four categories of depository corporations: commercial banks, savings associations, credit unions, and industrial loan companies. In 35 of those states, the agency's jurisdiction includes commercial banks, savings associations, and credit unions.

(c) Consolidating the regulation of depository corporations and other providers of financial services presently regulated by the State Banking Department in a single department is in the public interest.

(d) The regulation of all four categories of depository corporations by a single department is expected and intended to be more efficient and cost-effective than regulation by multiple departments.

(e) Accordingly, this act abolishes the State Banking Department and the Department of Savings and Loan, creates a new Department of Financial Institutions, and transfers to the Department of Financial Institutions all of the functions of the State Banking Department and the Department of Savings and Loan. In addition, this act transfers to the Department of Financial Institutions from the Department of Corporations the regulation of credit unions and industrial loan companies. Under this act, the new Department of Financial Institutions will regulate all four categories of depository

corporations as well as the other providers of financial services presently regulated by the State Banking Department. The chief officer of the Department of Financial Institutions will be the Commissioner of Financial Institutions.

(f) While this act consolidates the regulation of the four categories of depository corporations in the Department of Financial Institutions, the four categories shall remain separate and distinct. In administering the Department of Financial Institutions, the Commissioner of Financial Institutions shall respect and give due consideration to the diversities among the four categories and the uniqueness of each category. Although some standards and practices may be common to two or more categories of depository corporations, other standards and practices are unique to each category. Whenever the Commissioner of Financial Institutions takes action with respect to a depository corporation of any particular category, the Commissioner of Financial Institutions shall take into account the differences between that category and other categories and shall apply standards and practices that are appropriate for that category.

SEC. 1.5. Section 7500.3 of the Business and Professions Code is amended to read:

7500.3. A repossession agency shall not include any of the following:

(a) Any bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of the Currency of the United States.

(b) Any person organized, chartered, or holding a license or authorization certificate to make loans pursuant to the laws of this state or the United States who is subject to supervision by any official or agency of this state or the United States.

(c) An attorney at law in performing his or her duties as an attorney at law.

(d) The legal owner of collateral which is subject to a security agreement.

(e) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties.

(f) A person employed exclusively and regularly by one employer in connection with the affairs of that employer only, and where there exists an employer-employee relationship.

SEC. 2. Section 7522 of the Business and Professions Code is amended to read:

7522. This chapter does not apply to:

(a) A person employed exclusively and regularly by any employer who does not provide contract security services for other entities or persons, in connection with the affairs of such employer only and where there exists an employer-employee relationship, provided

that such person at no time carries or uses any deadly weapon in the performance of his or her duties. For purposes of this subdivision, "deadly weapon" is defined to include any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade and any metal pipe or bar used or intended to be used as a club.

(b) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in any calendar month.

(c) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

(d) A charitable philanthropic society or association duly incorporated under the laws of this state which is organized and maintained for the public good and not for private profit.

(e) An attorney at law in performing his or her duties as an attorney at law.

(f) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(g) Any bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of Currency of the United States.

(h) A person engaged solely in the business of securing information about persons or property from public records.

(i) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with the provisions of Section 1126 of the Government Code. However, nothing herein shall exempt such peace officer who contracts for his or her services or the services of others as a private investigator.

(j) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(k) Any savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(*l*) Any secured creditor engaged in the repossession of the creditor's collateral and any lessor engaged in the repossession of leased property in which it claims an interest.

SEC. 2.1. Section 7522 of the Business and Professions Code is amended to read:

7522. This chapter does not apply to:

(a) A person employed exclusively and regularly by any employer who does not provide contract security services for other entities or persons, in connection with the affairs of such employer only and where there exists an employer-employee relationship, provided that person at no time carries or uses any deadly weapon in the performance of his or her duties. For purposes of this subdivision, "deadly weapon" is defined to include any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade and any metal pipe or bar used or intended to be used as a club.

(b) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in any calendar month.

(c) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

(d) A charitable philanthropic society or association duly incorporated under the laws of this state which is organized and maintained for the public good and not for private profit.

(e) An attorney at law in performing his or her duties as an attorney at law.

(f) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(g) Any bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of Currency of the United States.

(h) A person engaged solely in the business of securing information about persons or property from public records.

(i) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with the provisions of Section 1126 of the Government Code. However, nothing herein shall exempt a peace officer who either contracts for his or her services or the services of others as a private investigator or contracts for his or her services as an armed private investigator. For purposes of this subdivision, "armed private investigator" means an individual who carries or uses a firearm in the course and scope of that employment.

(j) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(k) Any savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(*l*) Any secured creditor engaged in the repossession of the creditor's collateral and any lessor engaged in the repossession of leased property in which it claims an interest.

SEC. 3. Section 7582.2 of the Business and Professions Code is amended to read:

7582.2. This chapter does not apply to:

(a) A person employed exclusively and regularly by any employer who does not provide contract security services for other entities or persons, in connection with the affairs of the employer only and where there exists an employer-employee relationship, provided that the person at no time carries or uses any deadly weapon in the performance of his or her duties. For purposes of this subdivision, "deadly weapon" is defined to include any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade and any metal pipe or bar used or intended to be used as a club.

(b) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in any calendar month.

(c) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

(d) A charitable philanthropic society or association duly incorporated under the laws of this state which is organized and maintained for the public good and not for private profit.

(e) Patrol special police officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also under the express terms of the charter (1) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (2) must be not less than 18 years of age nor more than 40 years of age, (3) must possess physical qualifications prescribed by the commission, and (4) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(f) An attorney at law in performing his or her duties as an attorney at law.

(g) A collection agency or an employee thereof while acting within the scope of his or her employment, while making an investigation incidental to the business of the agency, including an

investigation of the location of a debtor or his or her property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.

(h) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(i) Any bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of Currency of the United States.

(j) A person engaged solely in the business of securing information about persons or property from public records.

(k) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with the provisions of Section 1126 of the Government Code. However, nothing herein shall exempt such peace officer who contracts for his or her services or the services of others as a private patrol operator.

(*l*) A retired peace officer of the state or political subdivision thereof when the retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where the employment takes place, provided that the retired officer is in a uniform of a public law enforcement agency, has registered with the bureau on a form approved by the director, and has met any training requirements or their equivalent as established for security personnel under Section 7583.5. This officer may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of subdivision (a) of Section 12027 of the Penal Code or paragraph (1) of subdivision (b) of Section 12031 of the Penal Code or has met the requirements set forth in Section 12033 of the Penal Code. However, nothing herein shall exempt the retired peace officer who contracts for his or her services or the services of others as a private patrol operator.

(m) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(n) Any savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(o) Any secured creditor engaged in the repossession of the creditor's collateral and any lessor engaged in the repossession of leased property in which it claims an interest.

SEC. 3.1. Section 7582.2 of the Business and Professions Code is amended to read:

7582.2. This chapter does not apply to:

(a) A person employed exclusively and regularly by any employer who does not provide contract security services for other entities or persons, in connection with the affairs of the employer only and where there exists an employer-employee relationship, provided

that the person at no time carries or uses any deadly weapon in the performance of his or her duties. For purposes of this subdivision, "deadly weapon" is defined to include any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade and any metal pipe or bar used or intended to be used as a club.

(b) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while the officer or employee is engaged in the performance of his or her official duties, including uniformed peace officers employed part time by a public agency pursuant to a written agreement between a chief of police or sheriff and the public agency, provided the part-time employment does not exceed 50 hours in any calendar month.

(c) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

(d) A charitable philanthropic society or association duly incorporated under the laws of this state which is organized and maintained for the public good and not for private profit.

(e) Patrol special police officers appointed by the police commission of any city, county, or city and county under the express terms of its charter who also under the express terms of the charter (1) are subject to suspension or dismissal after a hearing on charges duly filed with the commission after a fair and impartial trial, (2) must be not less than 18 years of age nor more than 40 years of age, (3) must possess physical qualifications prescribed by the commission, and (4) are designated by the police commission as the owners of a certain beat or territory as may be fixed from time to time by the police commission.

(f) An attorney at law in performing his or her duties as an attorney at law.

(g) A collection agency or an employee thereof while acting within the scope of his or her employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his or her property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.

(h) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(i) Any bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of Currency of the United States.

(j) A person engaged solely in the business of securing information about persons or property from public records.

(k) A peace officer of this state or a political subdivision thereof while the peace officer is employed by a private employer to engage in off-duty employment in accordance with the provisions of Section 1126 of the Government Code. However, nothing herein shall exempt such peace officer who either contracts for his or her services or the services of others as a private patrol operator or contracts for his or her services as an armed private security officer. For purposes of this subdivision, "armed security officer" means an individual who carries or uses a firearm in the course and scope of that employment.

(*l*) A retired peace officer of the state or political subdivision thereof when the retired peace officer is employed by a private employer in employment approved by the chief law enforcement officer of the jurisdiction where the employment takes place, provided that the retired officer is in a uniform of a public law enforcement agency, has registered with the bureau on a form approved by the director, and has met any training requirements or their equivalent as established for security personnel under Section 7583.5. This officer may not carry a loaded or concealed firearm unless he or she is exempted under the provisions of subdivision (a) of Section 12027 of the Penal Code or paragraph (1) of subdivision (b) of Section 12031 of the Penal Code or has met the requirements set forth in Section 12033 of the Penal Code. However, nothing herein shall exempt the retired peace officer who contracts for his or her services or the services of others as a private patrol operator.

(m) A licensed insurance adjuster in performing his or her duties within the scope of his or her license as an insurance adjuster.

(n) Any savings association subject to the jurisdiction of the Commissioner of Financial Institutions or the Office of Thrift Supervision.

(o) Any secured creditor engaged in the repossession of the creditor's collateral and any lessor engaged in the repossession of leased property in which it claims an interest.

SEC. 4. Section 1798.3 of the Civil Code is amended to read:

1798.3. As used in this chapter:

(a) The term "personal information" means any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. It includes statements made by, or attributed to, the individual.

(b) The term "agency" means every state office, officer, department, division, bureau, board, commission, or other state agency, except that the term agency shall not include:

(1) The California Legislature.

(2) Any agency established under Article VI of the California Constitution.

(3) The State Compensation Insurance Fund, except as to any records which contain personal information about the employees of the State Compensation Insurance Fund.

(4) A local agency, as defined in subdivision (b) of Section 6252 of the Government Code.

(c) The term "disclose" means to disclose, release, transfer, disseminate, or otherwise communicate all or any part of any record orally, in writing, or by electronic or any other means to any person or entity.

(d) The term "individual" means a natural person.

(e) The term "maintain" includes maintain, acquire, use, or disclose.

(f) The term "person" means any natural person, corporation, partnership, limited liability company, firm, or association.

(g) The term "record" means any file or grouping of information about an individual that is maintained by an agency by reference to an identifying particular such as the individual's name, photograph, finger or voice print, or a number or symbol assigned to the individual.

(h) The term "system of records" means one or more records, which pertain to one or more individuals, which is maintained by any agency, from which information is retrieved by the name of an individual or by some identifying number, symbol or other identifying particular assigned to the individual.

(i) The term "governmental entity," except as used in Section 1798.26, means any branch of the federal government or of the local government.

(j) The term "commercial purpose" means any purpose which has financial gain as a major objective. It does not include the gathering or dissemination of newsworthy facts by a publisher or broadcaster.

(k) The term "regulatory agency" means the Department of Financial Institutions, the Department of Corporations, the Department of Insurance, the Department of Real Estate, and agencies of the United States or of any other state responsible for regulating financial institutions.

SEC. 5. Section 1916.5 of the Civil Code is amended to read:

1916.5. (a) No increase in interest provided for in any provision for a variable interest rate contained in a security document, or evidence of debt issued in connection therewith, by a lender other than a supervised financial organization shall be valid unless that provision is set forth in the security document, and in any evidence of debt issued in connection therewith, and the document or documents contain the following provisions:

(1) A requirement that when an increase in the interest rate is required or permitted by a movement in a particular direction of a prescribed standard an identical decrease is required in the interest rate by a movement in the opposite direction of the prescribed standard.

(2) The rate of interest shall change not more often than once during any semiannual period, and at least six months shall elapse between any two changes.

(3) The change in the interest rate shall not exceed one-fourth of 1 percent in any semiannual period, and shall not result in a rate more than 2.5 percentage points greater than the rate for the first loan payment due after the closing of the loan.

(4) The rate of interest shall not change during the first semiannual period.

(5) The borrower is permitted to prepay the loan in whole or in part without a prepayment charge within 90 days of notification of any increase in the rate of interest.

(6) A statement attached to the security document and to any evidence of debt issued in connection therewith printed or written in a size equal to at least 10-point bold type, consisting of the following language:

NOTICE TO BORROWER: THIS DOCUMENT CONTAINS PROVISIONS FOR A VARIABLE INTEREST RATE.

(b) (1) This section shall be applicable only to a mortgage contract, deed of trust, real estate sales contract, or any note or negotiable instrument issued in connection therewith, when its purpose is to finance the purchase or construction of real property containing four or fewer residential units or on which four or fewer residential units are to be constructed.

(2) This section shall not apply to unamortized construction loans with an original term of two years or less or to loans made for the purpose of the purchase or construction of improvements to existing residential dwellings.

(c) Regulations setting forth the prescribed standard upon which variations in the interest rate shall be based may be adopted by the Commissioner of Financial Institutions with respect to savings associations and by the Insurance Commissioner with respect to insurers. Regulations adopted by the Commissioner of Financial Institutions shall apply to all loans made by savings associations pursuant to this section prior to January 1, 1990.

(d) As used in this section:

(1) "Supervised financial organization" means a state or federally regulated bank, savings association, savings bank, or credit union, or state regulated industrial loan company, personal property broker, consumer finance lender, or holding company, affiliate, or subsidiary thereof, or institution of the Farm Credit System, as specified in 12 U.S.C. Sec. 2002.

(2) "Insurer" includes, but is not limited to, a nonadmitted insurance company.

(3) "Semiannual period" means each of the successive periods of six calendar months commencing with the first day of the calendar month in which the instrument creating the obligation is dated.

(4) "Security document" means a mortgage contract, deed of trust, or real estate sales contract.

(5) "Evidence of debt" means a note or negotiable instrument.

(e) This section shall be applicable only to instruments executed on and after the effective date of this section.

(f) This section shall not apply to nonprofit public corporations.

(g) This section is not intended to apply to a loan made where the rate of interest provided for is less than the then current market rate for a similar loan in order to accommodate the borrower because of a special relationship, including, but not limited to, an employment or business relationship, of the borrower with the lender or with a customer of the lender and the sole increase in interest provided for with respect to the loan will result only by reason of the termination of that relationship or upon the sale, deed, or transfer of the property securing the loan to a person not having that relationship.

SEC. 6. Section 995.710 of the Code of Civil Procedure is amended to read:

995.710. (a) Except to the extent the statute providing for a bond precludes a deposit in lieu of bond or limits the form of deposit, the principal may, instead of giving a bond, deposit with the officer any of the following:

(1) Lawful money of the United States. The money shall be maintained by the officer in an interest-bearing trust account.

(2) Bearer bonds or bearer notes of the United States or the State of California.

(3) Certificates of deposit payable to the officer, not exceeding the federally insured amount, issued by banks or savings associations authorized to do business in this state and insured by the Federal Deposit Insurance Corporation.

(4) Savings accounts assigned to the officer, not exceeding the federally insured amount, together with evidence of the deposit in the savings accounts with banks authorized to do business in this state and insured by the Federal Deposit Insurance Corporation.

(5) Investment certificates or share accounts assigned to the officer, not exceeding the federally insured amount, issued by savings associations authorized to do business in this state and insured by the Federal Deposit Insurance Corporation.

(6) Certificates for funds or share accounts assigned to the officer, not exceeding the guaranteed amount, issued by a credit union, as defined in Section 14002 of the Financial Code, whose share deposits are guaranteed by the National Credit Union Administration or guaranteed by any other agency approved by the Department of Financial Institutions.

(b) The deposit shall be in an amount or have a face value, or in the case of bearer bonds or bearer notes have a market value, equal to or in excess of the amount that would be required to be secured by the bond if the bond were given by an admitted surety insurer. Notwithstanding any other provision of this chapter, in the case of a

deposit of bearer bonds or bearer notes other than in an action or proceeding, the officer may, in the officer's discretion, require that the amount of the deposit be determined not by the market value of the bonds or notes but by a formula based on the principal amount of the bonds or notes.

(c) The deposit shall be accompanied by an agreement executed by the principal authorizing the officer to collect, sell, or otherwise apply the deposit to enforce the liability of the principal on the deposit. The agreement shall include the address at which the principal may be served with notices, papers, and other documents under this chapter.

(d) The officer may prescribe terms and conditions to implement this section.

SEC. 7. Section 1571 of the Code of Civil Procedure is amended to read:

1571. (a) The Controller may at reasonable times and upon reasonable notice examine the records of any person if the Controller has reason to believe that such person has failed to report property that should have been reported pursuant to this chapter.

(b) When requested by the Controller, such examination shall be conducted by any licensing or regulating agency otherwise empowered by the laws of this state to examine the records of the holder. For the purpose of determining compliance with this chapter, the Commissioner of Financial Institutions is vested with full authority to examine the records of any banking organization and any savings association doing business within this state but not organized under the laws of or created in this state.

SEC. 8. Section 163 of the Corporations Code is amended to read:

163. "Corporation subject to the Banking Law" (Division 1 (commencing with Section 99) of the Financial Code) means:

(a) Any corporation which, with the approval of the Commissioner of Financial Institutions, is incorporated for the purpose of engaging in, or which is authorized by the Commissioner of Financial Institutions to engage in, the commercial banking business under Division 1 (commencing with Section 99) of the Financial Code.

(b) Any corporation (other than a corporation described in subdivision (c)) which, with the approval of the Commissioner of Financial Institutions, is incorporated for the purpose of engaging in, or which is authorized by the Commissioner of Financial Institutions to engage in, the trust business under Division 1 (commencing with Section 99) of the Financial Code.

(c) Any corporation which is authorized by the Commissioner of Financial Institutions and the Commissioner of Insurance to maintain a title insurance department to engage in title insurance business and a trust department to engage in trust business; or

(d) Any corporation which, with the approval of the Commissioner of Financial Institutions, is incorporated for the

purpose of engaging in, or which is authorized by the Commissioner of Financial Institutions to engage in, business under Article 1 (commencing with Section 3500), Chapter 19, Division 1 of the Financial Code.

SEC. 9. Section 201 of the Corporations Code is amended to read:

201. (a) The Secretary of State shall not file articles setting forth a name in which "bank," " trust," "trustee" or related words appear, unless the certificate of approval of the Commissioner of Financial Institutions is attached thereto. This subdivision does not apply to the articles of any corporation subject to the Banking Law on which is endorsed the approval of the Commissioner of Financial Institutions.

(b) The Secretary of State shall not file articles which set forth a name which is likely to mislead the public or which is the same as, or resembles so closely as to tend to deceive, the name of a domestic corporation, the name of a foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, a name which a foreign corporation has assumed under subdivision (b) of Section 2106, a name which will become the record name of a domestic or foreign corporation upon the effective date of a filed corporate instrument where there is a delayed effective date pursuant to subdivision (c) of Section 110 or subdivision (c) of Section 5008, or a name which is under reservation for another corporation pursuant to this section, Section 5122, Section 7122, or Section 9122, except that a corporation may adopt a name that is substantially the same as an existing domestic corporation or foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, upon proof of consent by such domestic or foreign corporation and a finding by the Secretary of State that under the circumstances the public is not likely to be misled.

The use by a corporation of a name in violation of this section may be enjoined notwithstanding the filing of its articles by the Secretary of State.

(c) Any applicant may, upon payment of the fee prescribed therefor in the Government Code, obtain from the Secretary of State a certificate of reservation of any name not prohibited by subdivision (b), and upon the issuance of the certificate the name stated therein shall be reserved for a period of 60 days. The Secretary of State shall not, however, issue certificates reserving the same name for two or more consecutive 60-day periods to the same applicant or for the use or benefit of the same person, partnership, firm or corporation; nor shall consecutive reservations be made by or for the use or benefit of the same person, partnership, firm or corporation of names so similar as to fall within the prohibitions of subdivision (b).

SEC. 10. Section 1001 of the Corporations Code is amended to read:

1001. (a) A corporation may sell, lease, convey, exchange, transfer or otherwise dispose of all or substantially all of its assets when the principal terms are

(1) Approved by the board, and

(2) Unless the transaction is in the usual and regular course of its business, approved by the outstanding shares (Section 152), either before or after approval by the board and before or after the transaction.

A transaction constituting a reorganization (Section 181) is subject to the provisions of Chapter 12 (commencing with Section 1200) and not this section (other than subdivision (d) hereof).

(b) Notwithstanding approval of the outstanding shares (Section 152), the board may abandon the proposed transaction without further action by the shareholders, subject to the contractual rights, if any, of third parties.

(c) Such sale, lease, conveyance, exchange, transfer or other disposition may be made upon such terms and conditions and for such consideration as the board may deem in the best interests of the corporation. The consideration may be money, property or securities of any other corporation, domestic or foreign, or any of them.

(d) If the buyer in a sale of assets pursuant to subdivision (a) of this section or subdivision (g) of Section 2001 is in control of or under common control with the seller, the principal terms of the sale must be approved by at least 90 percent of the voting power unless the sale is to a domestic or foreign corporation in consideration of the nonredeemable common shares of the purchasing corporation or its parent.

(e) Subdivision (d) does not apply to any transaction if the Commissioner of Corporations, the Commissioner of Financial Institutions, the Insurance Commissioner or the Public Utilities Commission has approved the terms and conditions of the transaction and the fairness of such terms and conditions pursuant to Section 25142, Section 696.5 of the Financial Code, Section 838.5 of the Insurance Code or Section 822 of the Public Utilities Code.

SEC. 11. Section 1101.1 of the Corporations Code is amended to read:

1101.1. Subdivision (c) of Section 1113 and the last two sentences of Section 1101 do not apply to any transaction if the Commissioner of Corporations, the Commissioner of Financial Institutions, the Insurance Commissioner or, the Public Utilities Commission has approved the terms and conditions of the transaction and the fairness of such terms and conditions pursuant to Section 25142 or Section 696.5, 5750, or 5802 of the Financial Code or Section 838.5 of the Insurance Code.

SEC. 12. Section 5122 of the Corporations Code is amended to read:

5122. (a) The Secretary of State shall not file articles setting forth a name in which "bank," "trust," "trustee" or related words appear,

unless the certificate of approval of the Commissioner of Financial Institutions is attached thereto.

(b) The Secretary of State shall not file articles which set forth a name which is likely to mislead the public or which is the same as, or resembles so closely as to tend to deceive, the name of a domestic corporation, the name of a foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, a name which a foreign corporation has assumed under subdivision (b) of Section 2106 or a name which will become the record name of a domestic or foreign corporation upon the effective date of a filed corporate instrument where there is a delayed effective date pursuant to subdivision (c) of Section 110, or subdivision (c) of Section 5008, or a name which is under reservation pursuant to this section, Section 201, Section 7122, or Section 9122, except that a corporation may adopt a name that is substantially the same as an existing domestic or foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, upon proof of consent by such corporation and a finding by the Secretary of State that under the circumstances the public is not likely to be misled.

The use by a corporation of a name in violation of this section may be enjoined notwithstanding the filing of its articles by the Secretary of State.

(c) Any applicant may, upon payment of the fee prescribed therefor in the Government Code, obtain from the Secretary of State a certificate of reservation of any name not prohibited by subdivision (b), and upon the issuance of the certificate the name stated therein shall be reserved for a period of 60 days. The Secretary of State shall not, however, issue certificates reserving the same name for two or more consecutive 60-day periods to the same applicant or for the use or benefit of the same person; nor shall consecutive reservations be made by or for the use or benefit of the same person of names so similar as to fall within the prohibitions of subdivision (b).

SEC. 13. Section 7122 of the Corporations Code is amended to read:

7122. (a) The Secretary of State shall not file articles setting forth a name in which "bank," "trust," "trustee" or related words appear, unless the certificate of approval of the Commissioner of Financial Institutions is attached thereto.

(b) The Secretary of State shall not file articles pursuant to this part setting forth a name which may create the impression that the purpose of the corporation is public, charitable or religious or that it is a charitable foundation.

(c) The Secretary of State shall not file articles which set forth a name which is likely to mislead the public or which is the same as, or resembles so closely as to tend to deceive, the name of a domestic corporation, the name of a foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to

Section 2101, a name which a foreign corporation has assumed under subdivision (b) of Section 2106, a name which will become the record name of a domestic or foreign corporation upon the effective date of a filed corporate instrument where there is a delayed effective date pursuant to subdivision (c) of Section 110, or subdivision (c) of Section 5008, or a name which is under reservation pursuant to this section, Section 201, Section 5122, or Section 9122 except that a corporation may adopt a name that is substantially the same as an existing domestic or foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, upon proof of consent by such corporation and a finding by the Secretary of State that under the circumstances the public is not likely to be misled.

The use by a corporation of a name in violation of this section may be enjoined notwithstanding the filing of its articles by the Secretary of State.

(d) Any applicant may, upon payment of the fee prescribed therefor in the Government Code, obtain from the Secretary of State a certificate of reservation of any name not prohibited by subdivision (c), and upon the issuance of the certificate the name stated therein shall be reserved for a period of 60 days. The Secretary of State shall not, however, issue certificates reserving the same name for two or more consecutive 60-day periods to the same applicant or for the use or benefit of the same person; nor shall consecutive reservations be made by or for the use or benefit of the same person of names so similar as to fall within the prohibitions of subdivision (c).

SEC. 14. Section 9122 of the Corporations Code is amended to read:

9122. (a) The Secretary of State shall not file articles setting forth a name in which "bank," "trust," "trustee" or related words appear, unless the certificate of approval of the Commissioner of Financial Institutions is attached thereto.

(b) The Secretary of State shall not file articles which set forth a name which is likely to mislead the public or which is the same as, or resembles so closely as to tend to deceive, the name of a domestic corporation, the name of a foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, a name which a foreign corporation has assumed under subdivision (b) of Section 2106 or a name which will become the record name of a domestic or foreign corporation upon the effective date of a filed corporate instrument where there is a delayed effective date pursuant to subdivision (c) of Section 110 or subdivision (c) of Section 5008, or a name which is under reservation pursuant to this section, Section 201, Section 5122, or Section 7122, except that a corporation may adopt a name that is substantially the same as an existing domestic or foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, upon proof of consent by such corporation

and a finding by the Secretary of State that under the circumstances the public is not likely to be misled.

The use by a corporation of a name in violation of this section may be enjoined notwithstanding the filing of its articles by the Secretary of State.

(c) Any applicant may, upon payment of the fee prescribed therefor in the Government Code, obtain from the Secretary of State a certificate of reservation of any name not prohibited by subdivision (b), and upon the issuance of the certificate the name stated therein shall be reserved for a period of 60 days. The Secretary of State shall not, however, issue certificates reserving the same name for two or more consecutive 60-day periods to the same applicant or for the use or benefit of the same person; nor shall consecutive reservations be made by or for the use or benefit of the same person of names so similar as to fall within the prohibitions of subdivision (b).

SEC. 15. Section 12302 of the Corporations Code is amended to read:

12302. (a) The Secretary of State shall not file articles setting forth a name in which "bank," "trust," "trustee" or related words appear, unless the certificate of approval of the Commissioner of Financial Institutions is attached thereto.

(b) The Secretary of State shall not file articles which set forth a name which is likely to mislead the public or which is the same as, or resembles so closely as to tend to deceive, the name of a domestic corporation, the name of a foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, a name which a foreign corporation has assumed under subdivision (b) of Section 2106, a name which will become the record name of a domestic or foreign corporation upon the effective date of a filed corporate instrument where there is a delayed effective date pursuant to this title, or a name which is under reservation pursuant to this title, except that a corporation may adopt a name that is substantially the same as an existing domestic or foreign corporation which is authorized to transact intrastate business or has registered its name pursuant to Section 2101, upon proof of consent by such corporation and a finding by the Secretary of State that under the circumstances the public is not likely to be misled.

(c) The use by a corporation of a name in violation of this section may be enjoined notwithstanding the filing of its articles by the Secretary of State.

(d) Any applicant may, upon payment of the fee prescribed therefor in the Government Code, obtain from the Secretary of State a certificate of reservation of any name not prohibited by subdivision (c), and upon the issuance of the certificate the name stated therein shall be reserved for a period of 60 days. The Secretary of State shall not, however, issue certificates reserving the same name for two or more consecutive 60-day periods to the same applicant or for the use or benefit of the same person; nor shall consecutive reservations be

made by or for the use or benefit of the same person of names so similar as to fall within the prohibitions of subdivision (c).

SEC. 16. Section 14021 of the Corporations Code is amended to read:

14021. The board consists of the following membership:

(a) The Commissioner of Financial Institutions or his or her designee.

(b) The Secretary of Trade and Commerce or his or her designee.

(c) The Director of Food and Agriculture or his or her designee.

(d) The Director of the Employment Development Department or his or her designee.

(e) The President of the State Assistance Fund for Energy, California Business and Industrial Development Corporation (SAFE BIDCO) shall serve as an ex officio nonvoting member.

(f) The Director of the California Export Finance Office, California State World Trade Commission shall serve as an ex officio nonvoting member.

(g) The Chief of the Office of Small and Minority Business, Department of General Services shall serve as an ex officio nonvoting member.

(h) The California Small Business Advocate shall serve as an ex officio nonvoting member.

(i) The Chairperson of the Coalition of California Small Business Development Centers shall serve as an ex officio nonvoting member.

(j) Thirteen members appointed by the Governor, including:

(1) Two persons residing in economically disadvantaged areas who are actively engaged in providing leadership and assistance for persons residing in these areas; one each from an urban and rural area.

(2) Two persons to be recommended by the financial institutions participating in the program as of January 1 of each year.

(3) Two persons actively engaged in a commercial, agricultural, or industrial business and who are members of a small, agricultural, minority, or women's business association.

(4) One person who is an officer of an urban labor organization.

(5) One person experienced in financial matters or actively engaged in the banking, savings and loan, or insurance business.

(k) Two Members of the Legislature or their designees, one of whom shall be appointed by the Speaker of the Assembly, and one by the Senate Rules Committee, shall advise with the board insofar as it does not conflict with the duties of the legislators. For purposes of this part, the two Members of the Legislature shall constitute a joint interim legislative committee on the subject of this part and shall have all the powers and duties imposed upon these committees by the Joint Rules of the Senate and the Assembly.

(*l*) Four persons actively involved in the business or agricultural community, two of whom shall be appointed by the Speaker of the

Assembly, and two by the Senate Rules Committee, each of whom may be removed at the pleasure of the appointing authority.

(m) One person from each small business development corporation, who shall be selected by the board of directors or members of each corporation in accordance with its bylaws, each of whom shall serve as a nonvoting member of the board.

(n) The Chairperson of the Development Board shall be designated by the Governor from the members he or she appoints.

SEC. 17. Section 14025 of the Corporations Code is amended to read:

14025. The director, as provided for in Section 15335.07 of the Government Code, shall do all of the following:

(a) Administer this part.

(b) In accordance with program resources, stimulate the formation of corporations and the use of branch offices for the purposes of making this program accessible to all areas of the state.

(c) Expeditiously approve or disapprove the articles of incorporation and any subsequent amendments to the articles of incorporation of a corporation.

(d) Require each corporation to submit an annual written plan of operation in the form and containing the information as the board may require by regulation or otherwise.

(e) Review reports from the Department of Financial Institutions and inform corporations as to what corrective action is required.

(f) Examine, or cause to be examined, at any reasonable time, all books, records, and documents of every kind, and the physical properties of a corporation. The inspection shall include the right to make copies, extracts, and search records.

SEC. 17.1. Section 14025 of the Corporations Code is amended to read:

14025. The director, as provided for in Section 15335.07 of the Government Code, shall do all of the following:

(a) Administer this part.

(b) In accordance with program resources, stimulate the formation of corporations and the use of branch offices for the purposes of making this program accessible to all areas of the state.

(c) Expeditiously approve or disapprove the articles of incorporation and any subsequent amendments to the articles of incorporation of a corporation.

(d) Require each corporation to submit an annual written plan of operation.

(e) Review reports from the Department of Financial Institutions and inform corporations as to what corrective action is required.

(f) Examine, or cause to be examined, at any reasonable time, all books, records, and documents of every kind, and the physical properties of a corporation. The inspection shall include the right to make copies, extracts, and search records.

SEC. 18. Section 25100 of the Corporations Code is amended to read:

25100. The following securities are exempted from Sections 25110, 25120, and 25130:

(a) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state or any agency or corporate or other instrumentality of any one or more of the foregoing; or any certificate of deposit for any of the foregoing.

(b) Any security issued or guaranteed by the Dominion of Canada, any Canadian province, any political subdivision or municipality of that province, or by any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor; or any certificate of deposit for any of the foregoing.

(c) Any security issued or guaranteed by and representing an interest in or a direct obligation of a national bank or a bank or trust company incorporated under the laws of this state, and any security issued by a bank to one or more other banks and representing an interest in an asset of the issuing bank.

(d) Any security issued or guaranteed by a federal savings association or federal savings bank or federal land bank or joint land bank or national farm loan association or by any savings association, as defined in subdivision (a) of Section 5102 of the Financial Code, which is subject to the supervision and regulation of the Commissioner of Financial Institutions of this state.

(e) Any security (other than an interest in all or portions of a parcel or parcels of real property which are subdivided land or a subdivision or in a real estate development), the issuance of which is subject to authorization by the Insurance Commissioner, the Public Utilities Commission, or the Real Estate Commissioner of this state.

(f) Any security consisting of any interest in all or portions of a parcel or parcels of real property which are subdivided lands or a subdivision or in a real estate development; provided that the exemption in this subdivision shall not be applicable to any investment contract sold or offered for sale with, or as part of, any such interest, or to any person engaged in the business of selling, distributing, or supplying water for irrigation purposes or domestic use which is not a public utility.

(g) Any mutual capital certificates or savings accounts, as defined in the Savings Association Law, issued by a savings association, as defined by subdivision (a) of Section 5102 of the Financial Code, and holding a license or certificate of authority then in force from the Commissioner of Financial Institutions of this state.

(h) Any security issued or guaranteed by any federal credit union, or by any credit union organized and supervised, or regulated, under the Credit Union Law.

(i) Any security issued or guaranteed by any railroad, other common carrier, public utility, or public utility holding company which is (1) subject to the jurisdiction of the Interstate Commerce Commission or (2) a holding company registered with the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 or a subsidiary of that company within the meaning of that act or (3) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, of any state, of Canada or of any Canadian province; and the security is subject to registration with or authorization of issuance by that authority.

(j) Any security (except evidences of indebtedness, whether interest bearing or not) of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes and not for pecuniary profit, if no part of the net earnings of the issuer inures to the benefit of any private shareholder or individual, or (2) organized as a chamber of commerce or trade or professional association. The fact that amounts received from memberships or dues or both will or may be used to construct or otherwise acquire facilities for use by members of the nonprofit organization does not disqualify the organization for this exemption. This exemption does not apply to the securities of any nonprofit organization if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the organization or operation of that nonprofit organization or from remuneration received from that nonprofit organization.

(k) Any agreement, commonly known as a "life income contract," of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes and not for pecuniary profit and (2) which the commissioner designates by rule or order, with a donor in consideration of a donation of property to that issuer and providing for the payment to the donor or persons designated by him or her of income or specified periodic payments from the donated property or other property for the life of the donor or those other persons.

(*l*) Any note, draft, bill of exchange, or banker's acceptance which is freely transferable and of prime quality, arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of that paper which is likewise limited, or any guarantee of that paper or of any such renewal, provided that the paper is not offered to the public in amounts of less than twenty-five thousand dollars ($25,000) in the aggregate to any one purchaser. In addition, the commissioner may, by rule or order, exempt any issuer of any notes, drafts, bills of exchange or banker's acceptances from qualification of those securities when the commissioner finds that the

qualification is not necessary or appropriate in the public interest or for the protection of investors.

(m) Any security issued by any corporation organized and existing under the provisions of Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code.

(n) Any beneficial interest in an employees' pension, profit-sharing, stock bonus or similar benefit plan which meets the requirements for qualification under Section 401 of the federal Internal Revenue Code or any statute amendatory thereof or supplementary thereto. A determination letter from the Internal Revenue Service stating that an employees' pension, profit-sharing, stock bonus or similar benefit plan meets those requirements shall be conclusive evidence that the plan is an employees' pension, profit-sharing, stock bonus or similar plan within the meaning of the first sentence of this subdivision until the date the determination letter is revoked in writing by the Internal Revenue Service, regardless of whether or not the revocation is retroactive.

(o) Any security listed or approved for listing upon notice of issuance on a national securities exchange or designated or approved for designation upon notice of issuance as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., if the exchange or interdealer quotation system has been certified by rule or order of the commissioner and any warrant or right to purchase or subscribe to the security. The exemption afforded by this subdivision does not apply to securities listed or designated, or approved for listing or designation upon notice of issuance, in a rollup transaction unless the rollup transaction is an eligible rollup transaction as defined in Section 25014.7.

That certification of any exchange or system shall be made by the commissioner upon the written request of the exchange or system if the commissioner finds that the exchange or system: (i) in acting on applications for listing of common stock substantially applies the minimum standards set forth in either alternative (A) or (B) of paragraph (1), and (ii) in considering suspension or removal from listing or designation, substantially applies each of the criteria set forth in paragraph (2).

(1) Listing standards:

(A) (i) Shareholders' equity of at least four million dollars ($4,000,000).

(ii) Pretax income of at least seven hundred fifty thousand dollars ($750,000) in the issuer's last fiscal year or in two of its last three fiscal years.

(iii) Minimum public distribution of 500,000 shares (exclusive of the holdings of officers, directors, controlling shareholders, and other concentrated or family holdings), together with a minimum of 800 public holders or minimum public distribution of 1,000,000 shares together with a minimum of 400 public holders. The exchange or

system may also consider the listing or designation of a company's securities if the company has a minimum of 500,000 shares publicly held, a minimum of 400 shareholders and daily trading volume in the issue has been approximately 2,000 shares or more for the six months preceding the date of application. In evaluating the suitability of an issue for listing or designation under this trading provision, the exchange or system shall review the nature and frequency of that activity and any other factors as it may determine to be relevant in ascertaining whether the issue is suitable for trading. A security which trades infrequently shall not be considered for listing or designation under this paragraph even though average daily volume amounts to 2,000 shares per day or more.

Companies whose securities are concentrated in a limited geographical area, or whose securities are largely held in block by institutional investors, normally may not be considered eligible for listing or designation unless the public distribution appreciably exceeds 500,000 shares.

(iv) Minimum price of three dollars ($3) per share for a reasonable period of time prior to the filing of a listing or designation application; provided, however, in certain instances an exchange or system may favorably consider listing an issue selling for less than three dollars ($3) per share after considering all pertinent factors, including market conditions in general, whether historically the issue has sold above three dollars ($3) per share, the applicant's capitalization, and the number of outstanding and publicly held shares of the issue.

(v) An aggregate market value for publicly held shares of at least three million dollars ($3,000,000).

(B) (i) Shareholders' equity of at least four million dollars ($4,000,000).

(ii) Minimum public distribution set forth in clause (iii) of subparagraph (A) of paragraph (1).

(iii) Operating history of at least three years.

(iv) An aggregate market value for publicly held shares of at least fifteen million dollars ($15,000,000).

(2) Criteria for consideration of suspension or removal from listing:

(i) If a company which (A) has shareholders' equity of less than one million dollars ($1,000,000) has sustained net losses in each of its two most recent fiscal years, or (B) has net tangible assets of less than three million dollars ($3,000,000) and has sustained net losses in three of its four most recent fiscal years.

(ii) If the number of shares publicly held (excluding the holdings of officers, directors, controlling shareholders and other concentrated or family holdings) is less than 150,000.

(iii) If the total number of shareholders is less than 400 or if the number of shareholders of lots of 100 shares or more is less than 300.

(iv) If the aggregate market value of shares publicly held is less than seven hundred fifty thousand dollars ($750,000).

(v) If shares of common stock sell at a price of less than three dollars ($3) per share for a substantial period of time and the issuer shall fail to effectuate a reverse stock split of the shares within a reasonable period of time after being requested by the exchange to take that action.

A national securities exchange or interdealer quotation system of the National Association of Securities Dealers, Inc. certified by rule or order of the commissioner under this subdivision shall file annual reports when requested to do so by the commissioner. The annual reports shall contain, by issuer: the variances granted to an exchange's listing standards or interdealer quotation system's designation criteria, including variances from corporate governance and voting rights' standards, for any security of that issuer; the reasons for the variances; a discussion of the review procedure instituted by the exchange or interdealer quotation system to determine the effect of the variances on investors and whether the variances should be continued; and any other information that the commissioner deems relevant. The purpose of these reports is to assist the commissioner in determining whether the quantitative and qualitative requirements of this subdivision are substantially being met by the exchange or system in general or with regard to any particular security.

The commissioner after appropriate notice and opportunity for hearing in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, may, in his or her discretion, by rule or order, decertify any exchange or interdealer quotation system previously certified which ceases substantially to apply the minimum standards or criteria as set forth in paragraphs (1) and (2).

A rule or order of certification shall conclusively establish that any security listed or approved for listing upon notice of issuance on any exchange, or designated or approved for designation upon issuance as a national market system security on any interdealer quotation system, named in a rule or order of certification, and any warrant or right to purchase or subscribe to any such security, is exempt under this subdivision until the adoption by the commissioner of any rule or order decertifying the exchange or interdealer quotation system.

(p) A promissory note secured by a lien on real property, which is neither one of a series of notes of equal priority secured by interests in the same real property nor a note in which beneficial interests are sold to more than one person or entity.

(q) Any unincorporated interindemnity or reciprocal or interinsurance contract, which qualifies under the provisions of Section 1280.7 of the Insurance Code, between members of a cooperative corporation, organized and operating under Part 2

(commencing with Section 12200) of Division 3 of Title 1, and whose members consist only of physicians and surgeons licensed in California, which contracts indemnify solely in respect to medical malpractice claims against the members, and which do not collect in advance of loss any moneys other than contributions by each member to a collective reserve trust fund or for necessary expenses of administration.

(1) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of Section 1280.7 of the Insurance Code, the commissioner may in the commissioner's discretion bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance with Section 1280.7 of the Insurance Code. Upon a proper showing a permanent or preliminary injunction, restraining order or writ of mandate shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets.

(2) The commissioner may, in the commissioner's discretion, (A) make such public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated or is about to violate any provision of Section 1280.7 of the Insurance Code or to aid in the enforcement of Section 1280.7, and (B) publish information concerning the violation of Section 1280.7.

(3) For the purpose of any investigation or proceeding under this section, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(4) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the superior court, upon application by the commissioner, may issue to the person an order requiring the person to appear before the commissioner, or the officer designated by the commissioner, there to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt.

(5) No person is excused from attending or testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise), required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture, but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or

thing concerning which the person is compelled, after validly claiming the privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(6) The cost of any review, examination, audit, or investigation made by the commissioner under Section 1280.7 of the Insurance Code shall be paid to the commissioner by the person subject to the review, examination, audit, or investigation, and the commissioner may maintain an action for the recovery of these costs in any court of competent jurisdiction. In determining the cost, the commissioner may use the actual amount of the salary or other compensation paid to the persons making the review, examination, audit, or investigation plus the actual amount of expenses including overhead reasonably incurred in the performance of the work.

The recoverable cost of each review, examination, audit, or investigation made by the commissioner under Section 1280.7 of the Insurance Code shall not exceed twenty-five thousand dollars ($25,000), except that costs exceeding twenty-five thousand dollars ($25,000) shall be recoverable if the costs are necessary to prevent a violation of any provision of Section 1280.7 of the Insurance Code.

(r) Any shares or memberships issued by any corporation organized and existing pursuant to the provisions of Part 2 (commencing with Section 12200) of Division 3 of Title 1, provided the aggregate investment of any shareholder or member in shares or memberships sold pursuant to this subdivision does not exceed three hundred dollars ($300). This exemption does not apply to the shares or memberships of any such corporation if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the corporation or the operation of the corporation or from remuneration, other than reasonable salary, received from the corporation. This exemption does not apply to nonvoting shares or memberships of any such corporation issued to any person who does not possess, and who will not acquire in connection with the issuance of nonvoting shares or memberships, voting power (Section 12253) in the corporation. This exemption also does not apply to shares or memberships issued by a nonprofit cooperative corporation organized to facilitate the creation of an unincorporated interindemnity arrangement that provides indemnification for medical malpractice to its physician and surgeon members as set forth in subdivision (q).

(s) Any security consisting of or representing an interest in a pool of mortgage loans which meets each of the following requirements:

(1) The pool consists of whole mortgage loans or participation interests in those loans, which loans were originated or acquired in the ordinary course of business by a national bank or federal savings association or federal savings bank having its principal office in this state, by a bank incorporated under the laws of this state or by a

savings association as defined in subdivision (a) of Section 5102 of the Financial Code and which is subject to the supervision and regulation of the Commissioner of Financial Institutions, and each of which loans at the time of transfer to the pool is an authorized investment for such originating or acquiring institution.

(2) The pool of mortgage loans is held in trust by a trustee which is a financial institution specified in paragraph (1) as trustee or otherwise.

(3) The loans are serviced by a financial institution specified in paragraph (1).

(4) The security is not offered in amounts of less than twenty-five thousand dollars ($25,000) in the aggregate to any one purchaser.

(5) The security is offered pursuant to a registration under the Securities Act of 1933, or pursuant to an exemption under Regulation A under that act, or in the opinion of counsel for the issuer, is offered pursuant to an exemption under Section 4(2) of that act.

(t) (1) Any security issued or guaranteed by and representing an interest in or a direct obligation of an industrial loan company incorporated under the laws of the state and authorized by the Commissioner of Financial Institutions to engage in industrial loan business.

(2) Any investment certificate in or issued by any industrial loan company that is organized under the laws of a state of the United States other than this state, that is insured by the Federal Deposit Insurance Corporation, and that maintains a branch office in this state.

SEC. 18.1. Section 25100 of the Corporations Code is amended to read:

25100. The following securities are exempted from Sections 25110, 25120, and 25130:

(a) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state or any agency or corporate or other instrumentality of any one or more of the foregoing; or any certificate of deposit for any of the foregoing.

(b) Any security issued or guaranteed by the Dominion of Canada, any Canadian province, any political subdivision or municipality of that province, or by any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor; or any certificate of deposit for any of the foregoing.

(c) Any security issued or guaranteed by and representing an interest in or a direct obligation of a national bank or a bank or trust company incorporated under the laws of this state, and any security issued by a bank to one or more other banks and representing an interest in an asset of the issuing bank.

(d) Any security issued or guaranteed by a federal savings association or federal savings bank or federal land bank or joint land bank or national farm loan association or by any savings association, as defined in subdivision (a) of Section 5102 of the Financial Code, which is subject to the supervision and regulation of the Commissioner of Financial Institutions of this state.

(e) Any security (other than an interest in all or portions of a parcel or parcels of real property which are subdivided land or a subdivision or in a real estate development), the issuance of which is subject to authorization by the Insurance Commissioner, the Public Utilities Commission, or the Real Estate Commissioner of this state.

(f) Any security consisting of any interest in all or portions of a parcel or parcels of real property which are subdivided lands or a subdivision or in a real estate development; provided that the exemption in this subdivision shall not be applicable to any investment contract sold or offered for sale with, or as part of, any such interest, or to any person engaged in the business of selling, distributing, or supplying water for irrigation purposes or domestic use which is not a public utility.

(g) Any mutual capital certificates or savings accounts, as defined in the Savings Association Law, issued by a savings association, as defined by subdivision (a) of Section 5102 of the Financial Code, and holding a license or certificate of authority then in force from the Commissioner of Financial Institutions of this state.

(h) Any security issued or guaranteed by any federal credit union, or by any credit union organized and supervised, or regulated, under the Credit Union Law.

(i) Any security issued or guaranteed by any railroad, other common carrier, public utility, or public utility holding company which is (1) subject to the jurisdiction of the Interstate Commerce Commission or (2) a holding company registered with the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 or a subsidiary of that company within the meaning of that act or (3) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, of any state, of Canada or of any Canadian province; and the security is subject to registration with or authorization of issuance by that authority.

(j) Any security (except evidences of indebtedness, whether interest bearing or not) of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes and not for pecuniary profit, if no part of the net earnings of the issuer inures to the benefit of any private shareholder or individual, or (2) organized as a chamber of commerce or trade or professional association. The fact that amounts received from memberships or dues or both will or may be used to construct or otherwise acquire facilities for use by members of the nonprofit organization does not disqualify the organization for this

exemption. This exemption does not apply to the securities of any nonprofit organization if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the organization or operation of that nonprofit organization or from remuneration received from that nonprofit organization.

(k) Any agreement, commonly known as a "life income contract," of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes and not for pecuniary profit and (2) which the commissioner designates by rule or order, with a donor in consideration of a donation of property to that issuer and providing for the payment to the donor or persons designated by him or her of income or specified periodic payments from the donated property or other property for the life of the donor or those other persons.

(*l*) Any note, draft, bill of exchange, or banker's acceptance which is freely transferable and of prime quality, arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of that paper which is likewise limited, or any guarantee of that paper or of any such renewal, provided that the paper is not offered to the public in amounts of less than twenty-five thousand dollars ($25,000) in the aggregate to any one purchaser. In addition, the commissioner may, by rule or order, exempt any issuer of any notes, drafts, bills of exchange or banker's acceptances from registration of those securities when the commissioner finds that the registration is not necessary or appropriate in the public interest or for the protection of investors.

(m) Any security issued by any corporation organized and existing under the provisions of Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code.

(n) Any beneficial interest in an employees' pension, profit-sharing, stock bonus or similar benefit plan which meets the requirements for qualification under Section 401 of the federal Internal Revenue Code or any statute amendatory thereof or supplementary thereto. A determination letter from the Internal Revenue Service stating that an employees' pension, profit-sharing, stock bonus or similar benefit plan meets those requirements shall be conclusive evidence that the plan is an employees' pension, profit-sharing, stock bonus or similar plan within the meaning of the first sentence of this subdivision until the date the determination letter is revoked in writing by the Internal Revenue Service, regardless of whether or not the revocation is retroactive.

(o) Any security listed or approved for listing upon notice of issuance on a national securities exchange or designated or approved for designation upon notice of issuance as a national market system security on an interdealer quotation system by the National

Association of Securities Dealers, Inc., if the exchange or interdealer quotation system has been certified by rule or order of the commissioner and any warrant or right to purchase or subscribe to the security. The exemption afforded by this subdivision does not apply to securities listed or designated, or approved for listing or designation upon notice of issuance, in a rollup transaction unless the rollup transaction is an eligible rollup transaction as defined in Section 25014.7.

That certification of any exchange or system shall be made by the commissioner upon the written request of the exchange or system if the commissioner finds that the exchange or system: (i) in acting on applications for listing of common stock substantially applies the minimum standards set forth in either alternative (A) or (B) of paragraph (1), and (ii) in considering suspension or removal from listing or designation, substantially applies each of the criteria set forth in paragraph (2).

(1) Listing standards:

(A) (i) Shareholders' equity of at least four million dollars ($4,000,000).

(ii) Pretax income of at least seven hundred fifty thousand dollars ($750,000) in the issuer's last fiscal year or in two of its last three fiscal years.

(iii) Minimum public distribution of 500,000 shares (exclusive of the holdings of officers, directors, controlling shareholders, and other concentrated or family holdings), together with a minimum of 800 publicholders or minimum public distribution of 1,000,000 shares together with a minimum of 400 publicholders. The exchange or system may also consider the listing or designation of a company's securities if the company has a minimum of 500,000 shares publicly held, a minimum of 400 shareholders and daily trading volume in the issue has been approximately 2,000 shares or more for the six months preceding the date of application. In evaluating the suitability of an issue for listing or designation under this trading provision, the exchange or system shall review the nature and frequency of that activity and any other factors as it may determine to be relevant in ascertaining whether the issue is suitable for trading. A security which trades infrequently shall not be considered for listing or designation under this paragraph even though average daily volume amounts to 2,000 shares per day or more.

Companies whose securities are concentrated in a limited geographical area, or whose securities are largely held in block by institutional investors, normally may not be considered eligible for listing or designation unless the public distribution appreciably exceeds 500,000 shares.

(iv) Minimum price of three dollars ($3) per share for a reasonable period of time prior to the filing of a listing or designation application; provided, however, in certain instances an exchange or system may favorably consider listing an issue selling for less than

three dollars ($3) per share after considering all pertinent factors, including market conditions in general, whether historically the issue has sold above three dollars ($3) per share, the applicant's capitalization, and the number of outstanding and publicly held shares of the issue.

(v) An aggregate market value for publicly held shares of at least three million dollars ($3,000,000).

(B) (i) Shareholders' equity of at least four million dollars ($4,000,000).

(ii) Minimum public distribution set forth in clause (iii) of subparagraph (A) of paragraph (1).

(iii) Operating history of at least three years.

(iv) An aggregate market value for publicly held shares of at least fifteen million dollars ($15,000,000).

(2) Criteria for consideration of suspension or removal from listing:

(i) If a company which (A) has shareholders' equity of less than one million dollars ($1,000,000) has sustained net losses in each of its two most recent fiscal years, or (B) has net tangible assets of less than three million dollars ($3,000,000) and has sustained net losses in three of its four most recent fiscal years.

(ii) If the number of shares publicly held (excluding the holdings of officers, directors, controlling shareholders and other concentrated or family holdings) is less than 150,000.

(iii) If the total number of shareholders is less than 400 or if the number of shareholders of lots of 100 shares or more is less than 300.

(iv) If the aggregate market value of shares publicly held is less than seven hundred fifty thousand dollars ($750,000).

(v) If shares of common stock sell at a price of less than three dollars ($3) per share for a substantial period of time and the issuer shall fail to effectuate a reverse stock split of the shares within a reasonable period of time after being requested by the exchange to take that action.

A national securities exchange or interdealer quotation system of the National Association of Securities Dealers, Inc. certified by rule or order of the commissioner under this subdivision shall file annual reports when requested to do so by the commissioner. The annual reports shall contain, by issuer: the variances granted to an exchange's listing standards or interdealer quotation system's designation criteria, including variances from corporate governance and voting rights' standards, for any security of that issuer; the reasons for the variances; a discussion of the review procedure instituted by the exchange or interdealer quotation system to determine the effect of the variances on investors and whether the variances should be continued; and any other information that the commissioner deems relevant. The purpose of these reports is to assist the commissioner in determining whether the quantitative and qualitative requirements of this subdivision are substantially being

met by the exchange or system in general or with regard to any particular security.

The commissioner after appropriate notice and opportunity for hearing in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, may, in his or her discretion, by rule or order, decertify any exchange or interdealer quotation system previously certified which ceases substantially to apply the minimum standards or criteria as set forth in paragraphs (1) and (2).

A rule or order of certification shall conclusively establish that any security listed or approved for listing upon notice of issuance on any exchange, or designated or approved for designation upon issuance as a national market system security on any interdealer quotation system, named in a rule or order of certification, and any warrant or right to purchase or subscribe to any such security, is exempt under this subdivision until the adoption by the commissioner of any rule or order decertifying the exchange or interdealer quotation system.

(p) A promissory note secured by a lien on real property, which is neither one of a series of notes of equal priority secured by interests in the same real property nor a note in which beneficial interests are sold to more than one person or entity.

(q) Any unincorporated interindemnity or reciprocal or interinsurance contract, which qualifies under the provisions of Section 1280.7 of the Insurance Code, between members of a cooperative corporation, organized and operating under Part 2 (commencing with Section 12200) of Division 3 of Title 1, and whose members consist only of physicians and surgeons licensed in California, which contracts indemnify solely in respect to medical malpractice claims against the members, and which do not collect in advance of loss any moneys other than contributions by each member to a collective reserve trust fund or for necessary expenses of administration.

(1) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of Section 1280.7 of the Insurance Code, the commissioner may in the commissioner's discretion bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance with Section 1280.7 of the Insurance Code. Upon a proper showing a permanent or preliminary injunction, restraining order or writ of mandate shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets.

(2) The commissioner may, in the commissioner's discretion, (A) make such public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated or is about to violate any provision of Section 1280.7 of the Insurance Code or to aid in the enforcement of Section

1280.7, and (B) publish information concerning the violation of Section 1280.7.

(3) For the purpose of any investigation or proceeding under this section, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(4) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the superior court, upon application by the commissioner, may issue to the person an order requiring the person to appear before the commissioner, or the officer designated by the commissioner, there to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt.

(5) No person is excused from attending or testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise), required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture, but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after validly claiming the privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(6) The cost of any review, examination, audit, or investigation made by the commissioner under Section 1280.7 of the Insurance Code shall be paid to the commissioner by the person subject to the review, examination, audit, or investigation, and the commissioner may maintain an action for the recovery of these costs in any court of competent jurisdiction. In determining the cost, the commissioner may use the actual amount of the salary or other compensation paid to the persons making the review, examination, audit, or investigation plus the actual amount of expenses including overhead reasonably incurred in the performance of the work.

The recoverable cost of each review, examination, audit, or investigation made by the commissioner under Section 1280.7 of the Insurance Code shall not exceed twenty-five thousand dollars ($25,000), except that costs exceeding twenty-five thousand dollars ($25,000) shall be recoverable if the costs are necessary to prevent a violation of any provision of Section 1280.7 of the Insurance Code.

(r) Any shares or memberships issued by any corporation organized and existing pursuant to the provisions of Part 2 (commencing with Section 12200) of Division 3 of Title 1, provided the aggregate investment of any shareholder or member in shares or memberships sold pursuant to this subdivision does not exceed three hundred dollars ($300). This exemption does not apply to the shares or memberships of any such corporation if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the corporation or the operation of the corporation or from remuneration, other than reasonable salary, received from the corporation. This exemption does not apply to nonvoting shares or memberships of any such corporation issued to any person who does not possess, and who will not acquire in connection with the issuance of nonvoting shares or memberships, voting power (Section 12253) in the corporation. This exemption also does not apply to shares or memberships issued by a nonprofit cooperative corporation organized to facilitate the creation of an unincorporated interindemnity arrangement that provides indemnification for medical malpractice to its physician and surgeon members as set forth in subdivision (q).

(s) Any security consisting of or representing an interest in a pool of mortgage loans which meets each of the following requirements:

(1) The pool consists of whole mortgage loans or participation interests in those loans, which loans were originated or acquired in the ordinary course of business by a national bank or federal savings association or federal savings bank having its principal office in this state, by a bank incorporated under the laws of this state or by a savings association as defined in subdivision (a) of Section 5102 of the Financial Code and which is subject to the supervision and regulation of the Commissioner of Financial Institutions, and each of which loans at the time of transfer to the pool is an authorized investment for such originating or acquiring institution.

(2) The pool of mortgage loans is held in trust by a trustee which is a financial institution specified in paragraph (1) as trustee or otherwise.

(3) The loans are serviced by a financial institution specified in paragraph (1).

(4) The security is not offered in amounts of less than twenty-five thousand dollars ($25,000) in the aggregate to any one purchaser.

(5) The security is offered pursuant to a registration under the Securities Act of 1933, or pursuant to an exemption under Regulation A under that act, or in the opinion of counsel for the issuer, is offered pursuant to an exemption under Section 4(2) of that act.

(t) (1) Any security issued or guaranteed by and representing an interest in or a direct obligation of an industrial loan company incorporated under the laws of the state and authorized by the Commissioner of Financial Institutions to engage in industrial loan business.

(2) Any investment certificate in or issued by any industrial loan company that is organized under the laws of a state of the United States other than this state, that is insured by the Federal Deposit Insurance Corporation, and that maintains a branch office in this state.

(u) Any security issued by an issuer registered as an open-end management company or unit investment trust under the Investment Company Act of 1940, provided that all of the following requirements are met:

(1) The registration statement for the securities is currently effective under the Securities Act of 1933.

(2) Prior to any offer or sale in this state of securities claimed to be exempt under this subdivision, there is filed with or paid to the commissioner each of the following:

(A) A notice of intention to sell that has been executed by the issuer and that includes the name and address of the issuer and the name of the securities to be offered and sold under this subdivision.

(B) A copy of the current prospectus to be used in the offer and sale of the security.

(C) The fee provided in subdivision (f) of Section 25608.

If any offer or sale is made pursuant to this exemption more than 12 months after the date the notice was filed under this subdivision, the issuer shall file another notice of intention to sell, a copy of the prospectus the issuer is currently utilizing for the purpose of making that offer, and the fee specified in subparagraph (C) of paragraph (2).

SEC. 18.2. Section 25100 of the Corporations Code is amended to read:

25100. The following securities are exempted from Sections 25110, 25120, and 25130:

(a) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state or any agency or corporate or other instrumentality of any one or more of the foregoing; or any certificate of deposit for any of the foregoing.

(b) Any security issued or guaranteed by the Dominion of Canada, any Canadian province, any political subdivision or municipality of that province, or by any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor; or any certificate of deposit for any of the foregoing.

(c) Any security issued or guaranteed by and representing an interest in or a direct obligation of a national bank or a bank or trust company incorporated under the laws of this state, and any security issued by a bank to one or more other banks and representing an interest in an asset of the issuing bank.

(d) Any security issued or guaranteed by a federal savings association or federal savings bank or federal land bank or joint land bank or national farm loan association or by any savings association, as defined in subdivision (a) of Section 5102 of the Financial Code, which is subject to the supervision and regulation of the Commissioner of Financial Institutions of this state.

(e) Any security (other than an interest in all or portions of a parcel or parcels of real property which are subdivided land or a subdivision or in a real estate development), the issuance of which is subject to authorization by the Insurance Commissioner, the Public Utilities Commission, or the Real Estate Commissioner of this state.

(f) Any security consisting of any interest in all or portions of a parcel or parcels of real property which are subdivided lands or a subdivision or in a real estate development; provided that the exemption in this subdivision shall not be applicable to any investment contract sold or offered for sale with, or as part of, any such interest, or to any person engaged in the business of selling, distributing, or supplying water for irrigation purposes or domestic use which is not a public utility.

(g) Any mutual capital certificates or savings accounts, as defined in the Savings Association Law, issued by a savings association, as defined by subdivision (a) of Section 5102 of the Financial Code, and holding a license or certificate of authority then in force from the Commissioner of Financial Institutions of this state.

(h) Any security issued or guaranteed by any federal credit union, or by any credit union organized and supervised, or regulated, under the Credit Union Law.

(i) Any security issued or guaranteed by any railroad, other common carrier, public utility, or public utility holding company which is (1) subject to the jurisdiction of the Interstate Commerce Commission or (2) a holding company registered with the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 or a subsidiary of that company within the meaning of that act or (3) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, of any state, of Canada or of any Canadian province; and the security is subject to registration with or authorization of issuance by that authority.

(j) Any security (except evidences of indebtedness, whether interest bearing or not) of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes and not for pecuniary profit, if no part of the net earnings of the issuer inures to the benefit of any private shareholder or individual, or (2) organized as a chamber of commerce or trade or professional association. The fact that amounts received from memberships or dues or both will or may be used to construct or otherwise acquire facilities for use by members of the nonprofit organization does not disqualify the organization for this

exemption. This exemption does not apply to the securities of any nonprofit organization if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the organization or operation of that nonprofit organization or from remuneration received from that nonprofit organization.

(k) Any agreement, commonly known as a "life income contract," of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes and not for pecuniary profit and (2) which the commissioner designates by rule or order, with a donor in consideration of a donation of property to that issuer and providing for the payment to the donor or persons designated by him or her of income or specified periodic payments from the donated property or other property for the life of the donor or those other persons.

(*l*) Any note, draft, bill of exchange, or banker's acceptance which is freely transferable and of prime quality, arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of that paper which is likewise limited, or any guarantee of that paper or of any such renewal, provided that the paper is not offered to the public in amounts of less than twenty-five thousand dollars ($25,000) in the aggregate to any one purchaser. In addition, the commissioner may, by rule or order, exempt any issuer of any notes, drafts, bills of exchange or banker's acceptances from qualification of those securities when the commissioner finds that the qualification is not necessary or appropriate in the public interest or for the protection of investors.

(m) Any security issued by any corporation organized and existing under the provisions of Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code.

(n) Any beneficial interest in an employees' pension, profit-sharing, stock bonus or similar benefit plan which meets the requirements for qualification under Section 401 of the federal Internal Revenue Code or any statute amendatory thereof or supplementary thereto. A determination letter from the Internal Revenue Service stating that an employees' pension, profit-sharing, stock bonus or similar benefit plan meets those requirements shall be conclusive evidence that the plan is an employees' pension, profit-sharing, stock bonus or similar plan within the meaning of the first sentence of this subdivision until the date the determination letter is revoked in writing by the Internal Revenue Service, regardless of whether or not the revocation is retroactive.

(o) Any security listed or approved for listing upon notice of issuance on a national securities exchange or designated or approved for designation upon notice of issuance as a national market system security on an interdealer quotation system by the National

Association of Securities Dealers, Inc., if the exchange or interdealer quotation system has been certified by rule or order of the commissioner and any warrant or right to purchase or subscribe to the security. The exemption afforded by this subdivision does not apply to securities listed or designated, or approved for listing or designation upon notice of issuance, in a rollup transaction unless the rollup transaction is an eligible rollup transaction as defined in Section 25014.7.

That certification of any exchange or system shall be made by the commissioner upon the written request of the exchange or system if the commissioner finds that the exchange or system: (i) in acting on applications for listing of common stock substantially applies the minimum standards set forth in either alternative (A) or (B) of paragraph (1), and (ii) in considering suspension or removal from listing or designation, substantially applies each of the criteria set forth in paragraph (2).

(1) Listing standards:

(A) (i) Shareholders' equity of at least four million dollars ($4,000,000).

(ii) Pretax income of at least seven hundred fifty thousand dollars ($750,000) in the issuer's last fiscal year or in two of its last three fiscal years.

(iii) Minimum public distribution of 500,000 shares (exclusive of the holdings of officers, directors, controlling shareholders, and other concentrated or family holdings), together with a minimum of 800 public holders or minimum public distribution of 1,000,000 shares together with a minimum of 400 public holders. The exchange or system may also consider the listing or designation of a company's securities if the company has a minimum of 500,000 shares publicly held, a minimum of 400 shareholders and daily trading volume in the issue has been approximately 2,000 shares or more for the six months preceding the date of application. In evaluating the suitability of an issue for listing or designation under this trading provision, the exchange or system shall review the nature and frequency of that activity and any other factors as it may determine to be relevant in ascertaining whether the issue is suitable for trading. A security which trades infrequently shall not be considered for listing or designation under this paragraph even though average daily volume amounts to 2,000 shares per day or more.

Companies whose securities are concentrated in a limited geographical area, or whose securities are largely held in block by institutional investors, normally may not be considered eligible for listing or designation unless the public distribution appreciably exceeds 500,000 shares.

(iv) Minimum price of three dollars ($3) per share for a reasonable period of time prior to the filing of a listing or designation application; provided, however, in certain instances an exchange or system may favorably consider listing an issue selling for less than

three dollars ($3) per share after considering all pertinent factors, including market conditions in general, whether historically the issue has sold above three dollars ($3) per share, the applicant's capitalization, and the number of outstanding and publicly held shares of the issue.

(v) An aggregate market value for publicly held shares of at least three million dollars ($3,000,000).

(B) (i) Shareholders' equity of at least four million dollars ($4,000,000).

(ii) Minimum public distribution set forth in clause (iii) of subparagraph (A) of paragraph (1).

(iii) Operating history of at least three years.

(iv) An aggregate market value for publicly held shares of at least fifteen million dollars ($15,000,000).

(2) Criteria for consideration of suspension or removal from listing:

(i) If a company which (A) has shareholders' equity of less than one million dollars ($1,000,000) has sustained net losses in each of its two most recent fiscal years, or (B) has net tangible assets of less than three million dollars ($3,000,000) and has sustained net losses in three of its four most recent fiscal years.

(ii) If the number of shares publicly held (excluding the holdings of officers, directors, controlling shareholders and other concentrated or family holdings) is less than 150,000.

(iii) If the total number of shareholders is less than 400 or if the number of shareholders of lots of 100 shares or more is less than 300.

(iv) If the aggregate market value of shares publicly held is less than seven hundred fifty thousand dollars ($750,000).

(v) If shares of common stock sell at a price of less than three dollars ($3) per share for a substantial period of time and the issuer shall fail to effectuate a reverse stock split of the shares within a reasonable period of time after being requested by the exchange to take that action.

A national securities exchange or interdealer quotation system of the National Association of Securities Dealers, Inc. certified by rule or order of the commissioner under this subdivision shall file annual reports when requested to do so by the commissioner. The annual reports shall contain, by issuer: the variances granted to an exchange's listing standards or interdealer quotation system's designation criteria, including variances from corporate governance and voting rights' standards, for any security of that issuer; the reasons for the variances; a discussion of the review procedure instituted by the exchange or interdealer quotation system to determine the effect of the variances on investors and whether the variances should be continued; and any other information that the commissioner deems relevant. The purpose of these reports is to assist the commissioner in determining whether the quantitative and qualitative requirements of this subdivision are substantially being

met by the exchange or system in general or with regard to any particular security.

The commissioner after appropriate notice and opportunity for hearing in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, may, in his or her discretion, by rule or order, decertify any exchange or interdealer quotation system previously certified which ceases substantially to apply the minimum standards or criteria as set forth in paragraphs (1) and (2).

A rule or order of certification shall conclusively establish that any security listed or approved for listing upon notice of issuance on any exchange, or designated or approved for designation upon issuance as a national market system security on any interdealer quotation system, named in a rule or order of certification, and any warrant or right to purchase or subscribe to any such security, is exempt under this subdivision until the adoption by the commissioner of any rule or order decertifying the exchange or interdealer quotation system.

(p) A promissory note secured by a lien on real property, which is neither one of a series of notes of equal priority secured by interests in the same real property nor a note in which beneficial interests are sold to more than one person or entity.

(q) Any unincorporated interindemnity or reciprocal or interinsurance contract, which qualifies under the provisions of Section 1280.7 of the Insurance Code, between members of a cooperative corporation, organized and operating under Part 2 (commencing with Section 12200) of Division 3 of Title 1, and whose members consist only of physicians and surgeons licensed in California, which contracts indemnify solely in respect to medical malpractice claims against the members, and which do not collect in advance of loss any moneys other than contributions by each member to a collective reserve trust fund or for necessary expenses of administration.

(1) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of Section 1280.7 of the Insurance Code, the commissioner may in the commissioner's discretion bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance with Section 1280.7 of the Insurance Code. Upon a proper showing a permanent or preliminary injunction, restraining order or writ of mandate shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets.

(2) The commissioner may, in the commissioner's discretion, (A) make such public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated or is about to violate any provision of Section 1280.7 of the Insurance Code or to aid in the enforcement of Section

1280.7, and (B) publish information concerning the violation of Section 1280.7.

(3) For the purpose of any investigation or proceeding under this section, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(4) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the superior court, upon application by the commissioner, may issue to the person an order requiring the person to appear before the commissioner, or the officer designated by the commissioner, there to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt.

(5) No person is excused from attending or testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise), required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture, but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after validly claiming the privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(6) The cost of any review, examination, audit, or investigation made by the commissioner under Section 1280.7 of the Insurance Code shall be paid to the commissioner by the person subject to the review, examination, audit, or investigation, and the commissioner may maintain an action for the recovery of these costs in any court of competent jurisdiction. In determining the cost, the commissioner may use the actual amount of the salary or other compensation paid to the persons making the review, examination, audit, or investigation plus the actual amount of expenses including overhead reasonably incurred in the performance of the work.

The recoverable cost of each review, examination, audit, or investigation made by the commissioner under Section 1280.7 of the Insurance Code shall not exceed twenty-five thousand dollars ($25,000), except that costs exceeding twenty-five thousand dollars ($25,000) shall be recoverable if the costs are necessary to prevent a violation of any provision of Section 1280.7 of the Insurance Code.

(r) Any shares or memberships issued by any corporation organized and existing pursuant to the provisions of Part 2 (commencing with Section 12200) of Division 3 of Title 1, provided the aggregate investment of any shareholder or member in shares or memberships sold pursuant to this subdivision does not exceed three hundred dollars ($300). This exemption does not apply to the shares or memberships of any such corporation if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the corporation or the operation of the corporation or from remuneration, other than reasonable salary, received from the corporation. This exemption does not apply to nonvoting shares or memberships of any such corporation issued to any person who does not possess, and who will not acquire in connection with the issuance of nonvoting shares or memberships, voting power (Section 12253) in the corporation. This exemption also does not apply to shares or memberships issued by a nonprofit cooperative corporation organized to facilitate the creation of an unincorporated interindemnity arrangement that provides indemnification for medical malpractice to its physician and surgeon members as set forth in subdivision (q).

(s) Any security consisting of or representing an interest in a pool of mortgage loans which meets each of the following requirements:

(1) The pool consists of whole mortgage loans or participation interests in those loans, which loans were originated or acquired in the ordinary course of business by a national bank or federal savings association or federal savings bank having its principal office in this state, by a bank incorporated under the laws of this state or by a savings association as defined in subdivision (a) of Section 5102 of the Financial Code and which is subject to the supervision and regulation of the Commissioner of Financial Institutions, and each of which loans at the time of transfer to the pool is an authorized investment for such originating or acquiring institution.

(2) The pool of mortgage loans is held in trust by a trustee which is a financial institution specified in paragraph (1) as trustee or otherwise.

(3) The loans are serviced by a financial institution specified in paragraph (1).

(4) The security is not offered in amounts of less than twenty-five thousand dollars ($25,000) in the aggregate to any one purchaser.

(5) The security is offered pursuant to a registration under the Securities Act of 1933, or pursuant to an exemption under Regulation A under that act, or in the opinion of counsel for the issuer, is offered pursuant to an exemption under Section 4(2) of that act.

(t) (1) Any security issued or guaranteed by and representing an interest in or a direct obligation of an industrial loan company incorporated under the laws of the state and authorized by the Commissioner of Financial Institutions to engage in industrial loan business.

(2) Any investment certificate in or issued by any industrial loan company that is organized under the laws of a state of the United States other than this state, that is insured by the Federal Deposit Insurance Corporation, and that maintains a branch office in this state.

(u) Any security issued by an issuer registered as an open-end management company or unit investment trust under the Investment Company Act of 1940, provided that all of the following requirements are met:

(1) The registration statement for the securities is currently effective under the Securities Act of 1933.

(2) Prior to any offer or sale in this state of securities claimed to be exempt under this subdivision, there is filed with or paid to the commissioner each of the following:

(A) A notice of intention to sell that has been executed by the issuer and that includes the name and address of the issuer and the name of the securities to be offered and sold under this subdivision.

(B) A copy of the current prospectus to be used in the offer and sale of the security.

(C) The fee provided in subdivision (f) of Section 25608.

If any offer or sale is made pursuant to this exemption more than 12 months after the date the notice was filed under this subdivision, the issuer shall file another notice of intention to sell, a copy of the prospectus the issuer is currently utilizing for the purpose of making that offer, and the fee specified in subparagraph (C) of paragraph (2).

SEC. 18.3. Section 25100 of the Corporations Code is amended to read:

25100. The following securities are exempted from Sections 25110, 25120, and 25130:

(a) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state or any agency or corporate or other instrumentality of any one or more of the foregoing; or any certificate of deposit for any of the foregoing.

(b) Any security issued or guaranteed by the Dominion of Canada, any Canadian province, any political subdivision or municipality of that province, or by any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor; or any certificate of deposit for any of the foregoing.

(c) Any security issued or guaranteed by and representing an interest in or a direct obligation of a national bank or a bank or trust company incorporated under the laws of this state, and any security issued by a bank to one or more other banks and representing an interest in an asset of the issuing bank.

(d) Any security issued or guaranteed by a federal savings and loan association or federal savings bank or federal land bank or joint land bank or national farm loan association or by any savings association, as defined in subdivision (a) of Section 5102 of the Financial Code, which is subject to the supervision and regulation of the Savings and Loan Commissioner of this state.

(e) Any security (other than an interest in all or portions of a parcel or parcels of real property which are subdivided land or a subdivision or in a real estate development), the issuance of which is subject to authorization by the Insurance Commissioner, the Public Utilities Commission, or the Real Estate Commissioner of this state.

(f) Any security consisting of any interest in all or portions of a parcel or parcels of real property which are subdivided lands or a subdivision or in a real estate development; provided that the exemption in this subdivision shall not be applicable to any investment contract sold or offered for sale with, or as part of, any such interest, or to any person engaged in the business of selling, distributing, or supplying water for irrigation purposes or domestic use which is not a public utility.

(g) Any mutual capital certificates or savings accounts, as defined in the Savings Association Law, issued by a savings association, as defined by subdivision (a) of Section 5102 of the Financial Code, and holding a license or certificate of authority then in force from the Savings and Loan Commissioner of this state.

(h) Any security issued or guaranteed by any federal credit union, or by any credit union organized and supervised, or regulated, under the Credit Union Law.

(i) Any security issued or guaranteed by any railroad, other common carrier, public utility, or public utility holding company which is (1) subject to the jurisdiction of the Interstate Commerce Commission or (2) a holding company registered with the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 or a subsidiary of that company within the meaning of that act or (3) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, of any state, of Canada or of any Canadian province; and the security is subject to registration with or authorization of issuance by that authority.

(j) Any security (except evidences of indebtedness, whether interest bearing or not) of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes and not for pecuniary profit, if no part of the net earnings of the issuer inures to the benefit of any private shareholder or individual, or (2) organized as a chamber of commerce or trade or professional association. The fact that amounts received from memberships or dues or both will or may be used to construct or otherwise acquire facilities for use by members of the nonprofit organization does not disqualify the organization for this

exemption. This exemption does not apply to the securities of any nonprofit organization if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the organization or operation of that nonprofit organization or from remuneration received from that nonprofit organization.

(k) Any agreement, commonly known as a "life income contract," of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes and not for pecuniary profit and (2) which the commissioner designates by rule or order, with a donor in consideration of a donation of property to that issuer and providing for the payment to the donor or persons designated by him or her of income or specified periodic payments from the donated property or other property for the life of the donor or those other persons.

(*l*) Any note, draft, bill of exchange, or banker's acceptance which is freely transferable and of prime quality, arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of that paper which is likewise limited, or any guarantee of that paper or of any such renewal, provided that the paper is not offered to the public in amounts of less than twenty-five thousand dollars ($25,000) in the aggregate to any one purchaser. In addition, the commissioner may, by rule or order, exempt any issuer of any notes, drafts, bills of exchange or banker's acceptances from registration of those securities when the commissioner finds that the registration is not necessary or appropriate in the public interest or for the protection of investors.

(m) Any security issued by any corporation organized and existing under the provisions of Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code.

(n) Any beneficial interest in an employees' pension, profit-sharing, stock bonus or similar benefit plan which meets the requirements for qualification under Section 401 of the federal Internal Revenue Code or any statute amendatory thereof or supplementary thereto. A determination letter from the Internal Revenue Service stating that an employees' pension, profit-sharing, stock bonus or similar benefit plan meets those requirements shall be conclusive evidence that the plan is an employees' pension, profit-sharing, stock bonus or similar plan within the meaning of the first sentence of this subdivision until the date the determination letter is revoked in writing by the Internal Revenue Service, regardless of whether or not the revocation is retroactive.

(o) Any security listed or approved for listing upon notice of issuance on a national securities exchange or designated or approved for designation upon notice of issuance as a national market system security on an interdealer quotation system by the National

Association of Securities Dealers, Inc., if the exchange or interdealer quotation system has been certified by rule or order of the commissioner and any warrant or right to purchase or subscribe to the security. The exemption afforded by this subdivision does not apply to securities listed or designated, or approved for listing or designation upon notice of issuance, in a rollup transaction unless the rollup transaction is an eligible rollup transaction as defined in Section 25014.7.

That certification of any exchange or system shall be made by the commissioner upon the written request of the exchange or system if the commissioner finds that the exchange or system: (i) in acting on applications for listing of common stock substantially applies the minimum standards set forth in either alternative (A) or (B) of paragraph (1), and (ii) in considering suspension or removal from listing or designation, substantially applies each of the criteria set forth in paragraph (2).

(1) Listing standards:

(A) (i) Shareholders' equity of at least four million dollars ($4,000,000).

(ii) Pretax income of at least seven hundred fifty thousand dollars ($750,000) in the issuer's last fiscal year or in two of its last three fiscal years.

(iii) Minimum public distribution of 500,000 shares (exclusive of the holdings of officers, directors, controlling shareholders, and other concentrated or family holdings), together with a minimum of 800 publicholders or minimum public distribution of 1,000,000 shares together with a minimum of 400 publicholders. The exchange or system may also consider the listing or designation of a company's securities if the company has a minimum of 500,000 shares publicly held, a minimum of 400 shareholders and daily trading volume in the issue has been approximately 2,000 shares or more for the six months preceding the date of application. In evaluating the suitability of an issue for listing or designation under this trading provision, the exchange or system shall review the nature and frequency of that activity and any other factors as it may determine to be relevant in ascertaining whether the issue is suitable for trading. A security which trades infrequently shall not be considered for listing or designation under this paragraph even though average daily volume amounts to 2,000 shares per day or more.

Companies whose securities are concentrated in a limited geographical area, or whose securities are largely held in block by institutional investors, normally may not be considered eligible for listing or designation unless the public distribution appreciably exceeds 500,000 shares.

(iv) Minimum price of three dollars ($3) per share for a reasonable period of time prior to the filing of a listing or designation application; provided, however, in certain instances an exchange or system may favorably consider listing an issue selling for less than

three dollars ($3) per share after considering all pertinent factors, including market conditions in general, whether historically the issue has sold above three dollars ($3) per share, the applicant's capitalization, and the number of outstanding and publicly held shares of the issue.

(v) An aggregate market value for publicly held shares of at least three million dollars ($3,000,000).

(B) (i) Shareholders' equity of at least four million dollars ($4,000,000).

(ii) Minimum public distribution set forth in clause (iii) of subparagraph (A) of paragraph (1).

(iii) Operating history of at least three years.

(iv) An aggregate market value for publicly held shares of at least fifteen million dollars ($15,000,000).

(2) Criteria for consideration of suspension or removal from listing:

(i) If a company which (A) has shareholders' equity of less than one million dollars ($1,000,000) has sustained net losses in each of its two most recent fiscal years, or (B) has net tangible assets of less than three million dollars ($3,000,000) and has sustained net losses in three of its four most recent fiscal years.

(ii) If the number of shares publicly held (excluding the holdings of officers, directors, controlling shareholders and other concentrated or family holdings) is less than 150,000.

(iii) If the total number of shareholders is less than 400 or if the number of shareholders of lots of 100 shares or more is less than 300.

(iv) If the aggregate market value of shares publicly held is less than seven hundred fifty thousand dollars ($750,000).

(v) If shares of common stock sell at a price of less than three dollars ($3) per share for a substantial period of time and the issuer shall fail to effectuate a reverse stock split of the shares within a reasonable period of time after being requested by the exchange to take that action.

A national securities exchange or interdealer quotation system of the National Association of Securities Dealers, Inc. certified by rule or order of the commissioner under this subdivision shall file annual reports when requested to do so by the commissioner. The annual reports shall contain, by issuer: the variances granted to an exchange's listing standards or interdealer quotation system's designation criteria, including variances from corporate governance and voting rights' standards, for any security of that issuer; the reasons for the variances; a discussion of the review procedure instituted by the exchange or interdealer quotation system to determine the effect of the variances on investors and whether the variances should be continued; and any other information that the commissioner deems relevant. The purpose of these reports is to assist the commissioner in determining whether the quantitative and qualitative requirements of this subdivision are substantially being

met by the exchange or system in general or with regard to any particular security.

The commissioner after appropriate notice and opportunity for hearing in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, may, in his or her discretion, by rule or order, decertify any exchange or interdealer quotation system previously certified which ceases substantially to apply the minimum standards or criteria as set forth in paragraphs (1) and (2).

A rule or order of certification shall conclusively establish that any security listed or approved for listing upon notice of issuance on any exchange, or designated or approved for designation upon issuance as a national market system security on any interdealer quotation system, named in a rule or order of certification, and any warrant or right to purchase or subscribe to any such security, is exempt under this subdivision until the adoption by the commissioner of any rule or order decertifying the exchange or interdealer quotation system.

(p) A promissory note secured by a lien on real property, which is neither one of a series of notes of equal priority secured by interests in the same real property nor a note in which beneficial interests are sold to more than one person or entity.

(q) Any unincorporated interindemnity or reciprocal or interinsurance contract, which qualifies under the provisions of Section 1280.7 of the Insurance Code, between members of a cooperative corporation, organized and operating under Part 2 (commencing with Section 12200) of Division 3 of Title 1, and whose members consist only of physicians and surgeons licensed in California, which contracts indemnify solely in respect to medical malpractice claims against the members, and which do not collect in advance of loss any moneys other than contributions by each member to a collective reserve trust fund or for necessary expenses of administration.

(1) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of Section 1280.7 of the Insurance Code, the commissioner may in the commissioner's discretion bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance with Section 1280.7 of the Insurance Code. Upon a proper showing a permanent or preliminary injunction, restraining order or writ of mandate shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets.

(2) The commissioner may, in the commissioner's discretion, (A) make such public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated or is about to violate any provision of Section 1280.7 of the Insurance Code or to aid in the enforcement of Section

1280.7, and (B) publish information concerning the violation of Section 1280.7.

(3) For the purpose of any investigation or proceeding under this section, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(4) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the superior court, upon application by the commissioner, may issue to the person an order requiring the person to appear before the commissioner, or the officer designated by the commissioner, there to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt.

(5) No person is excused from attending or testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise), required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture, but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after validly claiming the privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(6) The cost of any review, examination, audit, or investigation made by the commissioner under Section 1280.7 of the Insurance Code shall be paid to the commissioner by the person subject to the review, examination, audit, or investigation, and the commissioner may maintain an action for the recovery of these costs in any court of competent jurisdiction. In determining the cost, the commissioner may use the actual amount of the salary or other compensation paid to the persons making the review, examination, audit, or investigation plus the actual amount of expenses including overhead reasonably incurred in the performance of the work.

The recoverable cost of each review, examination, audit, or investigation made by the commissioner under Section 1280.7 of the Insurance Code shall not exceed twenty-five thousand dollars ($25,000), except that costs exceeding twenty-five thousand dollars ($25,000) shall be recoverable if the costs are necessary to prevent a violation of any provision of Section 1280.7 of the Insurance Code.

(r) Any shares or memberships issued by any corporation organized and existing pursuant to the provisions of Part 2 (commencing with Section 12200) of Division 3 of Title 1, provided the aggregate investment of any shareholder or member in shares or memberships sold pursuant to this subdivision does not exceed three hundred dollars ($300). This exemption does not apply to the shares or memberships of any such corporation if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the corporation or the operation of the corporation or from remuneration, other than reasonable salary, received from the corporation. This exemption does not apply to nonvoting shares or memberships of any such corporation issued to any person who does not possess, and who will not acquire in connection with the issuance of nonvoting shares or memberships, voting power (Section 12253) in the corporation. This exemption also does not apply to shares or memberships issued by a nonprofit cooperative corporation organized to facilitate the creation of an unincorporated interindemnity arrangement that provides indemnification for medical malpractice to its physician and surgeon members as set forth in subdivision (q).

(s) Any security consisting of or representing an interest in a pool of mortgage loans which meets each of the following requirements:

(1) The pool consists of whole mortgage loans or participation interests in those loans, which loans were originated or acquired in the ordinary course of business by a national bank or federal savings and loan association or federal savings bank having its principal office in this state, by a bank incorporated under the laws of this state or by a savings association as defined in subdivision (a) of Section 5102 of the Financial Code and which is subject to the supervision and regulation of the Savings and Loan Commissioner, which at the time of transfer to the pool is an authorized investment for such originating or acquiring institution.

(2) The pool of mortgage loans is held in trust by a trustee which is a financial institution specified in paragraph (1) as trustee or otherwise.

(3) The loans are serviced by a financial institution specified in paragraph (1).

(4) The security is not offered in amounts of less than twenty-five thousand dollars ($25,000) in the aggregate to any one purchaser.

(5) The security is offered pursuant to a registration under the Securities Act of 1933, or pursuant to an exemption under Regulation A under that act, or in the opinion of counsel for the issuer, is offered pursuant to an exemption under Section 4(2) of that act.

(t) Any security issued by an issuer registered as an open-end management company or unit investment trust under the Investment Company Act of 1940, provided that all of the following requirements are met:

(1) The registration statement for the securities is currently effective under the Securities Act of 1933.

(2) Prior to any offer or sale in this state of securities claimed to be exempt under this subdivision, there is filed with or paid to the commissioner each of the following:

(A) A notice of intention to sell that has been executed by the issuer and that includes the name and address of the issuer and the name of the securities to be offered and sold under this subdivision.

(B) A copy of the current prospectus to be used in the offer and sale of the security.

(C) The fee provided in subdivision (f) of Section 25608.

If any offer or sale is made pursuant to this exemption more than 12 months after the date the notice was filed under this subdivision, the issuer shall file another notice of intention to sell, a copy of the prospectus the issuer is currently utilizing for the purpose of making that offer, and the fee specified in subparagraph (C) of paragraph (2).

SEC. 18.4. Section 25100 of the Corporations Code is amended to read:

25100. The following securities are exempted from Sections 25110, 25120, and 25130:

(a) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state or any agency or corporate or other instrumentality of any one or more of the foregoing; or any certificate of deposit for any of the foregoing.

(b) Any security issued or guaranteed by the Dominion of Canada, any Canadian province, any political subdivision or municipality of that province, or by any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor; or any certificate of deposit for any of the foregoing.

(c) Any security issued or guaranteed by and representing an interest in or a direct obligation of a national bank or a bank or trust company incorporated under the laws of this state, and any security issued by a bank to one or more other banks and representing an interest in an asset of the issuing bank.

(d) Any security issued or guaranteed by a federal savings association or federal savings bank or federal land bank or joint land bank or national farm loan association or by any savings association, as defined in subdivision (a) of Section 5102 of the Financial Code, which is subject to the supervision and regulation of the Commissioner of Financial Institutions of this state.

(e) Any security (other than an interest in all or portions of a parcel or parcels of real property which are subdivided land or a subdivision or in a real estate development), the issuance of which

is subject to authorization by the Insurance Commissioner, the Public Utilities Commission, or the Real Estate Commissioner of this state.

(f) Any security consisting of any interest in all or portions of a parcel or parcels of real property which are subdivided lands or a subdivision or in a real estate development; provided that the exemption in this subdivision shall not be applicable to any investment contract sold or offered for sale with, or as part of, any such interest, or to any person engaged in the business of selling, distributing, or supplying water for irrigation purposes or domestic use which is not a public utility.

(g) Any mutual capital certificates or savings accounts, as defined in the Savings Association Law, issued by a savings association, as defined by subdivision (a) of Section 5102 of the Financial Code, and holding a license or certificate of authority then in force from the Commissioner of Financial Institutions of this state.

(h) Any security issued or guaranteed by any federal credit union, or by any credit union organized and supervised, or regulated, under the Credit Union Law.

(i) Any security issued or guaranteed by any railroad, other common carrier, public utility, or public utility holding company which is (1) subject to the jurisdiction of the Interstate Commerce Commission or (2) a holding company registered with the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 or a subsidiary of that company within the meaning of that act or (3) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, of any state, of Canada or of any Canadian province; and the security is subject to registration with or authorization of issuance by that authority.

(j) Any security (except evidences of indebtedness, whether interest bearing or not) of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes and not for pecuniary profit, if no part of the net earnings of the issuer inures to the benefit of any private shareholder or individual, or (2) organized as a chamber of commerce or trade or professional association. The fact that amounts received from memberships or dues or both will or may be used to construct or otherwise acquire facilities for use by members of the nonprofit organization does not disqualify the organization for this exemption. This exemption does not apply to the securities of any nonprofit organization if any promoter thereof expects or intends to make a profit directly or indirectly from any business or activity associated with the organization or operation of that nonprofit organization or from remuneration received from that nonprofit organization.

(k) Any agreement, commonly known as a "life income contract," of an issuer (1) organized exclusively for educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes and

not for pecuniary profit and (2) which the commissioner designates by rule or order, with a donor in consideration of a donation of property to that issuer and providing for the payment to the donor or persons designated by him or her of income or specified periodic payments from the donated property or other property for the life of the donor or those other persons.

(*l*) Any note, draft, bill of exchange, or banker's acceptance which is freely transferable and of prime quality, arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of that paper which is likewise limited, or any guarantee of that paper or of any such renewal, provided that the paper is not offered to the public in amounts of less than twenty-five thousand dollars ($25,000) in the aggregate to any one purchaser. In addition, the commissioner may, by rule or order, exempt any issuer of any notes, drafts, bills of exchange or banker's acceptances from registration of those securities when the commissioner finds that the registration is not necessary or appropriate in the public interest or for the protection of investors.

(m) Any security issued by any corporation organized and existing under the provisions of Chapter 1 (commencing with Section 54001) of Division 20 of the Food and Agricultural Code.

(n) Any beneficial interest in an employees' pension, profit-sharing, stock bonus or similar benefit plan which meets the requirements for qualification under Section 401 of the federal Internal Revenue Code or any statute amendatory thereof or supplementary thereto. A determination letter from the Internal Revenue Service stating that an employees' pension, profit-sharing, stock bonus or similar benefit plan meets those requirements shall be conclusive evidence that the plan is an employees' pension, profit-sharing, stock bonus or similar plan within the meaning of the first sentence of this subdivision until the date the determination letter is revoked in writing by the Internal Revenue Service, regardless of whether or not the revocation is retroactive.

(o) Any security listed or approved for listing upon notice of issuance on a national securities exchange or designated or approved for designation upon notice of issuance as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., if the exchange or interdealer quotation system has been certified by rule or order of the commissioner and any warrant or right to purchase or subscribe to the security. The exemption afforded by this subdivision does not apply to securities listed or designated, or approved for listing or designation upon notice of issuance, in a rollup transaction unless the rollup transaction is an eligible rollup transaction as defined in Section 25014.7.

That certification of any exchange or system shall be made by the commissioner upon the written request of the exchange or system if the commissioner finds that the exchange or system: (i) in acting on applications for listing of common stock substantially applies the minimum standards set forth in either alternative (A) or (B) of paragraph (1), and (ii) in considering suspension or removal from listing or designation, substantially applies each of the criteria set forth in paragraph (2).

(1) Listing standards:

(A) (i) Shareholders' equity of at least four million dollars ($4,000,000).

(ii) Pretax income of at least seven hundred fifty thousand dollars ($750,000) in the issuer's last fiscal year or in two of its last three fiscal years.

(iii) Minimum public distribution of 500,000 shares (exclusive of the holdings of officers, directors, controlling shareholders, and other concentrated or family holdings), together with a minimum of 800 publicholders or minimum public distribution of 1,000,000 shares together with a minimum of 400 publicholders. The exchange or system may also consider the listing or designation of a company's securities if the company has a minimum of 500,000 shares publicly held, a minimum of 400 shareholders and daily trading volume in the issue has been approximately 2,000 shares or more for the six months preceding the date of application. In evaluating the suitability of an issue for listing or designation under this trading provision, the exchange or system shall review the nature and frequency of that activity and any other factors as it may determine to be relevant in ascertaining whether the issue is suitable for trading. A security which trades infrequently shall not be considered for listing or designation under this paragraph even though average daily volume amounts to 2,000 shares per day or more.

Companies whose securities are concentrated in a limited geographical area, or whose securities are largely held in block by institutional investors, normally may not be considered eligible for listing or designation unless the public distribution appreciably exceeds 500,000 shares.

(iv) Minimum price of three dollars ($3) per share for a reasonable period of time prior to the filing of a listing or designation application; provided, however, in certain instances an exchange or system may favorably consider listing an issue selling for less than three dollars ($3) per share after considering all pertinent factors, including market conditions in general, whether historically the issue has sold above three dollars ($3) per share, the applicant's capitalization, and the number of outstanding and publicly held shares of the issue.

(v) An aggregate market value for publicly held shares of at least three million dollars ($3,000,000).

(B) (i) Shareholders' equity of at least four million dollars ($4,000,000).

(ii) Minimum public distribution set forth in clause (iii) of subparagraph (A) of paragraph (1).

(iii) Operating history of at least three years.

(iv) An aggregate market value for publicly held shares of at least fifteen million dollars ($15,000,000).

(2) Criteria for consideration of suspension or removal from listing:

(i) If a company which (A) has shareholders' equity of less than one million dollars ($1,000,000) has sustained net losses in each of its two most recent fiscal years, or (B) has net tangible assets of less than three million dollars ($3,000,000) and has sustained net losses in three of its four most recent fiscal years.

(ii) If the number of shares publicly held (excluding the holdings of officers, directors, controlling shareholders and other concentrated or family holdings) is less than 150,000.

(iii) If the total number of shareholders is less than 400 or if the number of shareholders of lots of 100 shares or more is less than 300.

(iv) If the aggregate market value of shares publicly held is less than seven hundred fifty thousand dollars ($750,000).

(v) If shares of common stock sell at a price of less than three dollars ($3) per share for a substantial period of time and the issuer shall fail to effectuate a reverse stock split of the shares within a reasonable period of time after being requested by the exchange to take that action.

A national securities exchange or interdealer quotation system of the National Association of Securities Dealers, Inc. certified by rule or order of the commissioner under this subdivision shall file annual reports when requested to do so by the commissioner. The annual reports shall contain, by issuer: the variances granted to an exchange's listing standards or interdealer quotation system's designation criteria, including variances from corporate governance and voting rights' standards, for any security of that issuer; the reasons for the variances; a discussion of the review procedure instituted by the exchange or interdealer quotation system to determine the effect of the variances on investors and whether the variances should be continued; and any other information that the commissioner deems relevant. The purpose of these reports is to assist the commissioner in determining whether the quantitative and qualitative requirements of this subdivision are substantially being met by the exchange or system in general or with regard to any particular security.

The commissioner after appropriate notice and opportunity for hearing in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, may, in his or her discretion, by rule or order, decertify any exchange or interdealer

quotation system previously certified which ceases substantially to apply the minimum standards or criteria as set forth in paragraphs (1) and (2).

A rule or order of certification shall conclusively establish that any security listed or approved for listing upon notice of issuance on any exchange, or designated or approved for designation upon issuance as a national market system security on any interdealer quotation system, named in a rule or order of certification, and any warrant or right to purchase or subscribe to any such security, is exempt under this subdivision until the adoption by the commissioner of any rule or order decertifying the exchange or interdealer quotation system.

(p) A promissory note secured by a lien on real property, which is neither one of a series of notes of equal priority secured by interests in the same real property nor a note in which beneficial interests are sold to more than one person or entity.

(q) Any unincorporated interindemnity or reciprocal or interinsurance contract, which qualifies under the provisions of Section 1280.7 of the Insurance Code, between members of a cooperative corporation, organized and operating under Part 2 (commencing with Section 12200) of Division 3 of Title 1, and whose members consist only of physicians and surgeons licensed in California, which contracts indemnify solely in respect to medical malpractice claims against the members, and which do not collect in advance of loss any moneys other than contributions by each member to a collective reserve trust fund or for necessary expenses of administration.

(1) Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of Section 1280.7 of the Insurance Code, the commissioner may in the commissioner's discretion bring an action in the name of the people of the State of California in the superior court to enjoin the acts or practices or to enforce compliance with Section 1280.7 of the Insurance Code. Upon a proper showing a permanent or preliminary injunction, restraining order or writ of mandate shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets.

(2) The commissioner may, in the commissioner's discretion, (A) make such public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated or is about to violate any provision of Section 1280.7 of the Insurance Code or to aid in the enforcement of Section 1280.7, and (B) publish information concerning the violation of Section 1280.7.

(3) For the purpose of any investigation or proceeding under this section, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda,

agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(4) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the superior court, upon application by the commissioner, may issue to the person an order requiring the person to appear before the commissioner, or the officer designated by the commissioner, there to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt.

(5) No person is excused from attending or testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise), required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture, but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which the person is compelled, after validly claiming the privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(6) The cost of any review, examination, audit, or investigation made by the commissioner under Section 1280.7 of the Insurance Code shall be paid to the commissioner by the person subject to the review, examination, audit, or investigation, and the commissioner may maintain an action for the recovery of these costs in any court of competent jurisdiction. In determining the cost, the commissioner may use the actual amount of the salary or other compensation paid to the persons making the review, examination, audit, or investigation plus the actual amount of expenses including overhead reasonably incurred in the performance of the work.

The recoverable cost of each review, examination, audit, or investigation made by the commissioner under Section 1280.7 of the Insurance Code shall not exceed twenty-five thousand dollars ($25,000), except that costs exceeding twenty-five thousand dollars ($25,000) shall be recoverable if the costs are necessary to prevent a violation of any provision of Section 1280.7 of the Insurance Code.

(r) Any shares or memberships issued by any corporation organized and existing pursuant to the provisions of Part 2 (commencing with Section 12200) of Division 3 of Title 1, provided the aggregate investment of any shareholder or member in shares or memberships sold pursuant to this subdivision does not exceed three hundred dollars ($300). This exemption does not apply to the shares or memberships of any such corporation if any promoter thereof expects or intends to make a profit directly or indirectly from any

business or activity associated with the corporation or the operation of the corporation or from remuneration, other than reasonable salary, received from the corporation. This exemption does not apply to nonvoting shares or memberships of any such corporation issued to any person who does not possess, and who will not acquire in connection with the issuance of nonvoting shares or memberships, voting power (Section 12253) in the corporation. This exemption also does not apply to shares or memberships issued by a nonprofit cooperative corporation organized to facilitate the creation of an unincorporated interindemnity arrangement that provides indemnification for medical malpractice to its physician and surgeon members as set forth in subdivision (q).

(s) Any security consisting of or representing an interest in a pool of mortgage loans which meets each of the following requirements:

(1) The pool consists of whole mortgage loans or participation interests in those loans, which loans were originated or acquired in the ordinary course of business by a national bank or federal savings association or federal savings bank having its principal office in this state, by a bank incorporated under the laws of this state or by a savings association as defined in subdivision (a) of Section 5102 of the Financial Code and which is subject to the supervision and regulation of the Commissioner of Financial Institutions, and each of which loans at the time of transfer to the pool is an authorized investment for such originating or acquiring institution.

(2) The pool of mortgage loans is held in trust by a trustee which is a financial institution specified in paragraph (1) as trustee or otherwise.

(3) The loans are serviced by a financial institution specified in paragraph (1).

(4) The security is not offered in amounts of less than twenty-five thousand dollars ($25,000) in the aggregate to any one purchaser.

(5) The security is offered pursuant to a registration under the Securities Act of 1933, or pursuant to an exemption under Regulation A under that act, or in the opinion of counsel for the issuer, is offered pursuant to an exemption under Section 4(2) of that act.

(t) (1) Any security issued or guaranteed by and representing an interest in or a direct obligation of an industrial loan company incorporated under the laws of the state and authorized by the Commissioner of Financial Institutions to engage in industrial loan business.

(2) Any investment certificate in or issued by any industrial loan company that is organized under the laws of a state of the United States other than this state, that is insured by the Federal Deposit Insurance Corporation, and that maintains a branch office in this state.

(u) Any security issued by an issuer registered as an open-end management company or unit investment trust under the

Investment Company Act of 1940, provided that all of the following requirements are met:

(1) The registration statement for the securities is currently effective under the Securities Act of 1933.

(2) Prior to any offer or sale in this state of securities claimed to be exempt under this subdivision, there is filed with or paid to the commissioner each of the following:

(A) A notice of intention to sell that has been executed by the issuer and that includes the name and address of the issuer and the name of the securities to be offered and sold under this subdivision.

(B) A copy of the current prospectus to be used in the offer and sale of the security.

(C) The fee provided in subdivision (f) of Section 25608.

If any offer or sale is made pursuant to this exemption more than 12 months after the date the notice was filed under this subdivision, the issuer shall file another notice of intention to sell, a copy of the prospectus the issuer is currently utilizing for the purpose of making that offer, and the fee specified in subparagraph (C) of paragraph (2).

SEC. 19. Section 25302 of the Corporations Code is amended to read:

25302. (a) No person shall publish any advertisement concerning any security in this state after the commissioner finds that the advertisement contains any statement that is false or misleading or omits to make any statement necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading and so notifies the person in writing. Such notification may be given summarily without notice or hearing. At any time after the issuance of a notification under this section, the person desiring to use the advertisement may in writing request that the order be rescinded. Upon the receipt of such a written request, the matter shall be set down for hearing to commence within 15 business days after such receipt unless the person making the request consents to a later date. After such hearing, which shall be conducted in accordance with the provisions of the Administrative Procedure Act, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the commissioner shall determine whether to affirm and continue or to rescind such order, and the commissioner shall have all the powers granted under such act.

(b) This section does not apply to any advertisement for any security which is subject to the supervision, regulation or examination of any of the following:

(1) The Insurance Commissioner.

(2) The Commissioner of Financial Institutions.

(3) The Public Utilities Commission.

(4) The Office of Thrift Supervision.

(5) The Comptroller of the Currency of the United States.

(6) The Federal Deposit Insurance Corporation.

(7) The Board of Governors of the Federal Reserve System.

SEC. 20. Section 31103 of the Corporations Code is amended to read:

31103. This division shall not be applicable to any transaction relating to a bank credit card plan. "Bank credit card plan" means a credit card plan in which the issuers of credit cards, as defined in subdivision (a) of Section 1747.02 of the Civil Code are only: banks regulated by or under the supervision of the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Comptroller of the Currency of the United States, or the Commissioner of Financial Institutions of this state under Division 1 (commencing with Section 99) of the Financial Code; or, persons controlling these banks, provided that the assets of such a bank or banks represent a majority of the assets on a consolidated basis of any holding company system of which the card issuers may be a party; or, persons controlled by these banks.

SEC. 21. Section 109 of the Financial Code is amended to read:

109. "Bank" or "banks" embraces commercial banks and trust companies unless the context otherwise requires. However, "bank" does not include a savings association, an industrial loan company, or a credit union.

SEC. 22. Section 112 of the Financial Code is amended to read:

112. "Commissioner" means the Commissioner of Financial Institutions and "department" means the Department of Financial Institutions.

SEC. 23. Section 118 of the Financial Code is amended to read:

118. (a) All references in this division and in Division 1 (commencing with Section 100), Title 1 of the Corporations Code to financial statements, balance sheets, income statements and statements of changes in financial position of a bank and all references to assets, liabilities, earnings, retained earnings, shareholders' equity, and similar accounting items of a bank mean such financial statements or such items prepared or determined in conformity with generally accepted accounting principles then applicable, fairly presenting in conformity with generally accepted accounting principles the matters which they purport to present, subject to any specific accounting treatment required by any provision of Division 1 (commencing with Section 100), Title 1 of the Corporations Code, of this division, or of any regulation or order issued under this division.

(b) The commissioner may, by regulation or order, require that any financial statement or accounting item of a bank be prepared or determined in a manner other than in conformity with generally accepted accounting principles if the commissioner finds that such other manner is necessary or appropriate to carry out the purposes or provisions of this division.

SEC. 24. Section 134.5 is added to the Financial Code, to read:

134.5. "Credit union" means a corporation of the type described in Section 14002 organized under the laws of this state or a corporation of similar type organized under the laws of the United States or of any state of the United States other than this state.

SEC. 25. Section 139.6 is added to the Financial Code, to read:

139.6. "Industrial loan company" means a corporation of the type described in Section 18003 organized under the laws of this state or a corporation of similar type organized under the laws of any state of the United States other than this state.

SEC. 26. Section 143 is added to the Financial Code, to read:

143. "Savings association" includes a savings association, a savings and loan association, and a savings bank. However, "savings association" does not include any savings bank of the type defined in Section 3(g) of the Federal Deposit Insurance Act (12 U.S.C. Section 1813(g)).

SEC. 27. Section 180 of the Financial Code is amended to read:

180. In this chapter, unless the provision or context requires otherwise:

(a) "New General Corporation Law" means Division 1 (commencing with Section 100), Title 1 of the Corporations Code, as in effect on and after January 1, 1977.

(b) "Prior Banking Law" means this division, as in effect on December 31, 1978.

(c) "Prior General Corporation Law" means Division 1 (commencing with Section 100), Title 1 of the Corporations Code, as in effect on December 31, 1976.

(d) "Revised Banking Law" means this division, as in effect on and after January 1, 1979.

(e) "Subject institution" means:

(1) Any corporation incorporated under the laws of this state which is, with the approval of the commissioner, incorporated for the purpose of engaging in, or which is authorized by the commissioner to engage in, the commercial banking business under Division 1 (commencing with Section 99) of the Financial Code;

(2) Any corporation (other than a corporation described in paragraph (3) of this subdivision) incorporated under the laws of this state which is, with the approval of the commissioner, incorporated for the purpose of engaging in, or which is authorized by the commissioner to engage in, the trust business under Division 1 (commencing with Section 99) of the Financial Code;

(3) Any corporation incorporated under the laws of this state which is authorized by the Commissioner of Insurance and the commissioner to maintain a title insurance department to engage in title insurance business and a trust department to engage in trust business; or

(4) Any corporation incorporated under the laws of this state which is, with the approval of the commissioner, incorporated for the purpose of engaging in, or which is authorized by the superintendent

to engage in, business under Article 1 (commencing with Section 3500), Chapter 19 of this division.

SEC. 27.1. Section 180 of the Financial Code is amended to read:

180. In this chapter, unless the provision or context requires otherwise:

(a) "New General Corporation Law" means Division 1 (commencing with Section 100), Title 1 of the Corporations Code, as in effect on and after January 1, 1977.

(b) "Prior Banking Law" means this division, as in effect on December 31, 1978.

(c) "Prior General Corporation Law" means Division 1 (commencing with Section 100), Title 1 of the Corporations Code, as in effect on December 31, 1976.

(d) "Revised Banking Law" means this division, as in effect on and after January 1, 1979.

(e) "Subject institution" means:

(1) Any corporation incorporated under the laws of this state which is, with the approval of the commissioner, incorporated for the purpose of engaging in, or which is authorized by the commissioner to engage in, the commercial banking business under Division 1 (commencing with Section 99) of the Financial Code.

(2) Any corporation incorporated under the laws of this state which is, with the approval of the commissioner, incorporated for the purpose of engaging in, or which is authorized by the commissioner to engage in, the trust business under Division 1 (commencing with Section 99) of the Financial Code.

(3) Any corporation incorporated under the laws of this state which is, with the approval of the commissioner, incorporated for the purpose of engaging in, or which is authorized by the commissioner to engage in, business under Article 1 (commencing with Section 3500), Chapter 19 of this division.

SEC. 28. Section 184 of the Financial Code is amended to read:

184. In case the board of a subject institution has, prior to January 1, 1979, adopted a resolution levying an assessment on the common shares of such subject institution in accordance with an order issued by the commissioner pursuant to Section 661 of the prior Banking Law:

(a) If the assessment has, prior to January 1, 1979, become a lien on the common shares in accordance with Section 2704 of the prior General Corporation Law, the assessment shall be collected pursuant to the prior General Corporation Law:

(b) Otherwise, the resolution shall be deemed to be rescinded on January 1, 1979.

SEC. 28.5. The heading of Chapter 2 (commencing with Section 200) of Division 1 of the Financial Code is amended to read:

CHAPTER 2. DEPARTMENT OF FINANCIAL INSTITUTIONS

SEC. 29. Section 200 of the Financial Code is amended to read:

200. (a) In this section:

(1) "Business and industrial development corporation" means a corporation licensed under Division 15 (commencing with Section 31000).

(2) "Payment instrument" has the same meaning as set forth in Section 33059.

(3) "Traveler's check" has the same meaning as set forth in Section 1852.

(b) There is in the state government, in the Business, Transportation and Housing Agency, a Department of Financial Institutions which has charge of the execution of, among other laws, the laws of this state relating to any of the following: (1) banks or trust companies or the banking or trust business; (2) savings associations or the savings association business; (3) credit unions or the credit union business; (4) industrial loan companies or the industrial loan business; (5) persons who engage in the business of receiving money for transmission to foreign nations or such business; (6) issuers of traveler's checks or the traveler's check business; (7) issuers of payment instruments or the payment instrument business; or (8) business and industrial development corporations or the business and industrial development corporation business.

SEC. 29.5. The heading of Article 2 (commencing with Section 210) of Chapter 2 of Division 1 of the Financial Code is amended to read:

Article 2. Commissioner of Financial Institutions

SEC. 30. Section 210 of the Financial Code is amended to read:

210. The chief officer of the Department of Financial Institutions is the Commissioner of Financial Institutions. The Commissioner of Financial Institutions is the head of the department and, except as otherwise provided in this code, is subject to the provisions of the Government Code relating to department heads, but need not reside in Sacramento.

SEC. 31. Section 210.5 is added to the Financial Code, to read:

210.5. As of the operative date of this section:

(a) In this section, "order" means any approval, consent, authorization, exemption, denial, prohibition, requirement, or other administrative action, applicable to a specific case.

(b) The office of the Superintendent of Banks and the State Banking Department are abolished. All powers, duties, responsibilities, and functions of the Superintendent of Banks and the State Banking Department are transferred to the Commissioner of Financial Institutions and the Department of Financial Institutions, respectively. The Commissioner of Financial Institutions and the

Department of Financial Institutions succeed to all the rights and property of the Superintendent of Banks and the State Banking Department, respectively; the Commissioner of Financial Institutions and the Department of Financial Institutions are subject to all the debts and liabilities of the Superintendent of Banks and the State Banking Department, respectively, as if the Commissioner of Financial Institutions and the Department of Financial Institutions had incurred them. Any action or proceeding by or against the Superintendent of Banks or the State Banking Department may be prosecuted to judgment, which shall bind the Commissioner of Financial Institutions or the Department of Financial Institutions, respectively, or the Commissioner of Financial Institutions or the Department of Financial Institutions may be proceeded against or substituted in place of the Superintendent of Banks or the State Banking Department, respectively. References in the Constitution of the State of California or in any statute or regulation to the Superintendent of Banks or to the State Banking Department mean the Commissioner of Financial Institutions or the Department of Financial Institutions, respectively. All agreements entered into with, and orders and regulations issued by, the Superintendent of Banks or the State Banking Department shall continue in effect as if the agreements were entered into with, and the orders and regulations were issued by, the Commissioner of Financial Institutions or the Department of Financial Institutions, respectively.

(c) The office of the Savings and Loan Commissioner and the Department of Savings and Loan are abolished. All powers, duties, responsibilities, and functions of the Savings and Loan Commissioner and the Department of Savings and Loan are transferred to the Commissioner of Financial Institutions and the Department of Financial Institutions, respectively. The Commissioner of Financial Institutions and the Department of Financial Institutions succeed to all the rights and property of the Savings and Loan Commissioner and the Department of Savings and Loan, respectively; the Commissioner of Financial Institutions and the Department of Financial Institutions are subject to all the debts and liabilities of the Savings and Loan Commissioner and the Department of Savings and Loan, respectively, as if the Commissioner of Financial Institutions and the Department of Financial Institutions had incurred them. Any action or proceeding by or against the Savings and Loan Commissioner or the Department of Savings and Loan may be prosecuted to judgment, which shall bind the Commissioner of Financial Institutions or the Department of Financial Institutions, respectively, or the Commissioner of Financial Institutions or the Department of Financial Institutions may be proceeded against or substituted in place of the Savings and Loan Commissioner or the Department of Savings and Loan, respectively. References in the Constitution of the State of California or in any statute or regulation to the Savings and Loan Commissioner or to the Department of

Savings and Loan mean the Commissioner of Financial Institutions or the Department of Financial Institutions, respectively. All agreements entered into with, and orders and regulations issued by, the Savings and Loan Commissioner or the Department of Savings and Loan shall continue in effect as if the agreements were entered into with, and the orders and regulations were issued by, the Commissioner of Financial Institutions or the Department of Financial Institutions.

(d) All powers, duties, responsibilities, and functions of the Commissioner of Corporations and the Department of Corporations with respect to credit unions, the credit union business, industrial loan companies, or the industrial loan business are transferred to the Commissioner of Financial Institutions and the Department of Financial Institutions, respectively. The Commissioner of Financial Institutions and the Department of Financial Institutions succeed to all the rights and property of the Commissioner of Corporations and the Department of Corporations, respectively, with respect to credit unions, the credit union business, industrial loan companies, or the industrial loan business; the Commissioner of Financial Institutions and the Department of Financial Institutions are subject to all the debts and liabilities of the Commissioner of Corporations and the Department of Corporations, respectively, with respect to credit unions, the credit union business, industrial loan companies, or the industrial loan business, as if the Commissioner of Financial Institutions and the Department of Financial Institutions had incurred them. Any action or proceeding by or against the Commissioner of Corporations or the Department of Corporations with respect to credit unions, the credit union business, industrial loan companies, or the industrial loan business may be prosecuted to judgment, which shall bind the Commissioner of Financial Institutions or the Department of Financial Institutions, respectively, or the Commissioner of Financial Institutions or the Department of Financial Institutions may be proceeded against or substituted in place of the Commissioner of Corporations or the Department of Corporations, respectively. References in the Constitution of the State of California or any statute or regulation to the Commissioner of Corporations or to the Department of Corporations with respect to credit unions, the credit union business, industrial loan companies, or the industrial loan business mean the Commissioner of Financial Institutions or the Department of Financial Institutions, respectively. All agreements entered into with, and orders and regulations issued by, the Commissioner of Corporations or the Department of Corporations in the exercise of authority under any law relating to credit unions, the credit union business, industrial loan companies, or the industrial loan business, shall continue in effect as if the agreements were entered into with, and the orders and regulations were issued by, the Commissioner of Financial Institutions or the Department of Financial Institutions.

SEC. 32. Section 211 of the Financial Code is amended to read:

211. The commissioner is appointed by the Governor, and holds office at the pleasure of the Governor. The appointment of the commissioner is subject to confirmation by the Senate.

SEC. 33. Section 212 of the Financial Code is amended to read:

212. The commissioner shall be a citizen of the United States and a resident of the state for at least three years prior to his or her appointment. The commissioner shall be chosen solely for his or her qualifications and fitness to perform the duties of his or her office.

SEC. 34. Section 213 of the Financial Code is amended to read:

213. The annual salary of the commissioner is provided for by Chapter 6 (commencing with Section 11550) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 35. Section 214 of the Financial Code is amended to read:

214. Before entering upon the duties of his or her office, the commissioner shall take and subscribe to the constitutional oath of office and file the same with the Secretary of State.

SEC. 36. Section 215 of the Financial Code is amended to read:

215. The commissioner is responsible for the performance of all duties, the exercise of all powers and jurisdiction, and the assumption and discharge of all responsibilities vested by law in the department. The commissioner has and may exercise all the powers necessary or convenient for the administration and enforcement of, among other laws, the laws described in Section 200. The commissioner may issue such rules and regulations consistent with law as he or she may deem necessary or advisable in executing the powers, duties, and responsibilities of the department.

SEC. 37. Section 216 of the Financial Code is amended to read:

216. (a) The commissioner may make the agreements that he or she deems necessary or appropriate in exercising his or her powers.

(b) (1) The agreements authorized under subdivision (a) may include, but are not limited to, agreements with agencies of this state, of other states of the United States, of the United States, or of foreign nations that regulate financial institutions, relating to examinations of banks, savings associations, credit unions, industrial loan companies, and other matters.

(2) Any agreement with a government agency that regulates financial institutions is exempt from the advertising and competitive bidding requirements of the Public Contract Code.

SEC. 37.5. Section 217 is added to the Financial Code, to read:

217. The authority vested in the Superintendent of Banks under subdivision (2) of Section 1 of Article XV of the California Constitution is delegated to the commissioner.

SEC. 38. Section 230 of the Financial Code is amended to read:

230. The commissioner shall appoint a chief deputy who holds office at the pleasure of the commissioner. The annual salary of the chief deputy shall be fixed by the commissioner with the approval of the Director of Finance. The chief deputy shall have the same

qualifications as the commissioner. The commissioner shall also appoint two deputies, one to serve in the City and County of San Francisco and one to serve in the City of Los Angeles.

SEC. 39. Section 231 of the Financial Code is amended to read:

231. The commissioner may employ deputies in addition to the chief deputy, and examiners, appraisers, technical assistants, investigators, administrative assistants, clerks, and other employees that he or she may need to discharge in a proper manner the duties imposed upon him or her by law. He or she shall prescribe their duties and fix their compensation in accordance with classifications made by the State Personnel Board. The commissioner may also, at those times and on those terms as may be approved by the Governor, employ those attorneys as he or she may need.

SEC. 40. Section 233 of the Financial Code is amended to read:

233. The commissioner may require, at any time, of any deputy, examiner, or other employee of the department, an official bond in such amount as the commissioner may deem necessary. The premium for bonds required by the commissioner shall be an expense of the department.

SEC. 41. Section 234 of the Financial Code is amended to read:

234. Neither the commissioner nor any deputy or employee of the department shall do or be any of the following with respect to any bank, savings association, credit union, or industrial loan company supervised by the department:

(a) Be indebted, directly or indirectly, as borrower, endorser, surety, or guarantor to any such bank, savings association, credit union, or industrial loan company.

(b) Be an officer, director, or employee of any such bank, savings association, credit union, or industrial loan company.

(c) Own or deal in directly or indirectly, the shares or obligations of any such bank, savings association, credit union, or industrial loan company.

(d) Be interested in or, directly or indirectly, receive from any such bank, savings association, credit union, or industrial loan company or any officer, director, or employee thereof, any salary, fee, compensation, or other valuable thing by way of gift, credit, compensation for services, or otherwise. However, this subdivision does not prohibit any person from being interested in or directly or indirectly receiving (1) anything which is expressly excluded from a definition of "gift" or "honorarium" in the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code) or in regulations issued under the Political Reform Act of 1974 by the Fair Political Practices Commission or (2) anything which, if received by the commissioner, would constitute a gift or honorarium within the meaning of the Political Reform Act of 1974 or regulations issued under the Political Reform Act of 1974 by the Fair Political Practices Commission but which the commissioner would not be prohibited from receiving under the Political Reform Act of 1974 or

regulations issued under the Political Reform Act of 1974 by the Fair Political Practices Commission.

(e) Be interested in or engage in the negotiation of any loan to, obligation of, or accommodation for another person to or with any such bank, savings association, credit union, or industrial loan company.

Notwithstanding the foregoing the commissioner and any deputy or employee may have and maintain one or more deposit or similar accounts in any bank, savings association, credit union, or industrial loan company in this state and may maintain with any bank, savings association, credit union, or industrial loan company in this state a loan which was not obtained in violation of this section if the person reports the loan in writing to the department within 30 days after the person commences his or her term of appointment or employment with the department and if the loan is not renewed, renegotiated, extended, or otherwise modified on or after July 1, 1997.

A violation of this section by any person shall constitute sufficient grounds for his or her removal or discharge.

SEC. 42. Section 235 of the Financial Code is amended to read:

235. If the commissioner is unable to perform his or her duties for more than 30 consecutive days or if the office of the commissioner becomes vacant, the chief deputy shall have all the powers and duties of the commissioner until the return or recovery of the commissioner, or, in case of a vacancy, until a new commissioner is appointed by the Governor and qualifies to hold office.

SEC. 43. Section 250 of the Financial Code is amended to read:

250. The commissioner shall have his or her principal office in the City and County of San Francisco and may also have an office in the City of Sacramento, in the City of Los Angeles and in the City of San Diego. The commissioner shall provide at the expense of the department such office space, furniture, and equipment as may be necessary or convenient for the transaction of the business of the department.

SEC. 44. Section 252 of the Financial Code is amended to read:

252. The commissioner shall adopt and keep an official seal. Papers executed by the commissioner in his or her official capacity pursuant to law and bearing the seal, or copies thereof certified by him or her, shall be received in evidence in like manner as the original and may be recorded in the same manner and with the same effect as a deed regularly acknowledged.

SEC. 45. Section 253 of the Financial Code is amended to read:

253. Whenever it is necessary for the commissioner to approve any instrument and to affix his or her official seal thereto, the commissioner shall charge a fee of twenty-five dollars ($25) therefor. Whenever it is proper for the department to furnish a copy of any paper which has been filed therein and to certify to the paper, the commissioner may charge twenty-five cents ($0.25) per folio for each copy and a fee of twenty-five dollars ($25) for certifying the copy and

for affixing his or her official seal. The department may furnish photographic copies of the paper for a fee sufficient to cover the cost thereof.

SEC. 46. Section 255 of the Financial Code is amended to read:

255. Official reports made by the commissioner and verified reports of an examination made by the commissioner, exclusively or in conjunction with or with assistance from any agency of the United States, of a state of the United States, or of a foreign nation are prima facie evidence of the facts stated in the reports for all purposes.

SEC. 47. Section 256 of the Financial Code is repealed.

SEC. 47.5. Section 256 is added to the Financial Code, to read:

256. On or before May 31 of each year, the commissioner shall, through the Secretary of the Business, Transportation and Housing Agency, report to the Governor and to the Legislature. The report shall contain the following information:

(a) A list of the California state banks that were authorized by the commissioner to transact business as of the end of the preceding calendar year.

(b) A list of the foreign (other nation) banks that were licensed by the commissioner to maintain offices in California as of the end of the preceding calendar year.

(c) A list of the California state savings associations that were authorized by the commissioner to transact business as of the end of the preceding calendar year.

(d) A list of the foreign savings associations that were authorized by the commissioner to maintain offices in California as of the end of the preceding calendar year.

(e) A list of the California state credit unions that were authorized by the commissioner to transact business as of the end of the preceding calendar year.

(f) A list of the credit unions organized and qualified as credit unions in other states of the United States that were certified by the commissioner to act as credit unions in California as of the end of the preceding calendar year.

(g) A list of the California state industrial loan companies that were authorized by the commissioner to transact business as of the end of the preceding calendar year.

(h) A list of the persons that were licensed by the commissioner under Chapter 14 (commencing with Section 1800), Chapter 14A (commencing with Section 1851), Division 15 (commencing with Section 31000), or Division 16 (commencing with Section 33000) to transact business as of the end of the preceding calendar year.

(i) In case during the preceding calendar year the commissioner took possession of the property and business of any California state bank, foreign (other nation) bank, savings association, credit union, industrial loan company, or person licensed under any of the laws cited in subdivision (h) to transact business, a list of those California

state banks, foreign (other nation) banks, savings associations, credit unions, industrial loan companies, or licensees.

(j) In case at any time during the preceding calendar year the commissioner was the liquidator of any California state banks, foreign (other nation) banks, savings associations, credit unions, or industrial loan companies, or persons licensed under any of the laws cited in subdivision (h) to transact business, a list of those California state banks, foreign (other nation) banks, savings associations, credit unions, industrial loan companies, or licensees.

(k) Other information as the commissioner deems appropriate.

SEC. 48. Section 258 of the Financial Code is repealed.

SEC. 48.5. Section 258 is added to the Financial Code, to read:

258. At least once each month, the commissioner shall issue and disseminate as the commissioner deems appropriate a bulletin containing the following information:

(a) Information regarding any the following actions taken since issuance of the previous bulletin:

(1) The filing, approval, or denial under Chapter 3 (commencing with Section 350) of an application for authority to organize a California state bank, or the issuance under Chapter 3 of a certificate of authority to a California state bank.

(2) The filing, approval, or denial under Article 1 (commencing with Section 5400) of Chapter 2 of Division 2 of an application for the issuance of an organizing permit for the organization of a California savings association, or for the issuance under Article 2 (commencing with Section 5500) of Chapter 2 of Division 2 of a certificate of authority to a California savings association.

(3) The filing, approval, or denial under Article 2 (commencing with Section 14150) of Chapter 2 of Division 5 of an application for a certificate to act as a credit union, or the issuance of a certificate to engage in the business of a credit union.

(4) The filing, approval, or denial under Article 2 (commencing with Section 18115) of Chapter 2 of Division 7 of an application for authority to engage in the industrial loan business, or the issuance under Section 18101 of this code of a certificate of authority.

(5) The filing, approval, or denial under Chapter 14 (commencing with Section 1800), Chapter 14A (commencing with Section 1851), Division 15 (commencing with Section 31000), or Division 16 (commencing with Section 33000) of an application for a license to engage in business, or the issuance under any of those laws of a license to engage in business.

(6) The filing, approval, or denial under Chapter 13.5 (commencing with Section 1700) of an application by a foreign (other nation) bank to establish its first office of any particular class (as determined under Section 1701) in this state, or the issuance under that chapter of a license in connection with the establishment of such an office.

(7) The filing, approval, or denial under Division 1.5 (commencing with Section 4800) of an application for approval of a sale, merger, or conversion.

(8) The filing, approval, or denial under Article 6 (commencing with Section 5700) of Chapter 2 of Division 2 of an application for approval of a conversion of a federal savings association into a state savings association, or the filing of a federal charter of a state savings association that has converted to a federal savings association.

(9) The filing, approval, or denial under Article 7 (commencing with Section 5750) of Chapter 2 of Division 2 of an application for approval of a reorganization, merger, consolidation, or transfer of assets of a state savings association.

(10) The filing, approval, or denial under Chapter 9 (commencing with Section 15200) of Division 5 of an application for approval of a merger, dissolution, or conversion of a credit union.

(11) The taking of possession of the property and business of a California state bank, savings association, credit union, industrial loan company, or person licensed by the superintendent under any of the laws cited in paragraph (2).

(b) Other information as the commissioner deems appropriate.

SEC. 49. Section 259 of the Financial Code is amended to read:

259. Notwithstanding any other provision of this code, whenever any provision of this division requires the pledge of securities to be deposited with the Treasurer, to insure the performance of any act or duty, the securities after first being approved by the commissioner and upon the written order of the commissioner, shall be deposited with the Treasurer. The Treasurer, with the consent of the owner of the securities deposited or to be deposited with the Treasurer, may place the securities in the custody of a qualified trust company or bank in the same manner and under the same conditions provided in Article 3 (commencing with Section 16550) of Chapter 4 of Part 2 of Division 4 of Title 2 of the Government Code.

SEC. 50. Section 260 of the Financial Code is amended to read:

260. Whenever the commissioner is notified of or discovers a violation of the state law punishable by criminal penalties, he or she shall promptly advise the Attorney General.

SEC. 51. Section 261 of the Financial Code is amended to read:

261. (a) Notwithstanding any other provision of law, the commissioner may deliver fingerprints taken of an applicant for employment, or a director, officer, or employee of a bank, bank holding company, or any subsidiary of a bank or bank holding company, credit union or any subsidiary of a credit union, industrial loan company, industrial loan holding company, or any subsidiary of an industrial loan company or industrial loan holding company, to local, state, or federal law enforcement agencies for the purpose of obtaining information as to the existence and nature of a criminal record, if any, of that person relating to convictions, and to any arrest for which the person is released on bail or on his or her own

recognizance pending trial, for the commission or attempted commission of a crime involving robbery, burglary, theft, embezzlement, fraud, forgery, bookmaking, receiving stolen property, counterfeiting, or involving checks or credit cards or using computers.

(b) No request shall be submitted pursuant to this section without the written consent of the person affected.

(c) Any criminal history information obtained pursuant to this section shall be confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 52. Section 262 of the Financial Code is amended to read:

262. (a) The commissioner shall inform the Commissioner of Corporations and other appropriate state and federal officials charged with the regulation of financial institutions or securities transactions of any enforcement actions, including, but not limited to, civil or criminal actions, cease and desist orders, license or authorization suspensions or revocations, or an open investigation.

(b) The commissioner shall inform the Commissioner of Corporations and other appropriate state and federal officials charged with the regulation of financial institutions or securities transactions if it appears that any bank, bank holding company, savings association, savings and loan holding company, credit union, industrial loan company, industrial loan holding company, or other licensee of the department is conducting its business in a fraudulent, unsafe, unsound, or injurious manner, or has suffered or will suffer substantial financial loss or damage, and it appears to the commissioner that the information is relevant to the regulatory activities of the other agency.

SEC. 52.3. Section 263 is added to the Financial Code, to read:

263. Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code does not apply to hearings conducted by the department.

SEC. 52.5. Article 4.5 (commencing with Section 265) is added to Chapter 2 of Division 1 of the Financial Code, to read:

Article 4.5. Financial Institutions Fund

265. As of the operative date of this section, there is established a Financial Institutions Fund in the State Treasury. Except as otherwise provided in Division 5 (commencing with Section 14000), all money collected or received by the commissioner under this code shall be deposited with the Treasurer to the credit of the Financial Institutions Fund.

SEC. 52.7. The heading of Article 5 (commencing with Section 270) of Chapter 2 of Division 1 of the Financial Code is amended to read:

Article 5. State Banking Account

SEC. 53. Section 270 of the Financial Code is amended to read:

270. (a) The commissioner shall annually collect pro rata from the banks and trust companies under the supervision of the department a fund in amount sufficient in the commissioner's judgment to meet the expenses of the department in administering laws relating to banks or trust companies or to the banking or trust business that are not otherwise provided for and to provide a reasonable reserve for contingencies.

(b) The amount of the annual assessment for the fund on any bank or trust company shall not be less than five thousand dollars ($5,000). Above that minimum amount, except as otherwise provided subdivision (c), the annual assessment shall not exceed the sum of the products of a base assessment rate, or percentage thereof, and segregated portions of its total resources, according to the following table:

Segregated Total Resources (In Millions or Fractions Thereof)	Percentage of Base Assessment Rate
First $1	100.0
Next $9	33.0
Next $40	15.0
Next $50	7.5
Next $400	5.0
Next $500	4.5
Next $2,000	4.0
Next $7,000	3.4
Next $10,000	3.2
Excess over $20,000	2.1

(c) (1) For purposes of determining the annual assessment on banks and trust companies that have one or more foreign (other state) branch offices, the resources of foreign (other state) branch offices shall be excluded from total resources, except that the commissioner may order the resources of foreign (other state) branch offices to be included in total resources if and to the extent that it is necessary in the commissioner's judgment to meet the expenses of the department on account of foreign (other state) branch offices and a reasonable reserve for contingencies.

(2) If the commissioner finds that a bank or trust company allocated any resource to a foreign (other state) branch office for the purpose, in whole or in part, of reducing its annual assessment, the commissioner may, for purposes of calculating the annual assessment on the bank or trust company, reallocate the resource to the bank's or trust company's head office.

(d) The base assessment rate shall be set by the commissioner from time to time at the commissioner's discretion, not to exceed two dollars and twenty cents ($2.20) per one thousand dollars ($1,000) of total resources.

SEC. 53.1. Section 270 of the Financial Code is amended to read:

270. (a) The commissioner shall annually collect pro rata from the banks and trust companies under the supervision of the department a fund in amount sufficient in the commissioner's judgment to meet the expenses of the department in administering laws relating to banks or trust companies or to the banking or trust business that are not otherwise provided for and to provide a reasonable reserve for contingencies.

(b) The amount of the annual assessment for the fund on any bank or trust company shall not be less than five thousand dollars ($5,000). Above that minimum amount, except as otherwise provided subdivision (c), the annual assessment shall not exceed the sum of the products of a base assessment rate, or percentage thereof, and segregated portions of its total resources, according to the following table:

Segregated Total Resources (In Millions or Fractions Thereof)	Percentage of Base Assessment Rate
First $2	100.0
Next $18	50.0
Next $80	12.0
Next $100	6.25
Next $800	6.0
Next $1,000	4.0
Next $4,000	3.5
Next $14,000	3.0
Next $20,000	2.5
Excess over $40,000	1.5

(c) (1) For purposes of determining the annual assessment on banks and trust companies that have one or more foreign (other state) branch offices, the resources of foreign (other state) branch offices shall be excluded from total resources, except that the commissioner may order the resources of foreign (other state) branch offices to be included in total resources if and to the extent that it is necessary in the commissioner's judgment to meet the expenses of the department on account of foreign (other state) branch offices and a reasonable reserve for contingencies.

(2) If the commissioner finds that a bank or trust company allocated any resource to a foreign (other state) branch office for the purpose, in whole or in part, of reducing its annual assessment, the commissioner may, for purposes of calculating the annual assessment

on the bank or trust company, reallocate the resource to the bank's or trust company's head office.

(d) The base assessment rate shall be set by the commissioner from time to time at the commissioner's discretion, not to exceed two dollars and twenty cents ($2.20) per one thousand dollars ($1,000) of total resources.

SEC. 54. Section 271 of the Financial Code is amended to read:

271. The commissioner shall annually collect from national banking associations and foreign (other state) banks operating trust departments in this state an annual assessment to meet expenses of the department, not exceeding one one-hundredth of 1 percent of the amount required by law to be deposited with the Treasurer as surety for the faithful performance and execution of all court and private trusts accepted by them.

SEC. 55. Section 271.5 of the Financial Code is amended to read:

271.5. (a) Whenever the commissioner makes an assessment pursuant to Section 270 or 271, the commissioner shall mail or otherwise deliver to each bank and trust company assessed an invoice for the amount of its assessment. Notwithstanding the provisions of subdivision (b) relating to installment payments, the entire amount assessed to a bank or trust company shall become a liability of the bank or trust company at the time when the invoice is mailed or otherwise delivered to it.

(b) Any assessment made by the commissioner pursuant to Section 270 or 271 shall be paid as follows:

(1) If the assessment is two hundred thousand dollars ($200,000) or more, it shall be paid in three equal installments. The first installment shall be paid by September 30 next following the making of the assessment, the second installment shall be paid by December 31 of the same year, and the third installment shall be paid by February 28 of the succeeding year.

(2) If the assessment is less than two hundred thousand dollars ($200,000) but more than thirty thousand dollars ($30,000), it shall be paid in two equal installments. The first installment shall be paid by September 30 next following the making of the assessment, and the second installment shall be paid by February 28 of the succeeding year.

(3) If the assessment is thirty thousand dollars ($30,000) or less, it shall be paid by September 30 next following the making of the assessment.

SEC. 55.1. Section 271.5 of the Financial Code is amended to read:

271.5. Whenever the commissioner makes an assessment pursuant to Section 270 or 271, the commissioner shall fix the date when the assessment is due and payable and shall mail or otherwise deliver to each bank and trust company assessed an invoice showing the amount of its assessment and the date when the assessment is due and payable.

SEC. 56. Section 272 of the Financial Code is amended to read:

272. The commissioner in addition to the annual assessment shall collect from each bank authorized to engage in the trust business, and from each corporation doing a departmental business as a title insurance company and as a trust company, to defray the cost of examination, a fee not to exceed two hundred dollars ($200) per diem, for each examiner necessarily engaged in the examination of the trust company, trust business, or trust department. The commissioner shall assess the fee upon completion of the examination of the trust company, trust business, or trust department of the title insurance company and shall mail or otherwise deliver an invoice for the fee to the institution. The institution shall pay the fee within 30 days after the invoice is mailed or otherwise delivered to it.

SEC. 56.1. Section 272 of the Financial Code is amended to read:

272. The commissioner in addition to the annual assessment shall collect from each bank authorized to engage in the trust business, to defray the cost of examination, a fee not to exceed two hundred dollars ($200) per diem, for each examiner necessarily engaged in the examination of the trust company, trust business, or trust department. The commissioner shall assess the fee upon completion of the examination of the trust company or trust business and shall mail or otherwise deliver an invoice for the fee to the institution. The institution shall pay the fee within 30 days after the invoice is mailed or otherwise delivered to it.

SEC. 57. Section 273 of the Financial Code is amended to read:

273. If any bank or trust company or title insurance company fails to make timely payment of any assessment made pursuant to Section 270, 271, or 272, the commissioner may cancel the certificate of authority of the bank or trust company or title insurance company to conduct a banking or trust business.

SEC. 57.1. Section 273 of the Financial Code is amended to read:

273. If any bank or trust company fails to make timely payment of any assessment made pursuant to Section 270, 271, or 272, the commissioner may cancel the certificate of authority of the bank or trust company to conduct a banking or trust business.

SEC. 58. Section 273.5 is added to the Financial Code, to read:

273.5. As of the operative date of this section:

(a) The State Banking Fund is converted into a separate account in the Financial Institutions Fund and designated as the State Banking Account.

(b) All moneys and other assets and all liabilities of the State Banking Fund shall be transferred to the State Banking Account.

SEC. 59. Section 274 of the Financial Code is amended to read:

274. Except as otherwise provided in Section 276 or 277, all salaries and other expenses of the department, other than those incurred in administering laws relating to savings associations or the savings association business, credit unions or the credit union business, or industrial loan companies or the industrial loan business or Article 2 (commencing with Section 53630) of Chapter 4 of Part

1 of Division 2 of Title 5 of the Government Code, shall be paid out of the State Banking Account in the Financial Institutions Fund. Salaries and other expenses incurred in the liquidation or conservation of any bank or of any person licensed under Chapter 14 (commencing with Section 1800), Chapter 14A (commencing with Section 1851), Division 15 (commencing with Section 31000), or Division 16 (commencing with Section 33000), including the compensation of employees of the department to the extent that they are engaged in such liquidation or conservation, if possible, and if advanced from the State Banking Account in the Financial Institutions Fund, shall constitute a first charge against the assets of such bank or licensee, as the case may be.

SEC. 60. Section 275 of the Financial Code is amended to read:

275. The commissioner shall deliver all moneys received or collected by the commissioner under Section 270, 271, or 272 or otherwise, other than moneys received or collected by the commissioner under laws relating to savings associations, the savings association business, credit unions, the credit union business, industrial loan companies, or the industrial loan business or Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, to the Treasurer, who shall deposit the moneys to the credit of the State Banking Account of the Financial Institutions Fund.

SEC. 60.3. Section 276 is added to the Financial Code, to read:

276. (a) In this section, "assessment statute" means any statute that authorizes the commissioner to make or collect an assessment (other than a fine) on financial institutions, including the following:

(1) Sections 270 to 271.5, inclusive.

(2) Section 1801.1.

(3) Section 33302.

(4) Article 2 (commencing with Section 8030) of Chapter 7 of Division 2.

(5) Article 4 (commencing with Section 14350) of Chapter 3 of Division 5.

(6) Sections 18350 to 18352, inclusive.

(7) Section 53667 of the Government Code.

(b) The commissioner may charge to and collect from the Financial Institutions Fund, the Credit Union Fund, the Local Agency Deposit Security Fund, each of the accounts included in the Financial Institutions Fund, and each of the programs included in the State Banking Account an amount equal to the fund's, account's, or program's pro rata share of those expenses of the department which in the opinion of the commissioner it is not feasible to attribute to any single one of the funds, accounts, or programs. The fund's, account's, or program's pro rata share shall be determined and paid in the manner and at the time ordered by the commissioner.

(c) The provisions of any assessment statute that authorize the commissioner to make or collect an assessment for the purposes

specified in the assessment statute include authority for the commissioner to make and collect an assessment for the additional purpose of providing money in an amount that will, in the commissioner's judgment, be sufficient to make payments that may be required under subdivision (b).

SEC. 60.7. Section 277 is added to the Financial Code, to read:

277. Notwithstanding any other provision of this code or of Section 53667 of the Government Code, the commissioner may, at any time during a fiscal year, pay any expense of the department from any of the following accounts and funds: the State Banking Account, the Savings and Loan Account, the Industrial Loan Account, the Financial Institutions Fund, the Credit Union Fund, and the Local Agency Deposit Security Fund. However, if the commissioner pays an expense of the department from an account or fund from which the expense is not, except for this section, permitted to be paid, the commissioner shall, as of a date within that fiscal year, reimburse the account or fund from which the expense was paid by making a transfer from the account or fund from which the expense would have been permitted to be paid.

SEC. 61. Section 350 of the Financial Code is amended to read:

350. When authorized by the commissioner as provided in this chapter a corporation may be formed by one or more persons in accordance with the laws of this state for the purpose of conducting a commercial banking business or a trust business, or both of them. The Corporate Securities Law shall not apply to securities issued by and representing an interest in or a direct obligation of a bank or trust company incorporated under the laws of this state.

SEC. 62. Section 360 of the Financial Code is amended to read:

360. The request for authority to organize and establish a corporation to engage in the banking or trust business shall be set forth in an application in such form and containing such information as the commissioner may require and shall be accompanied by a fee of five thousand dollars ($5,000).

SEC. 63. Section 360.5 of the Financial Code is amended to read:

360.5. Upon receiving a request for an application, the commissioner shall inform the prospective applicant in writing that the commissioner is available to confer with such prospective applicant in advance of the filing of an application for the purpose of discussing questions relating to such application. However, no application shall be decided in advance of filing.

SEC. 64. Section 361 of the Financial Code is amended to read:

361. Upon the filing of an application the commissioner shall make or cause to be made a careful investigation and examination relative to the following:

(a) The character, reputation, and financial standing of the organizers or incorporators and their motives in seeking to organize the proposed bank or trust company.

(b) The need for banking or trust facilities or additional banking or trust facilities, as the case may be, in the community where the proposed bank or trust company is to be located, giving particular consideration to the adequacy of existing banking or trust facilities and the need for further banking or trust facilities in the locality.

(c) The ability of the community to support the proposed bank or trust company giving consideration to (1) the competition offered by existing banks or trust companies and other financial institutions; (2) the previous banking history of the community; (3) the opportunities for profitable employment of bank funds as indicated by the average demand for credit, the number of potential depositors, the volume of bank transactions, and the business and industries of the community with particular regard to their stability, diversification and size; and (4) as to trust companies, the opportunities for profitable employment of fiduciary services.

(d) The character, financial responsibility, banking or trust experience, and business qualifications of the proposed officers of the bank or trust company.

(e) The character, financial responsibility, business experience, and standing of the proposed stockholders and directors.

(f) Such other facts and circumstances bearing on the proposed bank or trust company and its relation to the locality as in the opinion of the commissioner may be relevant.

SEC. 64.1. Section 361 of the Financial Code is amended to read:

361. Upon the filing of an application the commissioner shall make or cause to be made a careful investigation and examination relative to the following:

(a) The character, reputation, and financial standing of the organizers or incorporators and their motives in seeking to organize the proposed bank or trust company.

(b) The need for banking or trust facilities or additional banking or trust facilities, as the case may be, giving particular consideration to the adequacy of existing banking or trust facilities and the need for further banking or trust facilities.

(c) The character, financial responsibility, banking or trust experience, and business qualifications of the proposed officers of the bank or trust company.

(d) The character, financial responsibility, business experience, and standing of the proposed stockholders and directors.

(e) Other facts and circumstances bearing on the proposed bank or trust company and its relation to the locality as in the opinion of the commissioner may be relevant.

SEC. 65. Section 362 of the Financial Code is amended to read:

362. The commissioner may give or withhold his or her approval of the application in his or her discretion but he or she shall not approve the application until he or she has ascertained to his or her satisfaction:

(a) That the public convenience and advantage will be promoted by the establishment of the proposed bank or trust company.

(b) That conditions in the locality in which the proposed bank or trust company will transact business afford reasonable promise of successful operation.

(c) That the bank is being formed for no other purpose than the legitimate objects contemplated by this division.

(d) That the proposed capital structure is adequate.

(e) That the proposed officers and directors have sufficient banking or trust experience, ability, and standing to afford reasonable promise of successful operation.

(f) That the name of the proposed bank or trust company does not resemble, so closely as to be likely to cause confusion, the name of any other bank or trust company transacting business in this state or which had previously transacted business in this state.

(g) That the applicant has complied with all of the applicable provisions of this division.

SEC. 65.1. Section 362 of the Financial Code is amended to read:

362. The commissioner may give or withhold his or her approval of the application in his or her discretion, but he or she shall not approve the application until he or she has ascertained to his or her satisfaction:

(a) That the public convenience and advantage will be promoted by the establishment of the proposed bank or trust company.

(b) That the proposed bank or trust company will have a reasonable promise of successful operation.

(c) That the bank is being formed for no other purpose than the legitimate objects contemplated by this division.

(d) That the proposed capital structure is adequate.

(e) That the proposed officers and directors have sufficient banking or trust experience, ability, and standing to afford reasonable promise of successful operation.

(f) That the name of the proposed bank or trust company does not resemble, so closely as to be likely to cause confusion, the name of any other bank or trust company transacting business in this state or which had previously transacted business in this state.

(g) That the applicant has complied with all of the applicable provisions of this division.

SEC. 66. Section 362.5 of the Financial Code is amended to read:

362.5. (a) In this section:

(1) "Control" has the meaning set forth in Section 700.

(2) "Officer" has the meaning set forth in Section 33057.

(b) For purposes of Section 362, the commissioner may find:

(1) That a proposed officer or director of a proposed bank or trust company does not have sufficient standing to afford reasonable promise of successful operation if such person has been convicted of, or has pleaded nolo contendere to, any crime involving fraud or dishonesty.

(2) That the establishment of a proposed bank or trust company will not promote the public convenience and advantage if any person who is proposed to control the proposed bank or trust company or any director or officer of such person has been convicted of, or has pleaded nolo contendere to, any crime involving fraud or dishonesty.

(c) Subdivision (b) shall not be deemed to be the only grounds upon which the commissioner may find, for purposes of Section 362, that a proposed officer or director of a proposed bank or trust company does not have sufficient standing to afford reasonable promise of successful operation or that the establishment of a proposed bank or trust company will not promote the public convenience and advantage.

SEC. 67. Section 363 of the Financial Code is amended to read:

363. At least 30 days before denying an application, the commissioner shall by mail or other method of service give written notice of the intended denial of an application and of the right of the applicant to meet with the commissioner regarding the reasons for such denial. The request for such meeting shall be in writing and delivered to the commissioner within 20 calendar days of the date of giving of the notice of intended denial. If a request is made for such meeting, the application may not be denied until after the meeting.

SEC. 68. Section 400 of the Financial Code is amended to read:

400. The articles of incorporation of the proposed bank or trust company shall be submitted to the commissioner for his or her approval before they are filed with the Secretary of State pursuant to the Corporations Code. After the articles have been filed with the Secretary of State the proposed bank or trust company shall:

(a) File with the commissioner a copy of its articles of incorporation, certified by the Secretary of State, and a copy of its bylaws certified by its secretary.

(b) File with the commissioner a statement in such form and with such supporting data as the commissioner may require showing that the entire contributed capital has been fully paid in lawful money, unconditionally, and that the funds representing such contributed capital, less sums spent as authorized by this article for preopening expenditures are on deposit in a state or national bank in this state, subject to withdrawal on demand.

(c) Pay to the commissioner a fee of two thousand five hundred dollars ($2,500).

SEC. 68.1. Section 400 of the Financial Code is amended to read:

400. The articles of incorporation of the proposed bank or trust company shall be submitted to the commissioner for his or her approval before they are filed with the Secretary of State pursuant to the Corporations Code. After the articles have been filed with the Secretary of State the proposed bank or trust company shall:

(a) File with the commissioner a copy of its articles of incorporation, certified by the Secretary of State.

(b) File with the commissioner a statement in the form and with any supporting data as the commissioner may require showing that the entire contributed capital has been fully paid in lawful money, unconditionally, and that the funds representing the contributed capital, less sums spent as authorized by this article for preopening expenditures are on deposit in a state or national bank in this state, subject to withdrawal on demand.

(c) Pay to the commissioner a fee of two thousand five hundred dollars ($2,500).

SEC. 69. Section 401 of the Financial Code is amended to read:

401. If the commissioner finds that the proposed bank or trust company has in good faith complied with all the requirements of law and fulfilled all the conditions precedent to commencing business imposed by this code or by regulation, the commissioner shall, within 30 days after the statement and supporting data specified in Section 400 have been filed with him or her, issue in duplicate a certificate of authorization to transact business as a bank or trust company, as the case may be, and shall transmit one copy to the bank or trust company and place one copy on file in the department. The certificate of authorization shall state that the corporation named therein has complied with all the provisions of this code governing organization of banks or trust companies and that it is authorized to transact the business specified therein.

SEC. 70. Section 402 of the Financial Code is amended to read:

402. It shall be unlawful to accept payment of subscriptions for shares of any corporation proposing to engage in the banking or trust business unless authority to organize such corporation has been granted by the commissioner.

SEC. 71. Section 403 of the Financial Code is amended to read:

403. No corporation organized to transact a commercial banking or trust business shall transact any business until the commissioner has issued his or her certificate authorizing it to transact such business. No bank or trust company shall incur any indebtedness except that which is incidental to its organization until the amount of its contributed capital has been fully paid in lawful money to the cashier or chief financial officer thereof.

SEC. 72. Section 404 of the Financial Code is amended to read:

404. If the proposed bank or trust company fails to file evidence of incorporation and organization with the commissioner pursuant to Section 400 within one year after the approval of the application for authority to organize the bank or trust company, the right to organize the bank or trust company automatically terminates. The commissioner, however, for good cause on written application filed before the expiration of the original period or any additional period, as the case may be, and payment of a fee of one hundred dollars ($100), may extend for additional periods not in excess of six months each the time within which the bank or trust company may be organized.

SEC. 73. Section 405 of the Financial Code is amended to read:

405. If the proposed bank or trust company fails to open for business within 90 days after the issuance of the certificate of authorization, the right to transact business automatically terminates. The commissioner, however, for good cause on written application filed before the end of said 90-day period, may extend for one additional period of not to exceed 90 days the time within which the bank or trust company may open for business.

SEC. 74. Section 406 of the Financial Code is amended to read:

406. It is unlawful to apply any part of the funds collected from subscribers or shareholders to the payment of commissions or fees for obtaining subscriptions or selling shares or, except with the prior approval of the commissioner, to the payment of preopening noncapital expenditures.

SEC. 75. Section 407 of the Financial Code is amended to read:

407. Every bank and trust company shall keep posted in a conspicuous place in its banking room at its head office the certificate of authority to transact a banking or trust business issued by the commissioner.

SEC. 76. Section 420 of the Financial Code is amended to read:

420. A bank or trust company may change the location of its head office within this state with the written approval of the commissioner. An application for approval shall be in the form and contain the information that the commissioner may require, and shall be accompanied by a fee of two hundred fifty dollars ($250).

SEC. 77. Section 421 of the Financial Code is amended to read:

421. (a) As used in this section:

(1) "Branch office" has the meaning set forth in subdivision (a) of Section 500.

(2) "Redesignation of the head office and a branch office" means the relocation by a bank of its head office to the site of a branch office in this state and the concurrent establishment by the bank of a branch office at the former site of the head office.

(b) A redesignation of the head office and a branch office shall not be subject to Section 420 or to Article 1 (commencing with Section 500) of Chapter 4.

(c) A bank may effect a redesignation of the head office and a branch office, if it files with the commissioner a report on the proposed redesignation not less than 30 days before the redesignation. The report shall be in the form, shall contain the information, shall be signed in the manner, and shall, if the commissioner so requires, be verified in the manner the commissioner may require.

(d) Whenever a bank effects a redesignation of the head office and a branch office, the bank shall do the following:

(1) The bank shall surrender to the commissioner for cancellation the certificate of authority for the head office at the original site and the certificate of authority for the branch office where it is relocating

the head office. The commissioner shall issue to the bank a new certificate of authority authorizing the bank to maintain the head office at the new site and a new certificate of authority authorizing the bank to establish and operate a branch office at the former site of the head office. The bank shall pay to the commissioner a fee of twenty-five dollars ($25) for each new certificate.

(2) In the event that the bank has any other certificates of authority which list the bank's head office at the former site, the bank shall surrender the certificates to the commissioner for cancellation. The commissioner shall issue to the bank replacement certificates listing the bank's head office at the new site, and the bank shall pay to the commissioner a fee of twenty-five dollars ($25) for each replacement certificate.

SEC. 78. Section 490 of the Financial Code is amended to read:

490. (a) In issuing an exemption under this section, the commissioner may impose any conditions that the commissioner finds necessary or appropriate.

(b) The commissioner may, by order or regulation, exempt from the requirement of authorization by the commissioner set forth in subdivision (b) of Section 500 or Section 541 or 551 any establishment of an office that the commissioner finds not necessary or appropriate to regulate under the section.

(c) The commissioner may, by order or regulation, exempt from the requirement of authorization or approval by the commissioner set forth in Section 507 or 546 any relocation of an office that the commissioner finds not necessary or appropriate to regulate under the section.

SEC. 79. Section 500 of the Financial Code is amended to read:

500. (a) In this article, "branch office" means any branch office other than an automated teller machine branch office as defined in Section 550.

(b) When authorized by the commissioner as provided in this chapter, a bank or trust company, with the approval of its board, may establish and maintain one or more branch offices.

SEC. 80. Section 501 of the Financial Code is amended to read:

501. The request for authority to establish a branch office shall be set forth in an application in such form and containing such information as the commissioner may require and shall be accompanied by an application fee of one thousand dollars ($1,000) for each new branch office.

SEC. 81. Section 503 of the Financial Code is amended to read:

503. In determining whether to approve or disapprove an application by a bank for authority to establish a branch office, the commissioner shall consider all of the following:

(a) The financial history and condition of the bank.

(b) The adequacy of the shareholders' equity in the bank.

(c) The future earnings prospects of the bank.

(d) The management of the bank.

(e) The convenience and needs of the community to be served by the branch office.

SEC. 82. Section 504 of the Financial Code is amended to read:

504. When the commissioner has approved an application for permission to establish a branch office, the commissioner shall issue a certificate in duplicate authorizing the opening and operation of the branch office and specifying the date on which and the conditions under which it may be opened and the place where it will be located. The commissioner shall cause one copy to be transmitted to the applicant and the other copy to be filed in the department.

SEC. 83. Section 505 of the Financial Code is amended to read:

505. The failure of a bank or trust company to open and operate a branch office within one year after the commissioner approves the application therefor shall automatically terminate the right of the bank or trust company to open the branch office except that the commissioner, for good cause on written application made before the expiration of the one-year period and accompanied by a fee of one hundred dollars ($100), may extend for additional periods not in excess of one year each the time within which the branch office may be opened.

SEC. 84. Section 506 of the Financial Code is amended to read:

506. A bank or trust company which opens a branch office without first obtaining the approval of the commissioner shall forfeit to the people of the state the sum of one hundred dollars ($100) for every day during which the branch office is maintained without authority.

SEC. 85. Section 507 of the Financial Code is amended to read:

507. When authorized by the commissioner a bank or trust company may change the location of a branch office from one location to another in the same vicinity. An application for such authorization shall be in such form and contain such information as the commissioner may require and be accompanied by a fee of two hundred fifty dollars ($250).

SEC. 86. Section 508 of the Financial Code is amended to read:

508. Every bank and every trust company shall keep posted in a conspicuous place in each branch office the certificate issued by the commissioner permitting the operation of the branch office.

SEC. 87. Section 510 of the Financial Code is amended to read:

510. With the prior written approval of the commissioner a bank or trust company may close or discontinue the operation of any branch office provided public notice thereof is given in such manner as the commissioner directs at least 90 days before the date of closing or discontinuance.

SEC. 87.1. Section 510 of the Financial Code is amended to read:

510. (a) A bank or trust company may close or discontinue the operation of any branch office if, before the closing or discontinuance, (1) the bank files with the commissioner a notice containing the information in subdivision (b), and (2) the

commissioner within 60 days after the filing of the notice or any longer period to which the bank consents, either (A) issues a written statement not objecting to the notice or (B) does not issue a written objection to the notice.

(b) (1) A notice filed under subdivision (a) shall contain all of the following information:

(A) The name of the California state bank.

(B) The location of the branch office proposed to be closed or discontinued.

(C) The location of the office to which the business of the branch office proposed to be closed or discontinued is proposed to be transferred.

(D) The proposed date of closing or discontinuance.

(E) A detailed statement of the reasons for the decision to close the branch office.

(F) Statistical or other information in support of the reasons consistent with the institution's written policy for branch office closings.

(G) Any other information that the commissioner may require.

(2) A notice filed under subdivision (a) shall be in the form, shall be signed in the manner, and shall, if the commissioner requires, be verified in the manner that the commissioner may require.

(c) For purposes of subdivision (a), a notice is deemed to be filed with the commissioner at the time when the complete notice, including any amendments or supplements, containing all the information required by the commissioner, and otherwise complying with subdivision (b), is received by the commissioner.

(d) In determining whether or not to object to a notice filed under subdivision (a), except if the commissioner finds that it is necessary in the interests of safety and soundness that the branch office be closed or discontinued, the commissioner shall consider whether the closing or discontinuance of the branch office will have a seriously adverse effect on the public convenience or advantage.

SEC. 88. Section 511 of the Financial Code is amended to read:

511. A bank may arrange for the collection of savings from school children by the principal of the school, by the teachers, or by collectors, pursuant to regulations issued by the commissioner and approved, in the case of public schools, by the board of education or board of trustees of the city or district in which the school is situated. The principal, teacher, or person authorized by the bank to make collections from the school children shall be the agent of the bank and the bank is liable to the pupil for all deposits made with such principal, teacher, or other authorized person to the same extent as if the deposits were made directly with the bank.

SEC. 89. Section 512 of the Financial Code is amended to read:

512. With the approval of the commissioner and subject to any regulations that the commissioner may prescribe, a bank may transact at a foreign (other state) or foreign (other nation) branch

office business that is permissible for banks organized under the laws of the state or nation where the branch office is located but that would not otherwise be permissible for the bank.

SEC. 90. Section 540 of the Financial Code is amended to read:

540. As used in this article, "place of business" means any place of business of a bank other than a head office, a branch office, or a place of business consented to by the commissioner pursuant to Section 776 of this code.

SEC. 91. Section 541 of the Financial Code is amended to read:

541. No bank shall establish or maintain a place of business unless it is authorized to do so by the commissioner.

SEC. 92. Section 542 of the Financial Code is amended to read:

542. An application for authority to establish and maintain a place of business shall be in such form and contain such information as the commissioner may prescribe, and shall be accompanied by a fee of two hundred fifty dollars ($250).

SEC. 93. Section 543 of the Financial Code is amended to read:

543. The commissioner may give or withhold approval of an application in his or her discretion, but he or she shall not approve the application until he or she has ascertained to his or her satisfaction that the public convenience and advantage will be promoted by the proposed place of business.

SEC. 94. Section 544 of the Financial Code is amended to read:

544. When the commissioner has approved an application, the commissioner shall issue a certificate in duplicate authorizing such bank to establish and maintain the place of business. Such certificate shall specify the conditions, if any, under which the place of business may be established and maintained and the place where it will be located. The commissioner shall place one copy of such certificate on file with the department. The commissioner shall transmit one copy of such certificate to the applicant bank, and such bank shall display such copy in a conspicuous place in the place of business.

SEC. 94.1. Section 544 of the Financial Code is amended to read:

544. When the commissioner has approved an application, the commissioner shall issue a certificate in duplicate authorizing the bank to establish and maintain the place of business. The certificate shall specify the conditions, if any, under which the place of business may be established and maintained and the place where it will be located. The commissioner shall place one copy of the certificate on file with the department. The commissioner shall transmit one copy of the certificate to the applicant bank.

SEC. 95. Section 545 of the Financial Code is amended to read:

545. The approval of an application to establish and maintain a place of business shall be revoked by operation of law if the applicant bank does not establish and maintain such place of business within one year after the date of such approval. However, for good cause on written application made before such approval is revoked and accompanied by a fee of one hundred dollars ($100), the

commissioner may extend for additional periods not in excess of one year each the time within which such place of business may be established and maintained.

SEC. 96. Section 546 of the Financial Code is amended to read:

546. With the prior written approval of the commissioner, a bank may change the location of a place of business from one location to another in the same vicinity. An application for such approval shall be accompanied by a fee of one hundred dollars ($100).

SEC. 97. Section 547 of the Financial Code is amended to read:

547. With the prior written approval of the commissioner, a bank may close or discontinue the operation of a place of business.

SEC. 97.1. Section 547 of the Financial Code is amended to read:

547. (a) A bank may close or discontinue the operation of a place of business provided it files a notice with the commissioner, containing the information in subdivision (b), at least 30 days prior to the closure or discontinuance, and provided further that the commissioner either (1) issues a written statement not objecting to the notice or (2) does not issue a written objection to the notice.

(b) A notice filed by a California state bank of the closure or discontinuance of a place of business shall contain the following information.

(1) The name of the California state bank.

(2) The name and location of the place of business proposed to be closed or discontinued.

(3) The name and location of the place of business that will assume the business of the branch office proposed to be closed or discontinued.

(4) Any other information that the commissioner may require.

SEC. 98. Section 551 of the Financial Code is amended to read:

551. When authorized by the commissioner as provided in this article:

(a) A California state bank may establish or operate one or more automated teller machine branch offices.

(b) A foreign (other nation) bank may establish and operate one or more automated teller machine branch offices in the state.

SEC. 99. Section 552 of the Financial Code is amended to read:

552. An application for authority to establish and operate one or more automated teller machine branch offices shall be accompanied by a fee of two hundred and fifty dollars ($250), and shall contain the following information:

(a) The location of each automated teller machine branch office.

(b) A description of the type of functions which each automated teller machine branch office will perform.

(c) The institutions who will initially be sharing each automated teller machine branch office.

(d) The total fixed asset bank investment in each automated teller machine branch office.

The application shall also contain such additional information as the commissioner may prescribe regarding the financial condition of the applicant bank, and the sharing, functions, and location of each automated teller machine branch office.

SEC. 99.1. Section 552 of the Financial Code is amended to read:

552. A California state bank or a foreign (other nation) bank that intends to establish or operate an automated teller machine branch office in accordance with the authority of Section 551 shall provide the commissioner with notice at least 30 days prior to the establishment of the automated teller machine branch office. The notice shall contain the following information:

(a) The name of the California state bank or foreign (other nation) bank.

(b) The location of each automated teller machine branch office.

(c) A description of the type of functions which each automated teller machine branch office will perform.

(d) The date on which each automated teller machine branch office will commence operations.

The application shall also contain any additional information as the commissioner may, by regulation or order, prescribe.

SEC. 100. Section 553 of the Financial Code is amended to read:

553. If the commissioner finds, with respect to an application by a bank for authority to establish and operate one or more automated teller machine branch offices, that the financial condition of the bank is satisfactory, the commissioner shall approve the application. If the commissioner finds otherwise, the commissioner shall deny the application.

SEC. 101. Section 554 of the Financial Code is amended to read:

554. In case an application by a bank for authority to establish and operate one or more automated teller machine branch offices is not denied or approved by the commissioner within 45 days after the application is filed with the commissioner, or, if the bank consents to an extension of the period within which the commissioner may act, within the extended period, the application shall be deemed to be approved by the commissioner as of the first day after the period of 45 days or the extended period, as the case may be.

For purposes of this section, an application for approval to establish and operate one or more automated teller machine branch offices shall be deemed to be filed with the commissioner at the time when the complete application, including any amendments or supplements, containing all the information in the form required by the commissioner, is received by the commissioner.

SEC. 102. Section 555 of the Financial Code is amended to read:

555. The approval of an application for authority to establish and operate one or more automated teller machine branch offices shall be revoked by operation of law with respect to any automated teller machine branch office which the applicant does not establish and operate within one year after the date of approval by the

commissioner. However, for good cause on written application made before the approval is revoked and accompanied by a fee of fifty dollars ($50), the commissioner may extend the approval for additional periods not in excess of one year.

SEC. 103. Section 556 of the Financial Code is amended to read:

556. Whenever an application by a bank for approval to establish and operate one or more automated teller machine branch offices has been approved by the commissioner and all conditions precedent to the issuance of a certificate of authority authorizing the bank to establish and operate automated teller machine branch offices have been fulfilled, the commissioner shall issue the certificate of authority.

SEC. 104. Section 557 of the Financial Code is amended to read:

557. Not less than 30 days prior to changing the location of an automated teller machine branch office from one location to another in the same vicinity, a bank shall provide the commissioner with written notice of the change in location.

SEC. 104.1. Section 557 of the Financial Code is amended to read:

557. Not less than 30 days prior to changing the location of an automated teller machine branch office from one location to another in the same vicinity, a bank shall provide the commissioner with written notice of the change in location containing the following information:

(a) The name of the California state bank or foreign (other nation) bank.

(b) The location of each automated teller machine branch office to be relocated.

(c) The date on which each automated teller machine branch office will terminate operations at its old location and the date on which it will commence operations at the new location.

SEC. 105. Section 558 of the Financial Code is amended to read:

558. Not less than 30 days prior to discontinuing the operation of an automated teller machine branch office, a bank shall provide the commissioner with written notice of the discontinuance.

SEC. 105.1. Section 558 of the Financial Code is amended to read:

558. Not less than 30 days prior to discontinuing the operation of an automated teller machine branch office, a bank shall provide the commissioner with written notice of the discontinuance containing the following information:

(a) The name of the California state bank or foreign (other nation) bank.

(b) The location of each automated teller machine branch office to be discontinued.

(c) The date on which each automated teller machine branch office will discontinue operations.

SEC. 106. Section 559 of the Financial Code is amended to read:

559. Subject to applicable laws and regulations, a bank is permitted but not required to share its automated teller machine

branch offices with one or more other banks (as defined in Section 102), savings associations, and credit unions, or such other persons as the commissioner may approve.

SEC. 107. Section 561 of the Financial Code is amended to read:

561. A bank may use automated teller machines established or operated by another person, provided that the bank complies with the following requirements:

(a) In case the person is not (1) a bank, (2) a national banking association headquartered in this state, or (3) a foreign (other nation) bank that maintains a federal retail branch office (as defined in Section 1700) in this state, the bank shall, before commencing such use, file with the commissioner satisfactory assurances that the performance of the services by the person will be subject to examination by the commissioner to the same extent as if the services were being performed by the bank itself.

(b) In any case the bank shall, not less than 30 days before commencing such use, file with the commissioner a notice that contains the following information:

(1) The name and primary address of the person establishing or operating the automated teller machines.

(2) A description of the type of functions that the automated teller machines will perform.

The notice shall also contain any additional information that the commissioner may prescribe regarding the financial condition of the notifying bank, and the functions and locations of the automated teller machines.

SEC. 108. Section 600.2 of the Financial Code is amended to read:

600.2. (a) The articles of each bank (other than a bank which is, or is proposed to be, a corporation authorized to maintain a title insurance department to engage in title insurance business and a trust department to engage in trust business) shall provide that the common shares of such bank are subject to assessment by the bank upon order of the commissioner for the purpose of correcting an impairment of contributed capital in the manner and to the extent provided in this division.

(b) The articles of each bank that is a corporation which is, or is proposed to be, authorized to maintain a title insurance department to engage in title insurance business and a trust department to engage in trust business, shall provide that the common shares of such corporation are subject to assessment by the corporation upon order of the commissioner for the purpose of correcting an impairment of the contributed capital apportioned or segregated to the trust department of the corporation in the manner and to the extent provided in this division.

SEC. 108.1. Section 600.2 of the Financial Code is amended to read:

600.2. The articles of each bank shall provide that the common shares of the bank are subject to assessment by the bank upon order

of the commissioner for the purpose of correcting an impairment of contributed capital in the manner and to the extent provided in this division.

SEC. 109. Section 600.4 of the Financial Code is amended to read:

600.4. (a) No amendment of the articles of a bank (other than an amendment set forth in an agreement of merger or in a certificate of ownership executed pursuant to Section 1110 of the Corporations Code that requires the approval of the commissioner pursuant to Chapter 4 (commencing with Section 4880) of Division 1.5) shall become effective unless the certificate of amendment or other instrument setting forth the amendment is filed with the Secretary of State with the commissioner's approval endorsed thereon. Promptly after the amendment becomes effective, the bank shall file with the commissioner a copy of the certificate of amendment or other instrument certified by the Secretary of State.

(b) Any amendment of the articles of a bank set forth in an agreement of merger or in a certificate of ownership executed pursuant to Section 1110 of the Corporations Code that requires the approval of the commissioner pursuant to Chapter 4 (commencing with Section 4880) of Division 1.5, shall become effective at the time when the merger becomes effective pursuant to this division.

SEC. 110. Section 600.6 of the Financial Code is amended to read:

600.6. No restated articles of a bank shall become effective unless the certificate setting forth such restated articles is filed with the Secretary of State with the commissioner's approval endorsed thereon. Promptly after the restated articles become effective, such bank shall file with the commissioner a copy of such certificate certified by the Secretary of State.

SEC. 111. Section 600.8 of the Financial Code is amended to read:

600.8. No certificate of determination of a bank shall become effective unless such certificate of determination is filed with the Secretary of State with the commissioner's approval endorsed thereon. Promptly after the certificate of determination becomes effective, such bank shall file with the commissioner a copy of the certificate of determination certified by the Secretary of State.

SEC. 112. Section 600.10 of the Financial Code is amended to read:

600.10. No certificate of correction of a bank shall become effective unless such certificate of correction is filed with the Secretary of State with the commissioner's approval endorsed thereon. Promptly after the certificate of correction becomes effective, such bank shall file with the commissioner a copy of the certificate of correction certified by the Secretary of State.

SEC. 113. Section 600.12 of the Financial Code is amended to read:

600.12. No certificate of revocation of a bank shall become effective unless such certificate of revocation is filed with the Secretary of State with the commissioner's approval endorsed

thereon. Promptly after the certificate of revocation becomes effective, such bank shall file with the commissioner a copy of the certificate of revocation certified by the Secretary of State.

SEC. 114. Section 601 of the Financial Code is amended to read:

601. The bylaws of a bank or trust company and any amendment thereto shall become effective only when approved by the commissioner, for which approval no fee shall be charged, and when a copy thereof certified by the secretary or assistant secretary of the bank or trust company has been filed with the commissioner.

SEC. 115. Section 602 of the Financial Code is amended to read:

602. (a) A bank may change its name if it files with the commissioner a report on the proposed change not less than 30 days before the change. The report shall be in the form, shall contain the information, shall be signed in the manner, and shall, if the commissioner so requires, be verified in the manner the commissioner may require.

(b) Whenever a bank changes its name, the bank shall surrender to the commissioner for cancellation the certificates of authority under its old name for its head office, any branch offices, and any places of business. The commissioner shall issue to the bank replacement certificates under the bank's new name and the bank shall pay to the commissioner a fee of twenty-five dollars ($25) for each replacement certificate.

(c) The commissioner may not deny an application for approval of an amendment of the articles of incorporation of a bank which changes the name of the bank or any other application of a bank relating to a change in the name of the bank because the new name of the bank resembles so closely, as to be likely to cause confusion, the name of any other bank.

SEC. 116. Section 643 of the Financial Code is amended to read:

643. Notwithstanding the provisions of Section 642, a bank or a majority-owned subsidiary of a bank may, with the prior approval of the commissioner, make a distribution to the shareholders of such bank in an amount not exceeding the greatest of:

(a) The retained earnings of the bank;

(b) The net income of the bank for its last fiscal year; or

(c) The net income of the bank for its current fiscal year.

SEC. 117. Section 644 of the Financial Code is amended to read:

644. Notwithstanding the provisions of Section 642, a bank may:

(a) With the prior approval of the commissioner, make a distribution to its shareholders by means of redeeming its redeemable shares; and

(b) With the prior approval of its outstanding shares and of the commissioner, otherwise make a distribution to its shareholders in connection with a reduction of its contributed capital.

SEC. 118. Section 645 of the Financial Code is amended to read:

645. If the commissioner finds that the shareholders' equity of a bank is not adequate or that the making by a bank or by any

majority-owned subsidiary of a bank of a distribution to the shareholders of such bank would be unsafe or unsound for the bank, the commissioner may order such bank and its majority-owned subsidiaries not to make any distribution to the shareholders of the bank.

SEC. 119. Section 646 of the Financial Code is amended to read:

646. (a) For purposes of Section 506 of the Corporations Code, the making by a bank or by any majority-owned subsidiary of a bank of a distribution to any shareholder of such bank in violation of any provision of this article shall be deemed to be prohibited by, and to be a violation of, Section 500 of the Corporations Code.

(b) The commissioner may, in the name of the people of this state, bring or intervene in an action under Section 506 of the Corporations Code for the benefit of a bank against any shareholder of such bank on account of receiving, with knowledge of facts indicating the impropriety thereof, any distribution prohibited by any provision of this article or by any provision of Sections 501, 502, and 503 of the Corporations Code, to the same extent as a creditor of the bank who did not consent to the illegal distribution to such shareholder and who had a valid claim against the bank which arose prior to the time of the illegal distribution to the shareholder and which exceeded the amount of the illegal distribution to the shareholder, might bring such an action in the name of the bank.

SEC. 120. Section 660 of the Financial Code is amended to read:

660. In determining for purposes of this division whether the shareholders' equity of a bank or of a proposed bank is adequate, the commissioner shall consider:

(a) The nature and volume of the business of the bank;

(b) The amount, nature, quality, and liquidity of the assets of the bank;

(c) The amount and nature of the liabilities (including, but not limited to, any capital notes or debentures and any contingent liabilities) of the bank;

(d) The amount and nature of the fixed charges of the bank;

(e) The history of, and prospects for, the bank to earn and retain income;

(f) The quality of the operations of the bank;

(g) The quality of the management of the bank;

(h) The nature and quality of the ownership of the bank; and

(i) Such other factors as are in the opinion of the commissioner relevant.

SEC. 121. Section 662 of the Financial Code is amended to read:

662. (a) Whenever it appears that the contributed capital of a bank or trust company is impaired, the commissioner shall order the bank to correct such impairment within 60 days of the date of his or her order.

(b) The bank or trust company to which an order is issued pursuant to subdivision (a), unless the impairment of contributed

capital is otherwise corrected, shall levy and collect an assessment upon its common shares pursuant to Section 423 of the Corporations Code. The date on which the bank or trust company levies the assessment shall be not more than 60 days after the date of the order; the date on which the assessment is payable shall be not more than 60 days after the date of the levy of the assessment; the date on which the assessment becomes delinquent if not paid shall be not later than the time prescribed in Section 423 of the Corporations Code; and the date on which delinquent shares are sold shall be not later than the time prescribed in Section 423 of the Corporations Code. However, the commissioner may, for good cause, shorten any such time period.

(c) The common shares of every corporation doing a banking business in this state are subject to assessment as provided in this section, whether or not the fact that the shares are subject to such assessment is noted on the certificates representing such shares, and if the shares are subject to assessment only upon order of the commissioner as provided in this section no statement of that fact need be noted on the certificates.

SEC. 122. Section 663 of the Financial Code is amended to read:

663. A bank which has deficit retained earnings may, with the prior approval of its outstanding shares and of the commissioner, readjust its accounts in a quasi-reorganization. Such readjustment may include, without limitation, eliminating such deficit retained earnings.

SEC. 123. Section 670 of the Financial Code is amended to read:

670. A bank at any time may, with the approval of its board, issue, sell or hypothecate its capital notes or debentures which may be payable upon such terms and may bear such rate of interest, if any, as may be provided therein or which may be convertible into shares. Such capital notes and debentures shall be subordinate to the claims of creditors and depositors and it shall be provided in any such capital notes or debentures that in the event of liquidation all depositors and other creditors of the bank shall be entitled to be paid in full with such interest as may be provided by law before any payment shall be made on account of principal of or interest on such capital notes or debentures and it may be provided in any such capital notes or debentures that after payment in full of all sums owing to such depositors and creditors the holders of such capital notes or debentures shall be entitled to be paid from the remaining assets of the bank the unpaid principal amount of the capital notes or debentures plus accrued and unpaid interest thereon before any payment or other distribution, whether in cash, property or otherwise, shall be made on account of any shares of the bank. It shall be provided in such capital notes or debentures that no payment shall at any time be made on account of the principal thereof, unless following such payment the aggregate of the shareholders' equity and capital notes or debentures thereafter outstanding shall be the equal of such aggregate at the date of the original issue of such capital

notes or debentures, or as may be otherwise authorized by the commissioner.

SEC. 124. Section 684 of the Financial Code is amended to read:

684. (a) The commissioner, whenever in his opinion such action is necessary or appropriate to carry out the purposes and provisions of this division, may call a meeting of the board of a bank.

(b) A meeting of the board of a bank called by the commissioner shall be held upon four days' notice by mail or 24 hours' notice delivered personally or by telephone or telegraph. Such notice shall be given by the commissioner or, if the commissioner so orders, by an officer of such bank.

(c) A meeting of the board of a bank called by the commissioner shall be held at such place within this state as may be designated by the commissioner and specified in the notice of such meeting.

(d) The expenses of a meeting of the board of a bank called by the commissioner shall be paid by such bank.

SEC. 125. Section 685 of the Financial Code is amended to read:

685. The commissioner may, in the name of the people of this state, bring or intervene in an action under Section 709 of the Corporations Code to determine the validity of any election or appointment of any director of a bank to the same extent as a shareholder of such bank might bring such an action.

SEC. 126. Section 686 of the Financial Code is amended to read:

686. (a) The commissioner shall be deemed to be a party in interest within the meaning of Section 306 of the Corporations Code with respect to a bank and may, in the name of the people of this state, bring or intervene in an action under Section 306 of the Corporations Code for the appointment of directors of a bank.

(b) The commissioner may, in the name of the people of this state, bring or intervene in an action under Section 308 of the Corporations Code for the appointment of a provisional director or directors of a bank to the same extent as a shareholder who held 50 percent of the voting power of such bank might bring such an action.

SEC. 127. Section 687 of the Financial Code is amended to read:

687. (a) For purposes of Section 316 of the Corporations Code, to the extent that the making by a bank or by any majority-owned subsidiary of a bank of a distribution to any shareholder of such bank is contrary to any provision of Article 3 (commencing with Section 640), the making of such distribution shall, to such extent, be deemed to be contrary to the provisions of Section 500 of the Corporations Code.

(b) The commissioner may, in the name of the people of this state, bring or intervene in an action under Section 316 of the Corporations Code for the benefit of a bank against any or all of the directors of such bank or of any majority-owned subsidiary of such bank on account of the making of a distribution to any shareholder of the bank contrary to any provision of Article 3 (commencing with Section 640) or any provision of Sections 501, 502, and 503 of the Corporations Code, to

the same extent as a creditor of the bank who did not consent to the illegal distribution and who had a valid claim against the bank which arose prior to the time of the illegal distribution, and which exceeded the amount of the illegal distribution, might bring such an action in the name of the bank.

SEC. 128. Section 688 of the Financial Code is amended to read:

688. (a) For purposes of Section 316 of the Corporations Code, the making of a loan or guarantee by a bank or any other extending of credit by a bank contrary to any provision of this division shall be deemed to be contrary to Section 315 of the Corporations Code.

(b) The commissioner may, in the name of the people of this state, bring or intervene in an action under Section 316 of the Corporations Code for the benefit of a bank against any or all of the directors of such bank on account of the making of a loan or guarantee or any other extending of credit contrary to any provision of this division, to the same extent as a creditor of the bank who did not consent to the illegal making of the loan or guarantee or the other illegal extending of credit and who had a valid claim against the bank which arose prior to the time of the illegal making of the loan or guarantee or the other illegal extending of credit and which exceeded the amount of loss suffered by the bank as a result of the illegal making of the loan or guarantee or the other illegal extending of credit, might bring such an action in the name of the bank.

SEC. 129. Section 689 of the Financial Code is amended to read:

689. (a) Paragraph (1) of subdivision (b) of Section 1501 of the Corporations Code does not apply to the annual report of any bank with respect to any transaction consisting of an extension of credit by such bank or by any of its majority-owned subsidiaries.

(b) The annual report of a bank which would, but for the provisions of subdivision (a), be subject to paragraph (1) of subdivision (b) of Section 1501 of the Corporations Code, shall disclose such information regarding debts owing to such bank or to any of its majority-owned subsidiaries and transactions consisting of extensions of credit by the bank or by any of its majority-owned subsidiaries, as the commissioner may by regulation require. In issuing any such regulation, the commissioner shall give due consideration to regulations regarding such matters issued by federal bank regulatory agencies under the Securities Exchange Act of 1934.

SEC. 130. Section 690 of the Financial Code is amended to read:

690. Unless the context otherwise requires, in this article:

(a) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security for value.

(b) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security for value. "Sale" or "sell" includes any exchange of securities and any change in the rights, preferences, privileges, or restrictions of or on outstanding securities.

(c) "Security" means any stock, capital note, or debenture, or any warrant, right, or option to subscribe to or purchase any of the foregoing.

(d) The terms defined in subdivisions (a) and (b) of this section do not include any stock dividend payable with respect to common stock of a bank solely (except for any cash or script paid for fractional shares) in shares of such common stock, if such bank has no other class of voting stock outstanding; provided, that shares issued in any such dividend shall be subject to any conditions previously imposed by the commissioner applicable to the shares with respect to which they are issued.

SEC. 131. Section 691 of the Financial Code is amended to read:

691. No bank organized under the laws of this state shall offer or sell any security issued by it unless the commissioner has issued a permit authorizing such sale.

SEC. 132. Section 692 of the Financial Code is amended to read:

692. An application for a permit shall be in such form and contain such information as the commissioner may prescribe.

SEC. 133. Section 692.1 of the Financial Code is amended to read:

692.1. The commissioner shall charge and collect fees for applications filed under this article as fixed in this section.

(a) The fee for a negotiating permit shall be fifty dollars ($50).

(b) The fee for a permit to exchange a security or to make any change in the rights, preferences, privileges, or restrictions of or on outstanding securities shall be fifty dollars ($50).

(c) The fee for any permit to sell securities other than as specified in subdivision (b) shall be one hundred dollars ($100) plus one-tenth of one percent (0.1%) of the aggregate value of the securities sought to be sold, up to a maximum aggregate fee of one thousand seven hundred fifty dollars ($1,750).

SEC. 134. Section 693 of the Financial Code is amended to read:

693. If the commissioner finds that the proposed sale of securities is fair, just, and equitable, he or she shall issue to the applicant a permit authorizing it to offer and sell the securities in such amount and upon such terms and conditions as he or she may provide in the permit. If the commissioner finds otherwise, he or she shall deny the application.

SEC. 135. Section 694 of the Financial Code is amended to read:

694. The commissioner may impose conditions in any permit issued under Section 693, requiring the deposit in escrow of securities, imposing a legend condition restricting the transferability thereof, impounding the proceeds from the sale thereof, limiting the expense in connection with the sale thereof, or such other conditions as he or she deems reasonable and necessary or advisable in the public interest.

SEC. 136. Section 696 of the Financial Code is amended to read:

696. The commissioner may amend, alter, suspend, or revoke any permit issued pursuant to Section 693.

SEC. 137. Section 696.5 of the Financial Code is amended to read:

696.5. Whenever a bank applies for a permit to issue any security or to deliver any other consideration (whether or not such security or such transaction is exempt from, or not subject to, the provisions of Section 691) in exchange for one or more bona fide outstanding securities (as defined in Section 25019 of the Corporations Code), claims, or property interests, or partly in such exchange and partly for cash, the commissioner is authorized to approve the terms and conditions of such issuance and exchange or such delivery and exchange and the fairness of such terms and conditions and is authorized to hold a hearing on the fairness of such terms and conditions, at which all persons to whom it is proposed to issue any security or to deliver any other consideration in such exchange shall have the right to appear.

SEC. 138. Section 697 of the Financial Code is amended to read:

697. There shall be exempted from the provisions of Section 691 any transaction or security which the commissioner by regulation or order exempts as not being comprehended within the purposes of this article and the regulation of which he or she finds is not necessary or appropriate in the public interest or for the protection of investors.

SEC. 139. Section 700 of the Financial Code is amended to read:

700. Unless the context otherwise requires, in this article:

(a) "Bank" means a bank organized under the laws of this state.

(b) "Control" means possession, direct or indirect, of the power:

(1) To vote 25 percent or more of any class of the voting securities issued by a person; or

(2) To direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract (other than a commercial contract for goods or nonmanagement services), or otherwise; provided, however, that no individual shall be deemed to control a person solely on account of being a director, officer, or employee of such person.

For purposes of paragraph (2) of this subdivision, a person who, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the then outstanding voting securities issued by another person is presumed to control such other person.

For purposes of this article, the commissioner may determine whether a person in fact controls another person.

(c) "Controlling person" means a person who, directly or indirectly, controls a bank.

(d) "Person" means an individual, a corporation, an association, a syndicate, a partnership, a limited liability company, a business trust, an estate, a trust, or an organization of any kind, or any combination of any of the foregoing acting in concert.

(e) "Shareholder" means:

(1) In the case of a corporation, a holder of a share of any class or series.

(2) In the case of a nonprofit or charitable corporation, an unincorporated association, or a syndicate, a member.

(3) In the case of a partnership, a partner.

(4) In the case of a business trust, an estate, or a trust, a holder of a beneficial interest.

(5) In the case of an organization of any other kind, a holder of an ownership interest.

SEC. 140. Section 701 of the Financial Code is amended to read:

701. No person shall, directly or indirectly, unless the commissioner has approved such acquisition of control, do any of the following:

(a) Make a tender offer for, a request or invitation for tenders of, or an offer to exchange securities for, any voting security or any security convertible into a voting security of a bank or a controlling person if the person making such tender offer, request or invitation for tenders, or offer to exchange securities would, by consummation thereof, directly or indirectly, acquire control of such bank or such controlling person.

(b) Solicit approval of any shareholder of a controlling person for a merger, consolidation, sale of assets, or other transaction by which any person other than such controlling person would acquire control of the bank controlled by such controlling person.

(c) Acquire control of a bank or a controlling person; provided, however, that nothing in this subdivision shall be deemed to prohibit any person from negotiating to acquire (but not acquiring) control of a bank or a controlling person.

SEC. 141. Section 702 of the Financial Code is amended to read:

702. An application for approval to acquire control of a bank or a controlling person shall be in such form and contain such information as the commissioner may require by regulation or order and shall be accompanied by the following fee:

(a) In case the applicant has been a director or officer of the bank for not less than two years (or, if the bank has been in business for less than two years, for such lesser period), a fee of five hundred dollars ($500); and

(b) In any other case, a fee of one thousand five hundred dollars ($1,500).

SEC. 142. Section 703 of the Financial Code is amended to read:

703. If the commissioner finds, with respect to the proposed acquisition of control of a bank or a controlling person, that any of the factors set forth in subdivisions (a) to (g), inclusive, is true, he or she shall deny the application. If the commissioner finds that none of such factors is true, he or she shall approve the application.

(a) That the proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of this state;

(b) That the effect of the proposed acquisition of control in any section of the state may be substantially to lessen competition or to tend to create a monopoly or that the proposed acquisition of control would in any other manner be in restraint of trade, and that the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(c) That the financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or the controlling person, or prejudice the interests of the depositors, creditors, or shareholders of the bank or the controlling person;

(d) That plans or proposals to liquidate the bank or the controlling person, to sell the assets of the bank or the controlling person, to merge or consolidate the bank or the controlling person, or to make any other major change in the business, corporation structure or management of the bank or the controlling person are not fair and reasonable to the depositors, creditors, and shareholders of the bank or the controlling person;

(e) That the competence, experience, or integrity of any acquiring person indicates that it would not be in the interest of the depositors, creditors, or shareholders of the bank or the controlling person or in the interest of the public to permit such person to control the bank or the controlling person;

(f) That the proposed acquisition is unfair, unjust, or inequitable to the bank or the controlling person or to the depositors, creditors, or shareholders of the bank or the controlling person; or

(g) That the applicant neglects, fails, or refuses to furnish to the commissioner all the information required by the commissioner.

SEC. 143. Section 703.5 of the Financial Code is amended to read:

703.5. (a) In this section, "officer" has the meaning set forth in Section 33057.

(b) For purposes of Section 703, the commissioner may find:

(1) That the integrity of an acquiring person indicates that it would not be in the interest of the depositors, creditors, or shareholders of a bank or controlling person or in the interest of the public to permit the acquiring person to control the bank or controlling person if the acquiring person or any director or officer of the acquiring person has been convicted of, or has pleaded nolo contendere to, any crime involving fraud or dishonesty.

(2) That a plan to make a major change in the management of a bank or controlling person is not fair and reasonable to the depositors, creditors, or shareholders of the bank or controlling person if the plan provides for a person who has been convicted of, or has pleaded nolo contendere to, any crime involving fraud or dishonesty to become a director or officer of the bank or controlling person.

(c) Subdivision (b) shall not be deemed to be the only grounds upon which the commissioner may find, for purposes of Section 703,

that the integrity of an acquiring person indicates that it would not be in the interest of the depositors, creditors, or shareholders of a bank or controlling person or in the interest of the public to permit the acquiring person to control the bank or controlling person or that a plan to make a major change in the management of a bank or controlling person is not fair and reasonable to the depositors, creditors, or shareholders of the bank or controlling person.

SEC. 144. Section 704 of the Financial Code is amended to read:

704. The commissioner may, in approving a proposal to acquire control of a bank or a controlling person pursuant to Section 703, impose such conditions as the commissioner deems reasonable or necessary or advisable in the public interest.

SEC. 145. Section 705 of the Financial Code is amended to read:

705. The commissioner may, for good cause, amend, alter, suspend, or revoke any approval of a proposal to acquire control of a bank or a controlling person issued pursuant to Section 703.

SEC. 146. Section 706 of the Financial Code is amended to read:

706. Notwithstanding any other provision of this article, any application for approval to acquire control of a bank or a controlling person which is not denied or approved by the commissioner within a period of 60 days after such application is filed with the commissioner or, if the applicant consents to an extension of the period within which the commissioner may act, within such extended period, shall be deemed to be approved by the commissioner as of the first day after such period of 60 days or such extended period, as the case may be.

For purposes of this section, an application for approval to acquire control of a bank or a controlling person is deemed to be filed with the commissioner at the time when the complete application, including any amendments or supplements, containing all the information in the form required by the commissioner, is received by him or her.

SEC. 147. Section 707 of the Financial Code is amended to read:

707. (a) The commissioner, before determining whether, for purposes of this article, a person controls another person or before denying or approving an application for approval to acquire control of a bank or controlling person, may hold a hearing.

(b) After determining whether, for purposes of this article, a person controls another person or after denying or approving an application for approval to acquire control of a bank or controlling person, the commissioner, upon the filing of a written request for a hearing by any person prejudiced by the commissioner's decision, shall hold a hearing and upon such hearing shall affirm, modify, or reverse his or her decision. Any such hearing shall commence within a period of 30 days after the written request for the hearing is filed with the commissioner or, if the person filing the written request for the hearing consents to an extension of the period within which the hearing is to commence, within such extended period.

SEC. 148. Section 708 of the Financial Code is amended to read:

708. There shall be exempted from the provisions of Section 701 any transaction which the commissioner by regulation or order exempts as not being comprehended within the purposes of this article and the regulation of which the commissioner finds is not necessary or appropriate in the public interest or for the protection of a bank, a controlling person, or the depositors, creditors, or shareholders of a bank or a controlling person.

SEC. 149. Section 709 of the Financial Code is amended to read:

709. Whenever it appears to the commissioner that any person has committed or is about to commit a violation of any provision of this article or of any regulation or order of the commissioner issued pursuant to this article, the commissioner may apply to the superior court for an order enjoining such person from violating or continuing to violate this article or any such regulation or order and for other equitable relief as the nature of the case or the interests of the bank, the controlling person, the depositors, creditors, or shareholders of such bank or such controlling person, or the public may require.

SEC. 150. Section 710 of the Financial Code is amended to read:

710. No person shall be entitled to vote or to give a written consent with respect to any security acquired in contravention of any provision of this article or of any regulation or order of the commissioner issued pursuant to this article for a period of three years after such acquisition. If a security of a bank or a controlling person is acquired in contravention of this article or any such regulation or order, such bank, such controlling person, any shareholder of such bank or such controlling person, or the commissioner may apply to the superior court for equitable relief, including costs and (except with respect to the commissioner) attorney fees, to enjoin prospectively any person from voting or giving any written consent with respect to such security for a period of three years after such acquisition, and the commissioner may apply to the superior court for equitable relief, including costs, to void any voting or any giving of a written consent with respect to such security which has occurred since such acquisition.

SEC. 151. Section 750 of the Financial Code is amended to read:

750. A bank or trust company may purchase, acquire, hold, or lease real property or an interest therein only as follows:

(a) Such as may be necessary or convenient for the use, operation or housing of its head office and branch offices, or for the storage of records or other personal property, or for office space for use by its officers or employees, or which may be reasonably necessary for future expansion of its business, or which is otherwise reasonably related to the conduct of its business. Real property used by a bank as its banking premises may include in addition to the space required for the transaction of its business other space which may be let as a source of income.

(b) Such as may be conveyed to it in satisfaction in whole or in part of debts previously contracted in the course of its business.

(c) Such as it may purchase or acquire at foreclosure sales under mortgages or deeds of trust held by it, or under judgments or decrees in its favor.

(d) Such as it may purchase or otherwise acquire when necessary to minimize or prevent the loss or destruction of any lien or interest therein.

(e) Such as it may purchase or otherwise acquire pursuant to Section 751.3.

A bank or trust company may sell, lease, or encumber real property or any interest therein owned by it, or, with the written approval of the commissioner, exchange the same for other real property.

SEC. 152. Section 751.3 of the Financial Code is amended to read:

751.3. (a) The Legislature finds and declares:

(1) That it is necessary to increase job opportunities in real estate development and construction and to provide additional housing and commercial facilities in this state.

(2) That within the commercial banking community there exists the expertise and ability to promote and assist in expansion of real estate development projects in this state.

(3) That it is proper and appropriate to utilize that expertise and ability by authorizing commercial banks to engage in real estate development and management on an entrepreneurial basis.

(b) As used in this section, "real property investment" means all forms of investing in real property, whether direct or in the form of partnerships, joint ventures, or other methods of investment. It includes, but is not limited to, the purchasing, subdividing, and developing of real property or any interest therein, the building of residential housing or commercial improvements, and the owning, renting, leasing, managing, operating for income, or selling of that property.

(c) Notwithstanding Section 1335, a commercial bank may acquire and hold stock of one or more corporations the primary activities of which are engaging in real property investment, in which event the sum of (1) investments made by a commercial bank pursuant to the authority of this subdivision, (2) any loans and guarantees extended by a commercial bank to, or for the benefit of, corporations whose stock it holds pursuant to the authority of this subdivision, and (3) real property investments made pursuant to the authority of subdivision (d), unless a higher percentage is approved by the commissioner in writing, shall not exceed 10 percent of the total assets of the bank.

(d) A commercial bank may engage in real property investment. The total of all real property investments made pursuant to the authority of this subdivision, unless a higher percentage is approved by the commissioner in writing, shall not exceed the total shareholders' equity of the bank.

(e) Prior to initially engaging in real property investment activities authorized by this section, a commercial bank shall make application with the commissioner for approval of its general plan of real property investment. The application for approval shall be in letter form, shall contain a copy of the general plan for real property investment as approved or adopted by the board of directors of the bank, which shall include a brief description of either the activities of the corporations the bank will invest in or the activities the bank will engage in, or both, the approximate amount to be invested, the extent, if any, of diversification of those activities or investment, and the approximate date of the initial investment, and shall be signed by the chief executive officer of the bank. Unless the commissioner finds (1) that the capital, assets, management, earnings, and liquidity of the commercial bank are, on a composite basis, not satisfactory, or (2) that the plan for the commercial bank to engage in real property investment or to acquire and hold the stock of one or more real property investment corporations is unsafe or unsound, the commissioner shall approve the application. An application for approval shall be deemed approved on the 46th day after the application is filed with the commissioner, unless the commissioner earlier makes a final decision on the application or extends the period for approving or denying the application. For purposes of this subdivision, an application for approval shall be deemed to be filed with the commissioner on the date when the application, substantially in compliance with the requirements of this subdivision, is received by the commissioner. Upon the filing of the application for approval, the applicant shall pay to the commissioner a filing fee of five hundred dollars ($500).

(f) The legality of any investment lawfully made pursuant to this section as it read prior to the amendment of this section shall not be affected by the existing form of this section, nor shall this section be construed to require the changing of any investments heretofore lawfully made.

SEC. 153. Section 752 of the Financial Code is amended to read:

752. A bank or trust company may purchase, acquire, and hold not less than 75 percent of the outstanding shares of a corporation engaged exclusively in holding real property of the character described in subdivision (a) of Section 750 for the purposes therein set forth or in holding, separately or in addition to that real property, tangible personal property necessary or convenient for the use of the bank or trust company in the conduct of its business or for future expansion of its business. The purchase or acquisition of stock of any such corporation shall be approved by two-thirds of all the directors of the bank or trust company and be approved in writing by the commissioner. An application for approval shall be in such form and contain such information as the commissioner may by order or regulation require and shall be accompanied by a fee of five hundred dollars ($500).

SEC. 154. Section 753 of the Financial Code is amended to read:

753. (a) (1) In this section, "federal law" includes, but is not limited to, the United States Constitution, any federal statute, any federal court decision, and any regulation, circular, bulletin, interpretation, decision, order, and waiver issued by a federal agency.

(2) The definitions set forth in Section 1700 apply to this section.

(b) (1) Notwithstanding any other provision of law, if the commissioner finds that any provision of federal law applicable to national banking associations doing business in this state is substantively different from the provisions of this code applicable to banks organized under the laws of this state, the commissioner may by regulation make that provision of federal law applicable to banks organized under the laws of this state.

(2) If the commissioner finds that any provision of federal law applicable to foreign (other nation) banks with respect to federal agencies or federal branches in this state is substantively different from the provisions of this code applicable to foreign (other nation) banks with respect to agencies or branch offices licensed by the commissioner under Chapter 13.5 (commencing with Section 1700), the commissioner may by regulation make that provision of federal law applicable to foreign (other nation) banks with respect to agencies or branch offices licensed by the commissioner under Chapter 13.5.

(c) (1) Section 11343.4 and Articles 5 (commencing with Section 11346) and 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code do not apply to any regulation adopted under this section.

(2) The commissioner shall file any regulation adopted pursuant to this section, together with a citation to this section as authority for the adoption and a citation to the provisions of federal law made applicable by the regulation, with the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations.

(3) Any regulation adopted under this section shall become effective on the date when it is filed with the Secretary of State unless the commissioner prescribes a later date in the regulation or in a written instrument filed with the regulation.

SEC. 154.1. Section 753 of the Financial Code is amended to read:

753. (a) (1) In this section, "federal law" includes, but is not limited to, the United States Constitution, any federal statute, any federal court decision, and any regulation, circular, bulletin, interpretation, decision, order, and waiver issued by a federal agency.

(2) The definitions set forth in Section 1700 apply to this section.

(b) (1) Notwithstanding any other provision of law, except as provided in subdivision (c), if the commissioner finds that any provision of federal law applicable to national banking associations

doing business in this state is substantively different from the provisions of this code applicable to banks organized under the laws of this state, the commissioner may by regulation make that provision of federal law applicable to banks organized under the laws of this state.

(2) If the commissioner finds that any provision of federal law applicable to foreign (other nation) banks with respect to federal agencies or federal branches in this state is substantively different from the provisions of this code applicable to foreign (other nation) banks with respect to agencies or branch offices licensed by the commissioner under Chapter 13.5 (commencing with Section 1700), the commissioner may by regulation make that provision of federal law applicable to foreign (other nation) banks with respect to agencies or branch offices licensed by the commissioner under Chapter 13.5.

(c) (1) Section 11343.4 and Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code do not apply to any regulation adopted under subdivision (b).

(2) The commissioner shall file any regulation adopted pursuant to subdivision (b), together with a citation to this section as authority for the adoption and a citation to the provisions of federal law made applicable by the regulation, with the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations.

(3) Any regulation adopted under subdivision (b) shall become effective on the date when it is filed with the Secretary of State unless the commissioner prescribes a later date in the regulation or in a written instrument filed with the regulation.

(4) Any regulation adopted under subdivision (b) shall expire at 12 p.m. on December 31 of the year following the calendar year in which it become effective.

(5) Any regulation adopted pursuant to subdivision (b) shall be subject to the following restrictions:

(A) The commissioner shall not renew or reinstate the regulation adopted pursuant to subdivision (b).

(B) The commissioner shall not adopt a new regulation pursuant to subdivision (b), to address the same conformity issue that was addressed by the regulation that expired pursuant to subdivision (c).

(d) The commissioner may adopt regulations pursuant to subdivision (b) that are exempt from the expiration and restrictions of subdivision (c) if the regulations are adopted in compliance with all provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code, including those listed in paragraph (1) of subdivision (c).

SEC. 155. Section 754 of the Financial Code is amended to read:

754. A bank or trust company may become a member of the Federal Reserve System, may subscribe for, purchase, and hold such

amounts of the capital stock of the Federal Reserve bank serving the district in which such bank or trust company is located as may be required to maintain such membership and, when not in conflict with the laws of this state, may exercise all powers conferred upon such members and may assume and discharge all obligations required of such members.

With the written consent of the commissioner a bank or trust company may become a member of a federal home loan bank in the manner provided in the Federal Home Loan Bank Act, and, for the purpose of becoming a member, may invest such part of its shareholders' equity in the capital stock of such federal home loan bank as may be required by the provisions of the Federal Home Loan Bank Act.

SEC. 156. Section 756 of the Financial Code is amended to read:

756. A bank or trust company may become a member of any federal agency, membership in which is open to banking institutions, and may comply with all the requirements and conditions imposed upon such members when not in conflict with the laws of this state, except that the power conferred by this section shall not be exercised unless the commissioner makes a general order authorizing banks generally as a class, or trust companies generally as a class, or banks doing a commercial or trust business, respectively, as a class, to become such members upon such terms and conditions as may be prescribed in such order.

SEC. 157. Section 758 of the Financial Code is amended to read:

758. With the prior written consent of the commissioner, a bank or trust company may purchase and hold not less than 75 percent of the outstanding shares of the stock of a corporation authorized to conduct a safe deposit business, organized and existing under the laws of this state and conducting a safe deposit business in the same city or locality in which an office of such bank or trust company is situated. No such safe deposit corporation shall conduct a safe deposit business in any city or locality in which such bank or trust company does not maintain an office. The aggregate investment of any bank or trust company in such corporation at any one time shall not exceed 10 percent of the shareholders' equity of such bank or trust company.

SEC. 158. Section 759 of the Financial Code is amended to read:

759. With the prior written consent of the commissioner, a bank may purchase and hold the whole or any part of the stock of not more than one corporation authorized to conduct a trust business, organized and existing under the laws of this state and transacting a trust business in the same county in which the head office of such bank is situated. An application for consent shall be in such form and contain such information as the commissioner may by order or regulation require and shall be accompanied by a fee of five hundred dollars ($500). No bank's investment in any such corporation at any one time shall exceed 25 percent of the bank's shareholders' equity.

No such trust company shall engage in or combine the business of a commercial bank or a title insurance company.

SEC. 159. Section 761 of the Financial Code is amended to read:

761. No bank shall purchase, acquire, or hold the stock of any corporation except as expressly authorized by this division, or pursuant to a plan of reorganization approved by the commissioner by which all of the stock of one or more banks organized under the laws of this state shall be acquired and immediately reissued proportionately to the stockholders of the acquiring bank.

SEC. 160. Section 763 of the Financial Code is amended to read:

763. The amount of funds of a bank or trust company which are deposited in any other financial institution (except a Federal Reserve bank) shall not at any time exceed 10 percent of the sum of the shareholders' equity, allowance for loan losses, capital notes, and debentures of the depositing bank or trust company unless the financial institution has been designated as a depositary for the funds of the depositing bank or trust company by the vote of a majority of the directors of the depositing bank or trust company, and unless the financial institution has been approved by the commissioner as a depositary for the purposes of this section. The commissioner may in his or her discretion revoke his or her approval of any such depositary and may in his or her discretion limit the amount of funds that may be deposited by any bank or trust company with any other financial institution. A deposit by one bank or trust company with another financial institution shall not be regarded as a loan.

SEC. 161. Section 771 of the Financial Code is amended to read:

771. With the prior written consent of the commissioner, two or more banks may invest in the stock of a corporation engaged exclusively in the business of performing for one or more banks such bank services as check and deposit sorting and posting, computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a bank; provided that the aggregate investment of any bank in such corporation at any one time shall not exceed 10 percent of the shareholders' equity of the bank; and provided, further, that the corporation shall furnish to the commissioner satisfactory assurances that the performance of services by such corporation will be subject to regulation and examination by the commissioner to the same extent as if such services were being performed by the bank itself on its own premises. An application for consent shall be in such form and contain such information as the commissioner may by order or regulation require and shall be accompanied by a fee of five hundred dollars ($500).

SEC. 161.1. Section 771 of the Financial Code is amended to read:

771. Two or more banks may invest in the stock of a corporation engaged exclusively in the business of performing for one or more banks such bank services as check and deposit sorting and posting,

computation and posting of interest and other credits and charges, preparation and mailing of checks, statements, notices and similar items, or any other clerical, bookkeeping, accounting, statistical, or similar functions performed for a bank; provided that the aggregate investment of any bank in the corporation at any one time shall not exceed 10 percent of the shareholders' equity of the bank; and provided, further, that the corporation shall furnish to the commissioner satisfactory assurances that the performance of services by the corporation will be subject to regulation and examination by the commissioner to the same extent as if the services were being performed by the bank itself on its own premises.

SEC. 162. Section 772 of the Financial Code is amended to read:

772. (a) Notwithstanding the provisions of Section 1335, and subject to such regulations and rules as the commissioner may prescribe, a bank may invest in the capital stock, obligations, or other securities of one or more corporations.

(b) No such corporation may act as an insurance company, insurance agent, or insurance broker. This prohibition shall not be deemed to exclude other possible restrictions with respect to the activities of such corporations.

SEC. 163. Section 774 of the Financial Code is amended to read:

774. Subject to such regulations and rules as the commissioner may prescribe, a bank may acquire and hold shares of stock issued by a corporation authorized to be created pursuant to Title IX of the Housing and Urban Development Act of 1968, and may make investments in a partnership, limited partnership, or joint venture formed pursuant to Section 907(a) or 907(c) of such act.

SEC. 164. Section 775 of the Financial Code is amended to read:

775. Notwithstanding any other provision of law, any commercial bank (as defined in Section 105) and any trust company (as defined in Section 107) holding securities in a fiduciary capacity or while engaged in a trust business (as defined in Section 106), or while acting in any capacity under a court or private trust, or while acting in such capacity with one or more persons as cofiduciary or cofiduciaries, unless the instrument creating such trust contains a provision to the contrary, is authorized to deposit or arrange for the deposit of such securities in a securities depository, as defined in Section 30004, which is licensed under Section 30200 or exempted from licensing thereunder by Section 30005 or 30006. When such securities are so deposited, they may be held in the custody of the securities depository in which they are deposited or in the custody of any other securities depository so licensed or exempted and in which the securities depository in which such securities were deposited maintains an account, or in the custody of any bank or trust company with authority to accept custody of such securities, which accepts custody of such securities on behalf of a securities depository. Such securities may be held in the name of the nominee of the securities depository in which they are deposited, or in the name of the

nominee of any other securities depository with which the securities depository in which they are deposited maintains an account. The custodian of securities so deposited may merge certificates representing securities of the same class of the same issuer and may hold such certificates in bulk with any other securities deposited in any securities depository by any person regardless of the ownership of such securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. Any commercial bank or trust company which deposits or arranges for the deposit of such securities in such a securities depository shall maintain records which at all times show the ownership of the securities so deposited. A commercial bank or trust company so depositing securities pursuant to this section shall be subject to such rules and regulations as in the case of state-chartered institutions, the commissioner and, in the case of national banking associations, the Comptroller of the Currency may from time to time issue.

This section shall apply to securities now held or hereafter held by a commercial bank or trust company in the above designated capacities. A commercial bank or trust company may but shall not be required to own capital stock of a securities depository in which it deposits securities pursuant to this section.

SEC. 165. Section 775.1 of the Financial Code is amended to read:

775.1. Notwithstanding any other provision of law, any commercial bank (as defined in Section 105) and any trust company (as defined in Section 107) holding securities in a fiduciary capacity or while engaged in a trust business (as defined in Section 106), or while acting in any capacity under a court or private trust, or while acting in such capacity with one or more persons as cofiduciary or cofiduciaries, unless the instrument creating such trust contains a provision to the contrary, is authorized to deposit or arrange for the deposit with a federal reserve bank of any such securities the principal and interest of which the United States or any department, agency or instrumentality thereof has agreed to pay, or has guaranteed payment, to be credited to one or more accounts on the books of such federal reserve bank in the name of such commercial bank or trust company, to be designated fiduciary or safekeeping accounts, to which accounts other similar securities may be credited. Any commercial bank or trust company which deposits or arranges for the deposit of such securities pursuant to this section shall maintain records which at all times show the ownership of the securities so deposited. A commercial bank or trust company so depositing securities pursuant to this section shall be subject to such rules and regulations as in the case of state-chartered institutions, the commissioner and, in the case of national banking associations, the Comptroller of the Currency, may from time to time issue. Ownership of, and other interests in, the securities credited to such account may be transferred by entries on the books of said federal reserve bank without physical delivery of any securities. A

commercial bank or trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities deposited by such commercial bank or trust company pursuant to this section for the account of the fiduciary. A fiduciary shall, on demand by any party to its accounting, certify in writing to such party the securities deposited for its account as such fiduciary pursuant to this section. This section shall apply to all fiduciaries and custodians for fiduciaries, acting on the effective date of this section or who thereafter may act regardless of the state of the instrument or court order by which they are appointed.

SEC. 166. Section 776 of the Financial Code is amended to read:

776. Every bank and branch shall conduct all of its business in one building or in adjoining buildings except that under special circumstances and with the written consent of the commissioner a bank or branch may conduct a portion of its business elsewhere in the same vicinity. An application for consent shall be in such form and contain such information as the commissioner may by order or regulation require and shall be accompanied by a fee of five hundred dollars ($500).

SEC. 166.1. Section 776 of the Financial Code is amended to read:

776. (a) Every bank and branch shall conduct all of its business in one building or in adjoining buildings except that under special circumstances a bank or branch may conduct a portion of its business at an extension office elsewhere in the same vicinity provided the notice requirements of subdivision (b) are complied with and provided further that the commissioner either (1) issues a written statement not objecting to the notice or (2) does not issue a written objection to the notice.

(b) The California state bank shall file a notice with the commissioner no fewer than 30 days prior to conducting any portion of its business at an extension office, which notice shall provide the following information:

(1) The name of the California state bank, and, if applicable, the popular name of the branch whose business will be conducted at an extension office.

(2) The address of the proposed extension office.

(3) A description of the proposed business to be conducted at the extension.

(4) The date on which the bank proposes to commence business at the extension.

(5) Any other information that the commissioner may, by regulation or order, require.

SEC. 167. Section 782 of the Financial Code is amended to read:

782. Notwithstanding Section 1335, a bank may invest in shares of an investment company (1) registered with the Securities and Exchange Commission pursuant to the federal Investment Company Act of 1940, as amended (15 U.S.C. Sec. 80a-1 et seq.) and for which the shares are registered under the federal Securities Act of 1933, as

amended (15 U.S.C. Sec. 77a et seq.), and (2) the portfolio of which consists solely of the following:

(a) Debt obligations in which a bank is permitted to invest without limitation pursuant to subdivision (a), (b), (c), or (d) of Section 1336 and repurchase agreements fully collateralized by those obligations.

(b) Loans of federal funds and similar loans of unsecured day(s) funds, maturing in six months or less to institutions insured by the Federal Deposit Insurance Corporation [Federal Funds]. Loans under this subdivision are limited to transactions described in subsection (a) or (b) of Section 32.102 of Title 12 of the Code of Federal Regulations involving investment companies in which the entire beneficial interest is held exclusively by depository institutions, as permitted by Section 204.123 of Title 12 of the Code of Federal Regulations.

The commissioner may, by regulation, prescribe further conditions respecting investment by banks under this section as may be necessary for the safety or soundness of banks or as may otherwise be in the public interest.

SEC. 168. Section 800 of the Financial Code is amended to read:

800. In this chapter, unless the context otherwise requires:

(a) "Authorized agency activities" means receiving deposits, renewing time deposits, closing loans, servicing loans, and receiving payments on loans and other obligations. "Authorized agency activities" includes ministerial functions such as providing loan applications, assembling documents, providing a location for returning documents necessary for making a loan, providing loan account information, receiving payments, disbursing loan funds, evaluating loan applications, and other activities that the commissioner may specify by order or regulation. However, "authorized agency activities" does not include any other activities that the commissioner may specify by order or regulation.

(b) "Insured depository institution" means any bank, savings and loan association, savings association or savings bank the deposits of which are insured by the Federal Deposit Insurance Corporation. "Insured depository institution" includes any depository institution affiliate within the meaning of Section 18(r) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1828(r)).

SEC. 168.1. Section 800 of the Financial Code is amended to read:

800. In this chapter, unless the context otherwise requires:

(a) "Authorized agency activities" means receiving deposits, renewing time deposits, closing loans, servicing loans, and receiving payments on loans and other obligations. "Authorized agency activities" includes ministerial functions such as providing loan applications, assembling documents, providing a location for returning documents necessary for making a loan, providing loan account information, receiving payments, disbursing loan funds, evaluating loan applications, and other activities that the commissioner may specify by order or regulation. However,

"authorized agency activities" does not include any other activities that the commissioner may specify by order or regulation.

(b) "Insured depository institution" means any bank, savings and loan association, savings association, savings bank, or industrial loan company the deposits of which are insured by the Federal Deposit Insurance Corporation. "Insured depository institution" includes any depository institution affiliate within the meaning of Section 18(r) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1828(r)).

SEC. 169. Section 802 of the Financial Code is amended to read:

802. (a) In this section, "affiliated," when used with respect to a California state bank and an insured depository institution, means that the California state bank controls the insured depository institution, the insured depository institution controls the California state bank, or the California state bank and the insured depository institution are under common control, directly or indirectly through one or more intermediaries. For purposes of this subdivision, "control" has the meaning set forth in Section 700.

(b) In case a California state bank and an insured depository institution are affiliated, the prior approval requirement set forth in Section 810 or 820 is deemed to be satisfied if the California state bank files a notice with the commissioner and, within 30 days or any longer period to which the California state bank consents, the commissioner either (1) issues a written statement not objecting to the notice or (2) does not issue a written objection to the notice.

(c) (1) A notice filed by a California state bank under subdivision (b) shall contain the following information:

(A) The name of the California state bank.

(B) The name and location of the main or head office of the affiliated insured depository institution.

(C) A description of the proposed agency, including identification of the institution that is to be the principal, identification of the institution that is to be the agent, and specification of the activities in which the agent is to engage on behalf of the principal.

(D) Any other information that the commissioner may require.

(2) A notice filed by a California state bank under subdivision (b) shall be in the form, shall be signed in the manner, and shall, if the commissioner requires by regulation or order, be verified in the manner that the commissioner may by regulation or order require.

(3) A notice filed by a California state bank under subdivision (b) shall be accompanied by a filing fee of two hundred fifty dollars ($250).

(d) For purposes of subdivision (b), a notice by a California state bank is deemed to be filed with the commissioner at the time when the complete notice, including any amendments or supplements, containing all the information required by the commissioner, and otherwise complying with subdivision (c) is received by the commissioner.

(e) In determining whether or not to object to a notice by a California state bank, the commissioner shall consider the factors set forth in Section 813 or 823, as the case may be.

SEC. 170. Section 810 of the Financial Code is amended to read:

810. Notwithstanding the provisions of Chapter 4 (commencing with Section 500) and Section 776, a California state bank may, with the prior approval of the commissioner and subject to any regulations that the commissioner may prescribe, have an insured depository institution engage in authorized agency activities as its agent.

SEC. 171. Section 811 of the Financial Code is amended to read:

811. An application by a California state bank for approval to have an insured depository institution engage in authorized agency activities as its agent shall be in the form, shall contain the information, shall be signed in the manner, and shall, if the commissioner so requires by regulation or order, be verified in the manner that the commissioner may, by regulation or order, require.

SEC. 172. Section 813 of the Financial Code is amended to read:

813. In determining whether to approve or deny an application by a California state bank for approval to have an insured depository institution engage in authorized agency activities as its agent, the commissioner shall consider both of the following:

(a) Whether the proposed agency arrangement is consistent with the safe and sound operation of the California state bank.

(b) Any other factors that the commissioner deems relevant.

SEC. 173. Section 816 of the Financial Code is amended to read:

816. If the commissioner finds that any activity performed by an insured depository institution as agent for a California state bank is not an authorized agency activity or that the agency arrangement is inconsistent with safe and sound banking practices, the commissioner may order the California state bank to terminate the agency arrangement.

SEC. 174. Section 820 of the Financial Code is amended to read:

820. Notwithstanding the provisions of Chapter 4 (commencing with Section 500) and Section 776, a California state bank may, with the prior approval of the commissioner and subject to any regulations that the commissioner may prescribe, engage in authorized agency activities as agent for an insured depository institution.

SEC. 175. Section 821 of the Financial Code is amended to read:

821. An application by a California state bank for approval to engage in authorized agency activities as agent for an insured depository institution shall be in the form, shall contain the information, shall be signed in the manner, and shall, if the commissioner so requires by regulation or order, be verified in the manner that the commissioner may, by regulation or order, require.

SEC. 176. Section 823 of the Financial Code is amended to read:

823. In determining whether to approve or deny an application by a California state bank for approval to engage in authorized

agency activities as agent for an insured depository institution, the commissioner shall consider both of the following factors:

(a) Whether the proposed agency arrangement is consistent with the safe and sound operation of the California state bank.

(b) Any other factors that the commissioner deems relevant.

SEC. 177. Section 826 of the Financial Code is amended to read:

826. If the commissioner finds that any activities performed by a California state bank as agent for an insured depository institution are not authorized agency activities or that the agency arrangement is inconsistent with safe and sound banking practices, the commissioner may order the California state bank to terminate the agency arrangement.

SEC. 178. Section 866.5 of the Financial Code is amended to read:

866.5. The commissioner shall issue administrative regulations to define a reasonable time for permitting customers to draw on items received for deposit in the customer's account. It is the public policy of this state to provide retail banking customers with the right to withdraw against items deposited with any depository institution located in this state within a reasonable period of time.

SEC. 179. Section 866.6 of the Financial Code is amended to read:

866.6. Pursuant to Section 866.5, the commissioner shall promulgate regulations which shall be reviewed annually to establish a reasonable period of time within which a depository institution must permit a customer to draw as a matter of right on an item which has been received for deposit in the customer's account.

In determining what constitutes a reasonable period of time the commissioner shall consider the following factors:

(a) The actual time for processing and transport between the depository and payer institutions.

(b) The fastest air transport time between depository and payer institutions to be used for purposes of setting the reasonable time for transport.

(c) The most expeditious route and means for processing of returned items.

SEC. 180. Section 866.7 of the Financial Code is amended to read:

866.7. The commissioner is authorized to gather from depository institutions such information as may be necessary for the formulation and promulgation of the regulations required by Section 866.5.

SEC. 181. Section 866.9 of the Financial Code is amended to read:

866.9. The commissioner is authorized to issue regulations which provide for a different period of time for withdrawal as a matter of right against deposited items, if there has been a determination that the application of the regulations adopted pursuant to this article would result in unsafe or unsound practices by a depository institution subject to the regulatory jurisdiction of the commissioner.

SEC. 182. Section 867 of the Financial Code is amended to read:

867. (a) Funds deposited in an account at a depository institution shall be available on the second business day after the business day

on which those funds are deposited in the case of a cashier's check, certified check, teller's check, or depository check subject to the following:

(1) The check is endorsed only by the person to whom it was issued.

(2) The check is deposited in a receiving depository institution which is staffed by individuals employed by that institution.

(3) The check is deposited with a special deposit slip which indicates it is a cashier's check, certified check, teller's check, or depository check, as the case may be.

(4) The check is deposited into an account in the name of a customer which has maintained any account with the receiving depository institution for a period of 60 days or more.

(5) The face amount of the check is for five thousand dollars ($5,000) or less.

In the case of funds deposited on any business day in an account at a depository institution by depository checks, the aggregate amount of which exceeds five thousand dollars ($5,000), this subdivision shall apply only with respect to the first five thousand dollars ($5,000) of the aggregate amount.

(b) Subdivision (a) does not apply to a depository check if the receiving depository institution reasonably believes that the check is uncollectible from the originating depository institution. For purposes of this subdivision, "reasonable cause to believe" requires the existence of facts which would cause a well-grounded belief in the mind of a reasonable person. These reasons shall include, but not be limited to, a belief that (1) the drawer or drawee of the depository check has been, or will imminently be, adjudicated a bankrupt or placed in receivership or (2) the depository check may be involved in a fraud or in a scheme commonly known as "kiting." In these situations, the depository institution electing to proceed under this subdivision shall so notify the drawer and drawee no later than the close of the next business day following deposit of the depository check.

(c) For purposes of this section the following terms have the following meaning:

(1) "Account" means any demand deposit account and any other similar transaction account at a depository institution.

(2) "Business day" means any day other than a Saturday, Sunday, or legal holiday.

(3) "Cashier's check" means any check which is subject to the following:

(A) The check is drawn on a depository institution.

(B) The check is signed by an officer or employee of the depository institution.

(C) The check is a direct obligation of the depository institution.

(4) "Certified check" means any check with respect to which a depository institution certifies the following:

(A) That the signature on the check is genuine.

(B) The depository institution has set aside funds which are equal to the amount of the check and will be used only to pay that check.

(5) "Depository check" means any cashier's check, certified check, teller's check, and any other functionally equivalent instrument, as determined by the Board of Governor's of the Federal Reserve System or the commissioner.

(6) "Depository institution" has the meaning given in clauses (i) through (vi) of Section 19(b)(1)(A) of the Federal Reserve Act.

(7) "Teller's check" means any check issued by a depository institution and drawn on another depository institution.

(d) Except for the specific circumstances and checks described in this section, this section is not intended to restrict or preempt the regulatory authority of the commissioner.

(e) In the event of a suspension or modification of any similar provisions in the federal Expedited Funds Availability Act, the effect of this section shall be similarly suspended or modified.

SEC. 182.1. Section 1007 of the Financial Code, as added by Assembly Bill 3012, is amended to read:

1007. Bonds of any flood control and water conservation districts, or any zone thereof, having an assessed valuation on taxable real property of not less than one million dollars ($1,000,000), county, city and county, city, metropolitan water district, municipal utility district, special districts established by and within any municipal utility district, transit district, rapid transit district including sales tax revenue bonds of the district, metropolitan transit authority, flood control district, or school district of the State of California (herein referred to generally as public corporation) except the bonds of any particular such public corporation which may be declared ineligible for investment by savings banks by regulations of the commissioner.

SEC. 183. Section 1201 of the Financial Code is amended to read:

1201. Assets hypothecated by a commercial bank as security for moneys borrowed shall not exceed in value the amount borrowed by more than 50 percent except with the prior written consent of the commissioner.

SEC. 184. Section 1202 of the Financial Code is amended to read:

1202. A commercial bank may borrow money by discounting or otherwise, and may borrow money secured by real property owned by the bank, to an amount not in excess of its shareholders' equity, but shall not borrow money except as provided in Sections 1204 and 1205 in excess of such amount without the prior written approval of the commissioner.

The amounts of moneys so borrowed by a commercial bank together with the amount of any of its deposits secured by surety bonds shall not at any one time exceed the amount of its shareholders' equity without the prior written approval of the commissioner.

SEC. 185. Section 1203 of the Financial Code is amended to read:

1203. A commercial bank may hypothecate its assets in any manner provided by law to secure the deposits of moneys of the United States, of postal savings funds, of bankrupt estates, of the State of California, or of any political subdivision, public corporation, or district of the State of California. With the prior approval of the commissioner a bank may hypothecate its assets to secure moneys payable to other states.

SEC. 186. Section 1208 of the Financial Code is amended to read:

1208. A commercial bank located in a place the population of which does not exceed 5,000 persons according to the most recent official federal or state census may act as agent for any fire, life, or other insurance company authorized to do business in California by soliciting and selling insurance and collecting premiums and may receive for such services such fees and commissions as may be agreed upon with the insurance company if the bank is engaged in such business on October 1, 1949, and is duly licensed under the Insurance Code, and may act also as the broker or agent for others in making or procuring loans on real property located within 100 miles of the place in which the bank is located and may receive for such services a fee or a commission if it is engaged in such business on October 1, 1949, and is duly licensed. In engaging in either of such businesses the bank shall comply with all rules and regulations of the commissioner relating thereto and shall not guarantee either the principal or interest of any loan procured by it as broker or agent or assume or guarantee the payment of any premium on insurance policies written through it as agent or broker or guarantee the truth of any statement made by an insured in filing an application for insurance.

SEC. 187. Section 1220 of the Financial Code is amended to read:

1220. For the purpose of this article:

(a) "Obligations" means the total sums for the payment of which a person is obligated, primarily or secondarily, to a commercial bank.

(b) Obligations of a person include obligations of others to a commercial bank arising out of loans made by the bank for the benefit of the person.

(c) Obligations of an individual include the obligations of a partnership or association for which obligations the individual is liable.

(d) Obligations of a partnership include the obligations of its members who are liable for its obligations.

(e) Obligations of a corporation include the obligations of all subsidiaries in which it owns or controls a majority interest, except to the extent and under such restrictions as the commissioner may prescribe in specific instances upon special application made by any bank prior to the creation of the obligations.

(f) Obligations of a sovereign government or agency include the obligations of instrumentalities or political subdivisions of the government or agency, except to the extent and under such restrictions as the commissioner may prescribe in specific instances

upon special application made by any bank prior to the creation of the obligations.

(g) Obligations of a limited liability company include the obligations of all subsidiaries in which it owns or controls a majority interest, except to the extent and under any restrictions the commissioner may prescribe in specific instances upon special application made by any bank prior to the creation of the obligations.

SEC. 188. Section 1223 of the Financial Code is amended to read:

1223. An obligation shall not be deemed secured by personal property or collateral unless the personal property or collateral held as security is of a kind which has not been declared ineligible by the commissioner and unless it has a market value at least 15 percent greater than the amount of the obligations secured thereby or, if the security is a bank deposit, it shall have a face value at least equal to the amount of the obligations secured thereby. The commissioner may by general regulation declare any particular kinds or classes of personal property ineligible as security. An obligation shall not be deemed secured by real property unless the obligation and the lien securing the same conform to the provisions of Section 1227, 1228, 1236, 1238, or 1239 or the first sentence of Section 1235. Secured and unsecured loans shall be represented by separate notes and shall not be combined in any way within one note or notes.

SEC. 189. Section 1224 of the Financial Code is amended to read:

1224. (a) In addition to the limitations contained in Section 1221 a commercial bank may issue letters of credit and a commercial bank may accept drafts or bills of exchange drawn upon it having not more than six months' sight to run, exclusive of days of grace, which grow out of transactions involving the importation or exportation of goods; or which grow out of transactions involving the domestic shipment of goods; or which are secured at the time of acceptance by a warehouse receipt or other such document conveying or securing title covering readily marketable staples. A commercial bank shall not accept such drafts or bills in the aggregate to an amount exceeding 150 percent of the sum of its shareholders' equity, allowance for loan losses, capital notes, and debentures or, when authorized by the commissioner, to an amount exceeding 200 percent of the sum of its shareholders' equity, allowance for loan losses, capital notes, and debentures. A commercial bank shall not accept such drafts or bills for any one person to an amount exceeding 10 percent of the sum of its shareholders' equity, allowance for loan losses, capital notes, and debentures, unless the bank is and remains secured by either attached documents or some other actual security growing out of the same transaction as the acceptance.

(b) With respect to a bank which issues an acceptance, the limitations contained in this section shall not apply to that portion of an acceptance which is issued by such bank and which is covered by a participation agreement sold to another institution.

SEC. 190. Section 1225 of the Financial Code is amended to read:

1225. With the approval of the commissioner a commercial bank may accept drafts or bills of exchange drawn upon it having not more than three months' sight to run, exclusive of days of grace, drawn by banks or bankers in foreign countries for the purpose of furnishing dollar exchange as required by the usages of trade in the respective countries; provided, no commercial bank shall accept such drafts or bills of exchange for any one bank to any amount exceeding 10 percent of the sum of the shareholders' equity, allowance for loan losses, capital notes, and debentures of the accepting bank unless the draft or bill of exchange is accompanied by documents conveying or securing title or unless the bank is secured by some other adequate security. A commercial bank shall not accept such drafts or bills, whether secured or unsecured, in the aggregate to an amount exceeding 50 percent of the sum of its shareholders' equity, allowance for loan losses, capital notes, and debentures.

SEC. 191. Section 1226 of the Financial Code is amended to read:

1226. The limitations of Section 1221 shall not apply to the following and the following shall not be included among the obligations of a person for the purpose of applying such limitations:

(a) Loans secured by obligations of the United States or by obligations unconditionally guaranteed both as to principal and interest by the United States, having a market value at least 10 percent in excess of the loans secured thereby.

(b) Loans in an amount and of a type or class previously approved in writing by the commissioner which are secured by not less than a like amount of obligations of the United States or by obligations unconditionally guaranteed both as to principal and interest by the United States.

(c) Loans to the extent that they are covered by guarantees or by commitments to take over or to purchase without recourse made by (1) any Federal Reserve bank, (2) the United States, (3) any department, bureau, board, commission, agency, or establishment of the United States, including any corporation wholly owned directly or indirectly by the United States or (4) any small business development corporation, urban development corporation, or rural development corporation incorporated pursuant to the California Job Creation Law (Part 5 (commencing with Section 14000) of Division 3 of Title 1 of the Corporations Code).

(d) Drafts or bills of exchange drawn in good faith against actual existing values with negotiable bills of lading attached, whether or not accepted by the drawee.

(e) Bankers' acceptances of other banks which are eligible for rediscount with a Federal Reserve bank.

(f) Obligations resulting from daily clearances through any clearinghouse association.

(g) Obligations which are fully guaranteed or fully insured or covered by a commitment to fully guarantee or fully insure by the Federal Housing Administrator.

(h) Obligations described in Section 1336.

SEC. 192. Section 1227 of the Financial Code is amended to read:

1227. A commercial bank may lend on the security of a first lien on real property or a first lien on a leasehold under a lease which does not expire, or which has been extended or renewed so that it does not expire, for at least 10 years beyond the maturity date of the loan, if:

(a) The term of the loan does not exceed 10 years and the amount does not exceed 60 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal; or

(b) The term of the loan does not exceed 30 years, is repayable in substantially equal installments not less often than monthly (or such variation therefrom as may be authorized under a loan executed pursuant to Section 1916.5 or 1916.8 of the Civil Code), with payments commencing not later than 60 days from the date of the loan or, in the case of a construction loan, commencing not later than one year from the date of the loan, and the amount does not exceed 90 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal, provided, however, such loan may exceed 90 percent of the sound market value of the property or leasehold if that portion of the loan which is in excess of such 90 percent is guaranteed or insured by a qualified private insurer as determined by the commissioner; or

(c) The loan is made pursuant to and in conformance with regulations adopted under Section 1916.12 of the Civil Code; or

(d) The loan is on a farm or productive agricultural lands, the term does not exceed 30 years, is repayable in substantially equal installments not less often than annually, and the amount does not exceed 90 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal; or

(e) The term of the loan does not exceed six months and the amount does not exceed 85 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal; or

(f) The term of the loan does not exceed 60 months, the amount does not exceed 85 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal, and the loan is for the purpose of financing building operations under a plan providing for payment of the loan or providing for refinancing by loans otherwise permitted by this chapter.

A commercial bank may make a loan without regard to the above restrictions when necessary to facilitate the sale of real property owned by the bank.

SEC. 192.1. Section 1227 of the Financial Code is amended to read:

1227. A commercial bank may lend on the security of a first lien on real property or a first lien on a leasehold under a lease which does not expire, or which has been extended or renewed so that it does not expire, for at least 10 years beyond the maturity date of the loan, if:

(a) The term of the loan does not exceed 10 years and the amount does not exceed 60 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal.

(b) The term of the loan does not exceed 30 years, is repayable in substantially equal installments not less often than monthly (or a variation therefrom as may be authorized under a loan executed pursuant to Section 1916.5 or 1916.8 of the Civil Code), with payments commencing not later than 60 days from the date of the loan or, in the case of a construction loan, commencing not later than one year from the date of the loan, and the amount does not exceed 90 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal, provided, however, the loan may exceed 90 percent of the sound market value of the property or leasehold if that portion of the loan which is in excess of 90 percent is guaranteed or insured by a private insurer licensed by the Insurance Commissioner.

(c) The loan is made pursuant to and in conformance with regulations adopted under Section 1916.12 of the Civil Code.

(d) The loan is on a farm or productive agricultural lands, the term does not exceed 30 years, is repayable in substantially equal installments not less often than annually, and the amount does not exceed 90 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal.

(e) The term of the loan does not exceed six months and the amount does not exceed 85 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal.

(f) The term of the loan does not exceed 60 months, the amount does not exceed 85 percent of the sound market value of the property or leasehold, together with the improvements located on the property which are made subject to the lien, as determined by proper appraisal, and the loan is for the purpose of financing building operations under a plan providing for payment of the loan or

providing for refinancing by loans otherwise permitted by this chapter.

A commercial bank may make a loan without regard to the above restrictions when necessary to facilitate the sale of real property owned by the bank.

SEC. 193. Section 1228 of the Financial Code is amended to read:

1228. A commercial bank may lend on the security of a first lien on real property or a first lien on a leasehold under a lease which does not expire, or which has been extended or renewed so that it does not expire, for at least 10 years beyond the maturity date of the loan, if the criteria of any of the following subdivisions are satisfied:

(a) The loan is fully guaranteed or insured or covered by a commitment to guarantee or insure by the United States, the Federal Housing Administrator, or by any other agency of the United States which the commissioner shall have approved for the purposes of this subdivision as an issuer of insurance or guarantees of loans on real property, whether the proceeds of the guarantee or insurance is payable in cash or in obligations of the United States.

(b) The loan is fully guaranteed by the United States or any agency thereof pursuant to the "Servicemen's Readjustment Act of 1944" or any act of Congress supplementary or amendatory thereof, or, if a portion of the loan is so guaranteed, then if the unguaranteed portion of the loan does not exceed 80 percent of the sound market value of the property or leasehold for loan purposes as determined by proper appraisal.

(c) The loan is one in which the Small Business Administration cooperates through agreements to participate on an immediate or deferred basis under the Small Business Act, as amended.

SEC. 194. Section 1232 of the Financial Code is amended to read:

1232. A commercial bank shall not make a loan upon the capital stock of any other bank unless such bank has been in existence at least two years and has earned and paid a dividend on its capital stock, nor, without the written approval of the commissioner, shall it make a loan on the security of the capital stock of another bank if by the making of such loan the capital stock of such other bank owned or held as collateral by the lending bank will exceed in the aggregate 25 percent of the stock of such other bank.

SEC. 195. Section 1236 of the Financial Code is amended to read:

1236. A commercial bank may lend on the security of a first security interest on stock or a membership certificate issued to a tenant-stockholder or resident-member by a completed fee simple cooperative housing corporation, as defined in Section 216 of the U.S. Internal Revenue Code, and the assignment by way of security of the borrower's interest in the proprietary lease or right of tenancy in property issued by such cooperative housing corporation, provided all of the real property owned by such corporation is located within the state, and further provided, that:

(a) The term of the loan does not exceed 30 years, is repayable in substantially equal installments (or such variation therefrom as may be authorized under a loan executed pursuant to Section 1916.5 or 1916.8 of the Civil Code), not less often than monthly, with payments commencing not later than 60 days from the date of the loan, and the amount does not exceed 80 percent of the sound market value of such certificates of stock or membership certificates; and

(b) The proprietary lease or right of tenancy in the property provides:

(1) That no sublease in excess of one year, amendment or modification to such proprietary lease or right of tenancy in the property shall be permitted or created without the lender's prior written consent, and

(2) That in the event of the borrower's default under such loan, the lender shall have the right, without the prior consent or approval of the cooperative housing corporation, to sell such shares or membership certificates at public or private sale following at least 30 days prior written notice to the borrower and to the cooperative housing corporation, at the address of the premises subject to the proprietary lease or right of tenancy in the property, and assign such proprietary lease or right of tenancy in the property to the purchaser who shall agree as a condition of such assignment to cure any defaults thereunder.

For all purposes of this division, such loan shall be considered a secured residential real estate loan and shall be subject to rules and regulations implementing the provisions of this section issued by the commissioner.

SEC. 196. Section 1336 of the Financial Code is amended to read:

1336. Unless otherwise approved by the commissioner, a commercial bank shall not invest an amount exceeding 15 percent of its shareholders' equity in the securities of any one obligor or maker, except:

(a) Obligations of the United States and those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(b) Bonds, consolidated bonds, collateral trust debentures, or other obligations issued by the Federal Financing Bank, the United States Postal Service, federal land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended; in debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended; in consolidated notes, bonds, debentures and other obligations issued by federal land banks, federal intermediate credit banks, and banks for cooperatives under the Farm Credit Act of 1971; in the bonds of any federal home loan bank established under the Federal Home Loan Bank Act; and in stock, bonds, debentures, participations, and other obligations of or issued by the Student Loan Marketing Association,

the Federal National Mortgage Association and the Government National Mortgage Association.

(c) Obligations of the State of California and those for which the credit of the State of California is pledged for the payment of principal and interest.

(d) Obligations of a local agency or district of the State of California having the power, without limit as to rate or amount, to levy taxes to pay the principal and interest of such bonds upon all property within its boundaries subject to taxation by the local agency or district.

SEC. 196.1. Section 1336 of the Financial Code is amended to read:

1336. Unless otherwise approved by the commissioner, a commercial bank shall not invest an amount exceeding 15 percent of its shareholders' equity in the securities of any one obligor or maker, except:

(a) Obligations of the United States and those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(b) Bonds, consolidated bonds, collateral trust debentures, or other obligations issued by the Federal Financing Bank, the United States Postal Service, federal land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended; in debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended; in consolidated notes, bonds, debentures and other obligations issued by federal land banks, federal intermediate credit banks, and banks for cooperatives under the Farm Credit Act of 1971; in the bonds of any federal home loan bank established under the Federal Home Loan Bank Act; and in stock, bonds, debentures, participations, and other obligations of or issued by the Student Loan Marketing Association, the Federal National Mortgage Association, the Government National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

(c) Obligations of the State of California and those for which the credit of the State of California is pledged for the payment of principal and interest.

(d) Obligations of a local agency or district of the State of California having the power, without limit as to rate or amount, to levy taxes to pay the principal and interest of the bonds upon all property within its boundaries subject to taxation by the local agency or district.

SEC. 197. Section 1355.1 of the Financial Code is amended to read:

1355.1. In the bonds of any flood control and water conservation districts, or any zone thereof, having an assessed valuation on taxable real property of not less than one million dollars ($1,000,000), county,

city and county, city, metropolitan water district, municipal utility district, any special district established by and within any municipal utility district, transit district, rapid transit district including sales tax revenue bonds of such district, metropolitan transit authority, flood control district, or school district of the State of California (herein referred to generally as public corporations) except the bonds of any particular such public corporation which may be declared ineligible for investment by commercial banks by regulations of the commissioner.

SEC. 198. Section 1360 of the Financial Code is amended to read:

1360. In bonds, consolidated bonds, collateral trust debentures, consolidated debentures, or other obligations issued by federal land banks or federal intermediate credit banks established under the Federal Farm Loan Act, as amended, and the Farm Credit Act of 1971, in debentures and consolidated debentures issued by the Central Bank for Cooperatives and banks for cooperatives established under the Farm Credit Act of 1933, as amended, and the Farm Credit Act of 1971, in the bonds of any federal home loan bank established under the Federal Home Loan Bank Act, and in stocks, bonds, debentures, participations and other obligations of or issued by the Federal National Mortgage Association, the Student Loan Marketing Association, the Government National Mortgage Association and the Federal Home Loan Mortgage Corporation.

SEC. 199. Section 1371 of the Financial Code is amended to read:

1371. The commissioner is authorized upon the written application of any person made upon such form and containing such information as the commissioner may prescribe, accompanied by a fee of one hundred dollars ($100), and when in the commissioner's opinion the purposes of this article will be served thereby, to issue a certificate certifying that in the commissioner's opinion and upon the information furnished the commissioner, specifying the same, any particular security which is issued or guaranteed by the State of California, by any city, county, political subdivision, or public corporation of the State of California (herein referred to generally as California public corporations), or by any department, board, agency, or authority of the State of California or of any California public corporation constitutes a legal investment for savings and commercial banks pursuant to the provisions of this article. The commissioner may request any public official in whose office information relative to the assessed valuation of taxable property of any California public corporation is kept, or in whose office information relative to the direct debt or the overlapping debt of any California public corporation is kept, or in whose office any other information pertinent to a determination of whether or not any bonds issued by any California public corporation are qualified as investments for savings and commercial banks under this article is kept, to furnish the commissioner such information, and upon such

request being made it shall be the duty of such public official to furnish to the commissioner such information.

SEC. 200. Section 1500 of the Financial Code is amended to read:

1500. No corporation shall engage in the trust business unless:

(a) Its articles comply with the requirements of subdivision (b), (c), or (d) of Section 600; and

(b) It has received from the commissioner a certificate of authority pursuant to Section 401 to engage in the trust business, or, if it is a bank, has received the authorization of the commissioner to engage in the trust business pursuant to Section 1500.1; and

(c) It has deposited with the State Treasurer money or securities in compliance with Article 3 (commencing with Section 1540) of this chapter.

SEC. 201. Section 1500.1 of the Financial Code is amended to read:

1500.1. Any commercial bank, with the prior authorization of the commissioner, may engage in the trust business, if its articles comply with the requirements of subdivision (b) of Section 600. Any bank so authorized shall, in the conduct of its trust business, comply with and be governed by all of the provisions of this chapter, except the provisions of Section 1560. An application for such authorization shall be in such form and contain such information as the commissioner may require, and be accompanied by a fee of one thousand dollars ($1,000).

SEC. 202. Section 1501 of the Financial Code is amended to read:

1501. A corporation authorized to transact a title insurance business under the Insurance Code may engage in the trust business and maintain a trust department as well as a title insurance department if it complies with the following requirements:

(a) It shall first obtain the consent of both the commissioner and the Commissioner of Insurance. The application for such consent of the commissioner shall be in such form and contain such information as the commissioner may require and be accompanied by a fee of one thousand dollars ($1,000).

(b) In its application for such consent it shall include a statement making a segregation of its shareholders' equity for each department. When such apportionment is approved by the commissioner and the Commissioner of Insurance the part of such shareholders' equity apportioned to each department shall be segregated and shall be treated as the separate shareholders' equity of each such department as if each such department was a separate business.

(c) (1) It shall amend its articles to comply with the requirements of subdivision (d) of Section 600.

(2) It shall amend its articles to comply with the requirements of subdivision (b) of Section 600.2. Section 904 of the Corporations Code shall not apply to such amendment; however, the amendment must be approved by not less than two-thirds of each class of its outstanding shares which would become assessable under the amendment.

(d) It shall make the deposits of money or securities with the State Treasurer pursuant to Article 3 of this chapter.

(e) As to its trust department it shall be subject to and shall comply with all the requirements of this division applicable to trust companies and the rules and regulations of the commissioner.

SEC. 203. Section 1502 of the Financial Code is amended to read:

1502. In this section, "subject national banking association" means a national banking association that (a) maintains its main office or a branch office in this state, (b) is authorized to transact a trust business, and (c) has complied with the requirements of Article 3 (commencing with Section 1540) of this chapter and of all other laws of this state relating to the deposit of securities for the protection of court and private trusts. A subject national banking association may engage in and conduct a trust business and may be appointed by any court to act in any fiduciary capacity in which a trust company is authorized to act. All acts provided in this code to be performed by the commissioner, the State Treasurer, or other public officials for or in respect to the deposit of securities by trust companies, shall be performed for subject national banking associations equally with trust companies. Every subject national banking association shall be permitted to use the word "trust" in its corporate name and to advertise its authority to engage in and conduct a trust business and to advertise for and solicit trust business in this state, notwithstanding any contrary provision in this division or in any other law. The commissioner shall have access to reports of examination made by the Comptroller of the Currency insofar as they relate to the trust department of a subject national banking association. For purposes of Article 3 (commencing with Section 1540), the principal place of business of a national banking association that maintains its main office in another state of the United States and maintains a California branch office shall be deemed to be situated in the city where the California branch office is located or, if the national banking association maintains California branch offices in two or more cities, in the city with the largest population.

SEC. 204. Section 1540 of the Financial Code is amended to read:

1540. Every trust company shall deposit with the State Treasurer money or securities of the character described in Section 1542 as security for its court and private trusts as follows:

(a) If the trust company's principal place of business is situated in a city the population of which does not exceed 100,000 persons, it shall deposit with the State Treasurer money or securities having a market value of at least fifty thousand dollars ($50,000) as security for the faithful performance and execution of all court trusts accepted by it, and money or securities having a market value of at least fifty thousand dollars ($50,000) as security for the faithful performance and execution of all private trusts accepted by it.

Whenever any such trust company receives trust funds or property, other than real property, from court trusts accepted by it

to the amount of five hundred thousand dollars ($500,000), it shall forthwith give the commissioner written notice thereof, and within 30 days thereafter shall make an additional deposit with the State Treasurer of money or securities having a market value of fifty thousand dollars ($50,000) as security for its court trusts, and money or securities having a market value of fifty thousand dollars ($50,000) as additional security for its private trusts.

(b) If the trust company's principal place of business is situated in a city the population of which exceeds 100,000 persons, it shall deposit with the State Treasurer money or securities having a market value of at least one hundred thousand dollars ($100,000) as security for the faithful performance and execution of all court trusts accepted by it, and money or securities having a market value of at least one hundred thousand dollars ($100,000) as security for the faithful performance and execution of all private trusts accepted by it.

SEC. 205. Section 1541 of the Financial Code is amended to read:

1541. Whenever any trust company receives trust funds or property, other than real property, from court trusts accepted by it to the amount of one million dollars ($1,000,000), it shall forthwith give the commissioner written notice thereof, and within 30 days thereafter shall make an additional deposit with the State Treasurer of money or securities having a market value of fifty thousand dollars ($50,000). For each additional five hundred thousand dollars ($500,000) of such trust funds thereafter received by any trust company from court trusts a similar notification in writing shall forthwith be given to the commissioner and a further deposit of money or securities having a market value of twenty-five thousand dollars ($25,000) shall be made within 30 days thereafter by such trust company with the State Treasurer until money or securities having a market value of five hundred thousand dollars ($500,000) have been so deposited.

SEC. 206. Section 1543 of the Financial Code is amended to read:

1543. Such money or securities shall be approved by the commissioner and be deposited with the Treasurer upon the written order of the commissioner. Upon receiving any such deposit the Treasurer shall give his or her receipt therefor and thereafter subject to the provisions of this chapter shall hold such deposits for the sole benefit of the beneficiaries of the class of trust business for the security and protection of which the same were deposited. The state is responsible for the custody and safe return of any money or securities so deposited. The Treasurer shall deposit any such moneys under the provisions of Sections 16370 to 16375 of the Government Code.

SEC. 207. Section 1544 of the Financial Code is amended to read:

1544. Securities deposited pursuant to this article may be exchanged from time to time, with the approval of the commissioner, for other like securities of equal market value. Upon written request to the commissioner, any trust company shall be entitled to withdraw

from the Treasurer, from time to time, any amount of its securities so deposited in excess of the amount it is required to maintain on deposit in order to conform with the requirements of this article. Upon receiving a written request for such withdrawal or exchange, and satisfactory proof of the facts warranting the same, the commissioner shall forthwith deliver to the Treasurer a written order directing the withdrawal or exchange of such securities so as to conform with the provisions of this section. The Treasurer shall comply with such written order. So long as the trust company so depositing such securities shall continue solvent, it shall have the right and shall be permitted by the Treasurer to receive the interest and dividends on any securities deposited by it.

SEC. 208. Section 1545 of the Financial Code is amended to read:

1545. Should any security deposited pursuant to this article so depreciate in value as to reduce the deposit below the amount required by this article, additional money or securities shall be deposited promptly in amount sufficient to meet such requirements. The commissioner may make an investigation of the value of any security deposited pursuant to this article, at the time such security is presented for deposit or at any time thereafter, whenever in his judgment such investigation is necessary. The commissioner may make such charge as may be reasonable and proper for such investigation.

SEC. 209. Section 1545.5 of the Financial Code is amended to read:

1545.5. When any revaluation of securities is made by the commissioner pursuant to Section 1545, other than at the time such securities are presented for deposit, United States Government securities having a maturity date less than five years from the date of such revaluation shall be valued at not less than par.

SEC. 210. Section 1563 of the Financial Code is amended to read:

1563. Any trust company acting in any capacity under a court or private trust or when acting in such capacity with one or more persons as cofiduciary or cofiduciaries, unless the instrument creating such trust contains a provision to the contrary, may, with the consent of such cofiduciary or cofiduciaries cause any stock or other securities held in any such capacity to be registered in the name of a nominee or nominees of such trust company and any trust company when acting as depositary or custodian for the trustee of any other court or private trust, unless the instrument creating the trust contains a provision to the contrary, may, with the consent of the trustee of such other trust, cause any stock or other securities held by it in such capacity to be registered in the name of a nominee or nominees of such trust company. Any such trust company shall be liable for any loss occasioned by the acts of any nominee of such trust company with respect to such stock or other securities so registered. The records of such trust company shall at all times show the ownership of any such stock or other securities and of those held in

bearer form. Such stock or other securities and those held in bearer form shall at all times be kept by such trust company separate and apart from its other assets and may be kept by such trust company:

(a) In a manner such that all certificates representing the stock or other securities from time to time constituting the assets of a particular estate, trust or other fiduciary account are held separate from those of all other estates, trusts or accounts; or

(b) In a manner such that, without certification as to ownership attached, certificates representing stock or other securities of the same class of the same issuer and from time to time constituting assets of particular estates, trusts or other fiduciary accounts are held in bulk, including, to the extent feasible, the merging of certificates of small denomination into one or more certificates of large denomination, provided that a trust company, when operating under the method of safekeeping security certificates described in this subdivision, shall be subject to such rules and regulations as, in the case of state chartered institutions, the commissioner and, in the case of national bank associations, the Comptroller of the Currency, may from time to time issue. Such trust company shall, on demand by any party to an accounting by such trust company as fiduciary or on demand by the attorney for such party, certify in writing the stock or other securities held by such trust company as such fiduciary for such party.

No domestic or foreign corporation or the registrar or transfer agent of any such corporation shall be liable for registering or causing to be registered on the books of such corporation any share or shares or other securities in the name of any nominee of such trust company or for transferring or causing to be transferred on the books of any such corporation any share or shares or other securities theretofore registered by such corporation in the name of any nominee of such trust company as herein provided when the transfer is made upon the authorization of such nominee.

SEC. 211. Section 1564 of the Financial Code is amended to read:

1564. (a) For purposes of this section, two or more trust companies shall be deemed to be affiliated if they are members of the same affiliated group, within the meaning of Section 1504 of the Internal Revenue Code.

(b) Any trust company may establish and administer common trust funds composed of property permitted by law for the investment of trust funds, for the purpose of furnishing investments to any one or more of the following: (1) itself, as fiduciary; (2) itself and others, as cofiduciaries; (3) any affiliated trust company including, without limitation, any foreign (other state) affiliated trust company, as fiduciary; and (4) any affiliated trust company including, without limitation, any foreign (other state) affiliated trust company and others, as cofiduciaries. Any trust company may as such fiduciary or cofiduciary invest funds which it lawfully holds for investment in interests in common trust funds administered by itself

or by any affiliated trust company including, without limitation, any foreign (other state) affiliated trust company, if such investment is not prohibited by the instrument, judgment, decree, order, or statute creating or governing such fiduciary relationship, and if, in the case of cofiduciaries, the trust company procures the consent of its cofiduciaries to such investment.

(c) Each common trust fund established hereunder shall be treated as an entity separate and distinct from the fiduciary relationships participating therein. No fiduciary in administering a participating fiduciary relationship shall be required to make any apportionment or allocation between the principal and income of this relationship different from that made for the common trust fund. No participating fiduciary relationship, nor any person having an interest in that relationship, shall have or be deemed to have any ownership in any particular property of the common trust fund, but each participating fiduciary relationship shall have a proportionate undivided interest in the fund and its income, and the ownership of all property of the common trust fund shall be in the trustee of the fund.

(d) This section shall apply to fiduciary relationships now in existence or hereafter established, whether the same be revocable or irrevocable. The commissioner, at his or her direction, may make an examination of any common trust fund established hereunder at the times and to the extent as he or she may deem advisable. The provisions of the Corporate Securities Law shall not apply to the creation, administration, or termination of common trust funds, nor to participation therein.

SEC. 212. Section 1582 of the Financial Code is amended to read:

1582. A trust company, its officers and employees, shall not disclose any information to any person concerning the existence, condition, management, and administration of any private trust confided to it, except:

(a) Where such disclosure is specifically authorized by the terms of the trust.

(b) Where such disclosure is determined by an officer of the trust company to be necessary in the administration of such trust.

(c) Where such disclosure is required by a court of competent jurisdiction or by a subpoena issued by an attorney pursuant to Section 1985 of the Code of Civil Procedure.

(d) Where such disclosure is made to, or upon the instructions of, any party executing the trust instrument.

(e) Where such disclosure refers to an irrevocable trust, to, or upon the instructions of, any beneficiary thereunder whether or not presently entitled to receive benefits therefrom.

(f) Where such disclosure is made to the commissioner in the course of an examination.

SEC. 213. Section 1583 of the Financial Code is amended to read:

1583. The commissioner shall examine the court trust business of a trust company at least once every two calendar years and shall examine the private trust business at such times and to such extent as he or she may deem necessary or advisable.

SEC. 214. Section 1584 of the Financial Code is amended to read:

1584. In making the reports to the commissioner required by this division, every trust company shall report, in addition to the other facts called for, separately, the amount of real property and the amount of personal property held by such trust company in both its court trusts and in its private trusts.

SEC. 215. Section 1585 of the Financial Code is amended to read:

1585. Any corporation doing a departmental business as a title insurance company and as a trust company shall, as to its trust department, be subject to the requirements and have the benefit of the following provisions:

(a) It shall be subject to supervision and examination by the commissioner. The charges for this supervision and examination shall be assessed and paid in accordance with Article 5 (commencing with Section 270) of Chapter 2.

(b) It shall make all reports required by the commissioner of trust companies under this division.

(c) It shall be subject to and have the benefit of all provisions and requirements of this division and of all rules and regulations of the commissioner applicable to trust companies.

SEC. 216. Section 1588 of the Financial Code is amended to read:

1588. Whenever any corporation desires to withdraw from and discontinue doing a trust business, it shall furnish to the commissioner satisfactory evidence of its release and discharge from all the obligations and trusts which it has assumed or which have been imposed on it by law. Thereupon the commissioner shall revoke his or her certificate of authority to do a trust business, and the State Treasurer shall return to it all of the securities deposited by it. Thereafter such corporation shall not be permitted to use and shall not use the word "trust" in its corporate name, or in connection with its business.

SEC. 217. Section 1589 of the Financial Code is amended to read:

1589. The validity or legality of any act or proceeding done or taken by any trust company, relating to or in connection with the administration of its court and private trusts, shall not be affected or impaired by the neglect or failure of such trust company, or of any officer or employee thereof, to comply with any of the provisions of this division. All such acts and proceedings done or taken prior to the revocation of its certificate of authority to do a trust business by the commissioner, under the provisions of this division, or the revocation by any court or judge thereof of the appointment, order, or decree theretofore entered in such trust matter, shall be as valid and effective for all purposes as if any such neglect or failure had not occurred.

SEC. 218. Section 1701.5 of the Financial Code is amended to read:

1701.5. (a) For purposes of this chapter:

(1) Changing a lower class office into a higher class office shall be treated as establishing the higher class office, but not as closing the lower class office.

(2) Changing a higher class office into a lower class office shall be treated as closing the higher class office, but not as establishing the lower class office.

(b) In the case of changing a higher class office into a lower class office, when the application for approval to close the higher class office has been approved and all conditions precedent to the closing have been fulfilled, the foreign (other nation) bank may change the higher class office into the lower class office, and the commissioner shall issue a license authorizing the bank to maintain the lower class office.

SEC. 219. Section 1702 of the Financial Code is amended to read:

1702. Fees shall be paid to, and collected by, the commissioner, as follows:

(a) The fee for filing with the commissioner an application by a foreign (other nation) bank that is not licensed to transact business in this state for approval to establish a branch office shall be two thousand dollars ($2,000).

(b) The fee for filing with the commissioner an application by a foreign (other nation) bank that is not licensed to transact business in this state for approval to establish an agency shall be one thousand five hundred dollars ($1,500).

(c) The fee for filing with the commissioner an application by a foreign (other nation) bank that is licensed to transact business in this state for approval to establish a branch office shall be one thousand dollars ($1,000).

(d) The fee for filing with the commissioner an application by a foreign (other nation) bank that is licensed to transact business in this state for approval to establish an agency shall be seven hundred fifty dollars ($750).

(e) The fee for filing with the commissioner an application by a foreign (other nation) bank for approval to establish a representative office shall be two hundred fifty dollars ($250).

(f) The fee for filing with the commissioner an application by a foreign (other nation) bank that is licensed to maintain an agency or branch office for approval to relocate or to close the office shall be two hundred fifty dollars ($250).

(g) The fee for filing with the commissioner an application by a foreign (other nation) bank that is licensed to maintain a representative office for approval to relocate or to close the representative office shall be one hundred dollars ($100).

(h) The fee for issuing a license shall be twenty-five dollars ($25).

(i) Each foreign (other nation) bank that on June 1st of any year is licensed to maintain a representative office but is not licensed to transact business in this state shall pay, on or before the following July 1st, a fee of two hundred fifty dollars ($250) for each such representative office.

SEC. 220. Section 1703 of the Financial Code is amended to read:

1703. Each application filed with the commissioner under this chapter or under any regulation or order issued under this chapter shall be in such form, shall contain such information, shall be signed in such manner, and shall (if the commissioner so requires by regulation or order) be verified in such manner, as the commissioner may by regulation or order require.

SEC. 221. Section 1704 of the Financial Code is amended to read:

1704. (a) In this section, "act" includes (without limitation) omission.

(b) For purposes of making findings on an application by a foreign (other nation) bank for approval to establish an office:

(1) The commissioner may, in the absence of credible evidence to the contrary, presume that the directors, executive officers, and any controlling person of the bank and the directors and executive officers of any controlling person of the bank are each of good character and sound financial standing.

(2) The commissioner may find that the bank, a director, executive officer, or a controlling person of the bank, or a director or executive officer of a controlling person of the bank is not of good character if that person has done any of the following:

(A) Has been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty.

(B) Has consented to or suffered a judgment in any civil action based upon conduct involving an act of fraud or dishonesty.

(C) Has consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty.

(D) Has willfully made or caused to be made in any application or report filed with the commissioner or in any proceeding before the commissioner, any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has willfully omitted to state in any application or report filed with the commissioner or in any proceeding before the commissioner, any material fact that was required to be stated therein.

(E) Has willfully committed any violation of, or has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of this division or of any regulation or order issued under this division.

(c) Paragraph (2) of subdivision (b) shall not be deemed to be an exclusive list of the grounds upon which the commissioner may find, for purposes of making findings on an application by a foreign (other

nation) bank for approval to establish an office, that the bank, a director, executive officer, or controlling person of the bank, or a director or executive officer of a controlling person of the bank is not of good character.

SEC. 222. Section 1705 of the Financial Code is amended to read:

1705. (a) Each foreign (other nation) bank that is licensed to maintain an office shall file with the commissioner reports as and when the commissioner may, by regulation or order, require.

(b) Each report filed with the commissioner under this chapter or under any regulation or order issued under this chapter shall be in the form, shall contain the information, shall be signed in the manner, and shall (if the commissioner so requires by regulation or order) be verified in the manner, that the commissioner may, by regulation or order, require.

SEC. 223. Section 1706 of the Financial Code is amended to read:

1706. Each foreign (other nation) bank that is licensed to maintain an office shall make, keep, and preserve at the office or at another place that the commissioner may, by regulation or order, approve, the books, accounts, and other records relating to the business of the office, in the form, in the manner, and for the time that the commissioner may, by regulation or order, provide.

SEC. 224. Section 1710 of the Financial Code is amended to read:

1710. (a) (1) No foreign (other nation) bank (other than a bank that is licensed to maintain an agency or branch office) shall be issued a license to maintain a representative office unless it shall have first filed with the commissioner, in the form that the commissioner may by regulation or order require, an appointment irrevocably appointing the commissioner and the commissioner's successor from time to time in office to be the bank's attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the bank or any of its successors that arises out of the activities in this state of the representative office after the appointment has been filed, with the same force and validity as if served personally on the bank or its successor, as the case may be.

(2) Any foreign (other nation) bank (other than a bank that is licensed to maintain an agency or branch office or that maintains a federal agency or federal branch in this state) that maintains a representative office and that has not filed with the commissioner an appointment pursuant to paragraph (1) shall be deemed by the maintenance of that office to have appointed the commissioner as its attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the bank or any of its successors that arises out of the activities in this state of the representative office with the same force and validity as if served personally on the bank or its successor, as the case may be.

(b) (1) No foreign (other nation) bank shall be issued a license to maintain an agency or branch office unless it shall have first filed with the commissioner, in the form that the commissioner may by

regulation or order require, an appointment irrevocably appointing the commissioner and the commissioner's successor from time to time in office to be the bank's attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the bank or any of its successors that arises after the appointment has been filed, with the same force and validity as if served personally on the bank or its successor, as the case may be.

(2) Any foreign (other nation) bank that maintains an agency or branch office (other than a federal agency or federal branch) and that has not filed with the commissioner an appointment pursuant to paragraph (1) shall be deemed by the maintenance of that office to have appointed the commissioner as its attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the bank or any of its successors with the same force and validity as if served personally on the bank or its successor, as the case may be.

(c) Service may be made on a foreign (other nation) bank that has appointed or is deemed to have appointed the commissioner as its attorney for service of process by leaving a copy of the process at any office of the commissioner. However, the service is not effective unless (1) the party making the service, who may be the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the bank served at its last address on file with the commissioner at any of its offices in this state or at its head office, and (2) an affidavit of compliance with this subdivision by the party making service is filed in the case on or before the return date, if any, or within any further time that the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

SEC. 225. Section 1715 of the Financial Code is amended to read:

1715. Each foreign (other nation) bank that is licensed to maintain an office shall conduct all of the business of the office in a single building or in adjoining buildings. However, for good cause and with the approval of the commissioner, the bank may conduct part of the business of the office elsewhere in the same vicinity.

SEC. 226. Section 1726 of the Financial Code is amended to read:

1726. (a) (1) No foreign (other nation) bank shall establish or maintain a representative office unless the commissioner shall have first approved the establishment of the office and issued a license authorizing the bank to maintain the office.

(2) Paragraph (1) shall not be deemed to prohibit a foreign (other nation) bank that maintains a federal agency or federal branch in this state from establishing or maintaining one or more representative offices in this state.

(b) If the commissioner finds the following with respect to an application by a foreign (other nation) bank for approval to establish a representative office, the commissioner shall approve the application:

(1) That the bank, any controlling person of the bank, the directors and executive officers of the bank or of any controlling person of the bank, and the proposed management of the office are each of good character and sound financial standing;

(2) That the financial history and condition of the bank are satisfactory.

(3) That the management of the bank and the proposed management of the office are adequate;

(4) That it is reasonable to believe that, if licensed to maintain the office, the bank will operate the office in compliance with all applicable laws, regulations, and orders; and

(5) That the bank's establishment and maintenance of the office will promote the public convenience and advantage.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) bank for approval to establish a representative office has been approved and all conditions precedent to the issuance of a license authorizing the bank to maintain the office have been fulfilled, the commissioner shall issue the license.

SEC. 226.1. Section 1726 of the Financial Code is amended to read:

1726. (a) (1) No foreign (other nation) bank shall establish or maintain a representative office unless the commissioner shall have first approved the establishment of the office and issued a license authorizing the bank to maintain the office.

(2) Paragraph (1) shall not be deemed to prohibit a foreign (other nation) bank that maintains a federal agency or federal branch in this state from establishing or maintaining one or more representative offices in this state.

(b) If the commissioner finds the following with respect to an application by a foreign (other nation) bank for approval to establish a representative office, the commissioner shall approve the application:

(1) That the bank, any controlling person of the bank, the directors and executive officers of the bank or of any controlling person of the bank, and the proposed management of the office are each of good character and sound financial standing.

(2) That the financial history and condition of the bank are satisfactory.

(3) That the management of the bank and the proposed management of the office are adequate.

(4) That it is reasonable to believe that, if licensed to maintain the office, the bank will operate the office in compliance with all applicable laws, regulations, and orders.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) bank for approval to establish a representative office has been approved and all conditions precedent to the issuance of a license authorizing the bank to maintain the office have been fulfilled, the commissioner shall issue the license.

SEC. 227. Section 1727 of the Financial Code is amended to read:

1727. (a) No foreign (other nation) bank that is licensed to maintain a representative office shall relocate the office unless the commissioner shall have first approved the relocation and issued a license authorizing the bank to maintain the office at the new site.

(b) If the commissioner finds the following with respect to an application by a foreign (other nation) bank for approval to relocate a representative office, the commissioner shall approve the application:

(1) In case the new site of the office is in the same vicinity as the old site, that the relocation of the office will not be substantially detrimental to the public convenience and advantage; or

(2) In case the new site of the office is not in the same vicinity as the old site:

(A) That the relocation of the office from the old site will not be substantially detrimental to the public convenience and advantage in the area that is primarily served by the office at the old site; and

(B) That the relocation of the office to the new site will promote the public convenience and advantage.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) bank for approval to relocate a representative office has been approved and all conditions precedent to the issuance of a license authorizing the bank to maintain the office at the new site have been fulfilled, the commissioner shall issue the license.

(d) Promptly after a foreign (other nation) bank that is licensed to maintain a representative office relocates the office, the bank shall surrender to the commissioner the license that authorized it to maintain the office at the old site.

SEC. 228. Section 1728 of the Financial Code is amended to read:

1728. A foreign (other nation) bank that is licensed to maintain a representative office may, subject to any regulations that the commissioner may prescribe, engage in representational functions at the office but shall not solicit or accept deposits or otherwise transact business at the office.

SEC. 229. Section 1729 of the Financial Code is amended to read:

1729. (a) (1) No foreign (other nation) bank that is licensed to maintain a representative office shall close the office unless the commissioner shall have first approved the closing.

(2) Paragraph (1) shall not be deemed to prohibit a foreign (other nation) bank that is licensed to maintain a representative office from

closing the office in accordance with Article 4 (commencing with Section 1775).

(b) If the commissioner finds, with respect to an application by a foreign (other nation) bank for approval to close a representative office, that the closing of the office will not be substantially detrimental to the public convenience and advantage, the commissioner shall approve the application. If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) bank for approval to close a representative office has been approved and all conditions precedent to the closing have been fulfilled, the bank may close the office and shall promptly thereafter surrender to the commissioner the license that authorized it to maintain the office.

SEC. 230. Section 1753 of the Financial Code is amended to read:

1753. (a) (1) No foreign (other nation) bank shall establish or maintain an agency or branch office unless the commissioner shall have first approved the establishment of such office and issued a license authorizing such bank to maintain the office.

(2) Paragraph (1) shall not be deemed to prohibit a foreign (other nation) bank from establishing or maintaining a federal agency or federal branch in this state.

(b) If the commissioner finds the following with respect to an application by a foreign (other nation) bank for approval to establish an agency or branch office, the commissioner shall approve such application:

(1) That the bank, any controlling person of the bank, the directors and executive officers of the bank or of any controlling person of the bank, and the proposed management of the office are each of good character and sound financial standing;

(2) That the financial history and condition of the bank are satisfactory.

(3) That the management of the bank and the proposed management of the office are adequate;

(4) That it is reasonable to believe that, if licensed to maintain the office, the bank will operate the office in a safe and sound manner and in compliance with all applicable laws, regulations, and orders;

(5) That the bank's plan to establish and to maintain the office affords reasonable promise of successful operation;

(6) That the bank's establishment and maintenance of the office will promote the public convenience and advantage; and

(7) In case the office is to be a branch office, that the foreign nation where the bank is domiciled permits banks organized under the laws of this state and national banks headquartered in this state to establish and maintain in such foreign nation offices substantially equivalent to agencies, offices substantially equivalent to branch offices, or wholly (except for directors' qualifying shares) owned banks organized under the laws of such foreign nation.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) bank for approval to establish an agency or branch office has been approved and all conditions precedent to the issuance of a license authorizing such bank to maintain such office have been fulfilled, the commissioner shall issue such license.

SEC. 231. Section 1754 of the Financial Code is amended to read:

1754. (a) No foreign (other nation) bank which is licensed to maintain an agency or branch office shall relocate such office unless the commissioner shall have first approved such relocation and issued a license authorizing such bank to maintain the office at the new site.

(b) If the commissioner finds the following with respect to an application by a foreign (other nation) bank for approval to relocate any agency or branch office, the commissioner shall approve such application:

(1) In case the new site of the office is in the same vicinity as the old site:

(A) That it will not be unsafe or unsound for the bank to relocate the office; and

(B) That the relocation of the office will not be substantially detrimental to the public convenience and advantage, or that the relocation is necessary in the interests of the safety and soundness of the bank; or

(2) In case the new site of the office is not in the same vicinity as the old site:

(A) That the bank's plan to relocate the office and to maintain the office at the new site affords reasonable promise of successful operation;

(B) That the relocation of the office from the old site will not be substantially detrimental to the public convenience and advantage in the area which is primarily served by the office at the old site, or that the relocation is necessary in the interests of the safety and soundness of the bank; and

(C) That the relocation of the office to the new site will promote the public convenience and advantage.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) bank for approval to relocate an agency or branch office has been approved and all conditions precedent to the issuance of a license authorizing such bank to maintain such office at the new site have been fulfilled, the commissioner shall issue such license.

(d) Promptly after a foreign (other nation) bank which is licensed to maintain an agency or branch office relocates such office, such bank shall surrender to the commissioner the license which authorized it to maintain such office at the old site.

SEC. 232. Section 1755 of the Financial Code is amended to read:

1755. (a) A foreign (other nation) bank that is licensed to maintain an agency or branch office may transact commercial banking business at the office, subject to the following:

(1) In case the office is a nondepositary agency, the bank shall not transact the business of accepting deposits.

(2) In case the office is a depositary agency, the bank shall not transact the business of accepting any deposits other than deposits of (A) a foreign nation, (B) an agency or instrumentality of a foreign nation, or (C) a person which resides, is domiciled, and maintains its principal place of business in a foreign nation. For purposes of this paragraph, "person" means any individual, proprietorship, joint venture, partnership, trust, business trust, syndicate, association, joint stock company, corporation, limited liability company, or any other organization or any branch or division thereof.

(3) In case the office is a limited branch office, the bank shall not transact the business of accepting any deposits other than (A) deposits of the kind described in paragraph (2), or (B) deposits that the bank is permitted to accept pursuant to the agreement or undertaking that it enters into with the Board of Governors of the Federal Reserve System in accordance with Section 5(a)(2)(B) of the International Banking Act of 1978.

(4) In case the office is a wholesale branch office, the bank shall not transact the business of accepting any deposits other than (A) deposits of the kind described in paragraph (2), (B) deposits of one hundred thousand dollars ($100,000) or more, or (C) deposits the acceptance of which the commissioner determines by regulation or order do not constitute engaging in domestic retail deposit activities requiring deposit insurance protection.

(5) In case the office is an agency, limited branch office, or wholesale branch office, the bank may, subject to any regulations that the commissioner may prescribe, maintain credit balances.

(6) In any case, the bank shall not transact any business that it is not authorized to transact or is prohibited from transacting under the law of its domicile or that commercial banks organized under the laws of this state are not authorized to transact or are prohibited from transacting.

(b) No foreign (other nation) bank that is licensed to maintain an agency or branch office shall transact any trust business at the office except as permitted under Section 1503.

SEC. 232.1. Section 1755 of the Financial Code is amended to read:

1755. (a) A foreign (other nation) bank that is licensed to maintain an agency or branch office may transact commercial banking business at the office, subject to the following:

(1) In case the office is a nondepositary agency, the bank shall not transact the business of accepting deposits.

(2) In case the office is a depositary agency, the bank shall not transact the business of accepting any deposits other than deposits of

(A) a foreign nation, (B) an agency or instrumentality of a foreign nation, or (C) a person which resides, is domiciled, and maintains its principal place of business in a foreign nation. For purposes of this paragraph, "person" means any individual, proprietorship, joint venture, partnership, trust, business trust, syndicate, association, joint stock company, corporation, limited liability company, or any other organization or any branch or division thereof.

(3) In case the office is a limited branch office, the bank shall not transact the business of accepting any deposits other than (A) deposits of the kind described in paragraph (2), or (B) deposits that a corporation organized under Section 25A of the Federal Reserve Act is permitted to accept.

(4) In case the office is a wholesale branch office, the bank shall not transact the business of accepting any deposits other than (A) deposits of the kind described in paragraph (2), (B) deposits of one hundred thousand dollars ($100,000) or more, or (C) deposits the acceptance of which the commissioner determines by regulation or order do not constitute engaging in domestic retail deposit activities requiring deposit insurance protection.

(5) In case the office is an agency, limited branch office, or wholesale branch office, the bank may, subject to any regulations that the commissioner may prescribe, maintain credit balances.

(6) In any case, the bank shall not transact any business that it is not authorized to transact or is prohibited from transacting under the law of its domicile or that commercial banks organized under the laws of this state are not authorized to transact or are prohibited from transacting.

(b) No foreign (other nation) bank that is licensed to maintain an agency or branch office shall transact any trust business at the office except as permitted under Section 1503.

SEC. 233. Section 1757 of the Financial Code is amended to read:

1757. (a) Whenever the commissioner calls for a report under Section 1931 from commercial banks organized under the laws of this state, the commissioner shall call for a report from each foreign (other nation) bank that is licensed to transact business in this state.

(b) (1) A foreign (other nation) bank that is licensed to transact business in this state shall prominently display in the lobby of each agency and branch office, except an automated teller machine branch office, as defined in Section 550, a notice that any person may obtain a financial report from the bank. The notice shall include the address and telephone number of the person or office to be contacted for a financial report. The bank shall, after receiving a request for a financial report, promptly mail or otherwise furnish the financial report to the requester. The first financial report shall be provided without charge.

(2) The financial report called for in this subdivision shall contain either (A) the information that the commissioner may require by regulation or (B) in the absence of a regulation the last balance sheet

and income statement, each without any schedules, that the bank filed with the commissioner pursuant to Section 1931.

SEC. 233.1. Section 1757 of the Financial Code is amended to read:

1757. (a) Whenever the commissioner calls for a report under Section 1931 from commercial banks organized under the laws of this state, the commissioner shall call for a report from each foreign (other nation) bank that is licensed to transact business in this state.

(b) (1) A foreign (other nation) bank that is licensed to transact business in this state shall prominently display in the lobby of each agency and branch office, except an automated teller machine branch office (as defined in Section 550), a notice that any person may obtain a financial report from the bank. The notice shall include the address and telephone number of the person or office to be contacted for a financial report. The bank shall, promptly after receiving a request for a financial report, mail or otherwise furnish the financial report to the requester. The first financial report shall be provided without charge.

(2) The financial report called for in this subdivision shall contain either (A) the information that the commissioner may require by regulation or (B) in the absence of a regulation, the last balance sheet and income statement, each without any schedules, that the bank filed with the commissioner pursuant to Section 1931.

SEC. 234. Section 1758 of the Financial Code is amended to read:

1758. Each foreign (other nation) bank which is licensed to maintain a depositary agency, limited branch office, or wholesale branch office shall, in accordance with such regulations as the commissioner may prescribe, give notice that deposits in such office are not insured by the Federal Deposit Insurance Corporation.

SEC. 235. Section 1759 of the Financial Code is amended to read:

1759. (a) In case a foreign (other nation) bank is licensed to maintain a depositary agency or branch office and such office is not subject to the regulations of the Depository Institutions Deregulation Committee, Regulation Q of the Board of Governors of the Federal Reserve System, or Part 329 of the regulations of the Federal Deposit Insurance Corporation, such bank shall, with respect to deposits accepted at the office, comply with such regulations regarding maximum interest rates on deposits, prepayment of time deposits, and related matters as the commissioner may prescribe as being necessary and appropriate to maintain competitive equality between foreign (other nation) banks and banks organized under the laws of this state which are subject to the regulations of the Depository Institutions Deregulation Committee, Regulation Q of the Board of Governors of the Federal Reserve System, or Part 329 of the regulations of the Federal Deposit Insurance Corporation.

(b) For purposes of, and notwithstanding any contrary provisions of, Chapter 3.5 (commencing with Section 11340), Part 1 of Division 3 of Title 2 of the Government Code, whenever the commissioner

adopts a regulation or order of repeal of a regulation under subdivision (a), the commissioner may, without describing specific facts showing the need for immediate action, find that adoption of such regulation or order of repeal is necessary for the immediate preservation of the public peace, health and safety, or general welfare, and such regulation or order of repeal shall be deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare.

SEC. 236. Section 1761 of the Financial Code is amended to read:

1761. (a) In this section:

(1) "Adjusted liabilities," when used with respect to a foreign (other nation) bank, means the liabilities of such bank's business in this state, excluding (A) accrued expenses, (B) any liability to an office (whether in or outside of this state) or majority-owned subsidiary of the bank, and (C) such other liabilities as the commissioner may by regulation or order exclude.

(2) "Applicable minimum," when used with respect to eligible assets deposited or to be deposited with an approved depository by a foreign (other nation) bank, means such amount as the commissioner may from time to time by regulation or order determine to be necessary for the maintenance of sound financial condition, for the protection of the interests of creditors of the bank's business in this state, or for the protection of the public interest. However, in the case of a foreign (other nation) bank which is licensed to maintain a branch office, the applicable minimum shall in no event be less than 5 percent of the adjusted liabilities of such bank.

(3) "Approved depository," when used with respect to a foreign (other nation) bank, means a bank organized under the laws of this state or a national bank headquartered in this state which has been selected by such foreign (other nation) bank and approved by the commissioner for the purpose of acting as the approved depository of the foreign (other nation) bank and which has filed with the commissioner, in such form as the commissioner may by regulation or order prescribe, an agreement to comply with all applicable provisions of this section and of any regulation or order issued under this section.

(4) "Eligible assets" when used with respect to a foreign (other nation) bank, means any of the following:

(A) Cash.

(B) Any security of the type described in Section 1542.

(C) Any negotiable certificate of deposit which (i) has a maturity of not more than one year, (ii) is payable in the United States, and (iii) is issued by a bank organized under the laws of a state of the United States, by a national bank, or by a branch office of a foreign (other nation) bank which is located in the United States.

(D) Any commercial paper which is payable in the United States and which is rated P-1 or its equivalent by a nationally recognized

rating service; provided, however, that any conflict in rating shall be resolved in favor of the lower rating.

(E) Any banker's acceptance which is payable in the United States and which is eligible for discount with a Federal Reserve bank.

(F) Any other asset which the commissioner by regulation or order determines to be eligible.

Notwithstanding the foregoing provisions of this paragraph, "eligible asset," when used with respect to a foreign (other nation) bank, does not include any instrument the issuer of which (i) is, or is affiliated with, such foreign (other nation) bank, (ii) is domiciled in, or controlled by a bank or other person domiciled in, the same foreign nation as the foreign (other nation) bank, or (iii) is, or is controlled by, such foreign nation. For purposes of the foregoing provision, to be "affiliated" means to control, to be controlled by, or to be under common control with; and to "control" has the meaning set forth in subdivision (b) of Section 700.

(b) For purposes of this section:

(1) The amount of adjusted liabilities of a foreign (other nation) bank's business in this state shall be computed for such period, in such manner, and on such basis as the commissioner may by regulation or order prescribe.

(2) Any eligible asset shall be valued at the lesser of market or par.

(c) (1) Before any foreign (other nation) bank is licensed to transact business in this state, such bank shall deposit, and each foreign (other nation) bank which is licensed to transact business in this state shall maintain on deposit, with an approved depository eligible assets having a value in an amount not less than the applicable minimum.

(2) Whenever a foreign (other nation) bank which is licensed to transact business in this state ceases to be so licensed, such bank shall thereafter maintain on deposit with an approved depository eligible assets having a value in an amount not less than the applicable minimum for such period of time as the commissioner may determine to be necessary for the protection of creditors of the bank's business in this state or for the protection of the public interest.

(d) (1) No foreign (other nation) bank which maintains eligible assets on deposit with an approved depository pursuant to this section shall withdraw any such eligible assets except with the prior approval of the commissioner.

(2) No approved depository which holds eligible assets on deposit from a foreign (other nation) bank pursuant to this section shall release any such eligible assets except with the prior approval of the commissioner or as otherwise provided in subdivision (h).

(e) Any foreign (other nation) bank which maintains eligible assets on deposit with an approved depository pursuant to this section shall, unless the commissioner shall have suspended or revoked its license to transact business in this state or taken possession of its

property and business in this state, be entitled to receive any income paid on such eligible assets.

(f) (1) Whenever a foreign (other nation) bank deposits eligible assets with, or withdraws eligible assets from, an approved depository pursuant to this section, such bank shall do so in accordance with such procedures and requirements as the commissioner may by regulation or order prescribe.

(2) Whenever an approved depository receives, holds, or releases eligible assets pursuant to this section, such approved depository shall do so in accordance with such procedures and requirements as the commissioner may by regulation or order prescribe and shall file with the commissioner such reports as and when the commissioner may by regulation or order require.

(g) Whenever a foreign (other nation) bank maintains eligible assets on deposit with an approved depository pursuant to this section:

(1) The eligible assets shall be deemed to be pledged to the commissioner for the benefit of the creditors of the bank's business in this state; and, notwithstanding any provision of the Uniform Commercial Code to the contrary, the commissioner, for the benefit of such creditors, shall be deemed to have a security interest in such eligible assets.

(2) The eligible assets shall be free from any lien, charge, right of setoff, credit, or preference in connection with any claim of the approved depository against the bank.

(h) (1) In case the commissioner takes possession of the property and business of a foreign (other nation) bank which maintains eligible assets on deposit with an approved depository pursuant to this section, such approved depository shall, upon order of the commissioner, release such eligible assets to the commissioner, as liquidator of the property and business of such bank.

(2) In case a foreign (other nation) bank which maintains eligible assets on deposit with an approved depository pursuant to this section fails to pay any judgment creditor of its business in this state and the commissioner has not taken possession of the property and business of such bank, such approved depository shall release such eligible assets to the commissioner, and the commissioner shall make such disposition of the eligible assets, as a court of competent jurisdiction of this state or of the United States may order for the benefit of such judgment creditor. For purposes of this paragraph, "judgment creditor of its business in this state" means a person to whom the bank is required to pay money under a judgment which (A) arose out of the bank's business in this state, (B) has been entered by a court of this state or of the United States, (C) has become final, in that all possibility of direct attack on such judgment by way of appeal, motion for new trial, motion to vacate, or petition for extraordinary writ has been exhausted, and (D) has remained unpaid for a period of not less than 60 days after becoming final.

SEC. 237. Section 1762 of the Financial Code is amended to read:

1762. (a) In this section:

(1) "Adjusted liabilities," when used with respect to a foreign (other nation) bank which is licensed to maintain a branch office in this state, means the liabilities of such bank's business in this state, excluding (A) accrued expenses, (B) any liability to an office (whether in or outside of this state) or majority-owned subsidiary of the bank, and (C) such other liabilities as the commissioner may by regulation or order exclude.

(2) "Eligible assets" means any asset which the commissioner by regulation or order determines to be eligible for purposes of this section. However, "eligible asset," when used with respect to a foreign (other nation) bank which is licensed to maintain a branch office, includes (A) any asset which such bank maintains on deposit pursuant to Section 1761 and (B) any reserves which the bank maintains with respect to its business in this state in accordance with requirements prescribed by the Board of Governors of the Federal Reserve System.

(b) For purposes of this section, the amount of eligible assets and the amount of adjusted liabilities of a foreign (other nation) bank which is licensed to maintain a branch office in this state shall each be computed for such period, in such manner, and on such basis as the commissioner may by regulation or order prescribe.

(c) A foreign (other nation) bank licensed to maintain a branch office in this state shall hold at its branch offices in this state or at such other places as the commissioner may approve, eligible assets in such amount, if any, as the commissioner may from time to time by regulation or order determine to be necessary for the maintenance of sound financial condition, for the protection of the interests of creditors of the bank's business in this state, or for the protection of the public interest. However, in no event shall such amount exceed 108 percent of the adjusted liabilities of the bank's business in this state.

(d) If the commissioner finds, with respect to a foreign (other nation) bank licensed to maintain a branch office in this state, that such action is necessary for the maintenance of sound financial condition, for the protection of the interests of creditors of such bank's business in this state, or for the protection of the public interest, the commissioner may order the bank to place all or part of the eligible assets which the bank is required to hold under subdivision (c) in the custody of such bank organized under the laws of this state or such national bank headquartered in this state as the commissioner may designate.

SEC. 238. Section 1763 of the Financial Code is amended to read:

1763. (a) (1) No foreign (other nation) bank which is licensed to maintain an agency or branch office shall close such office unless the commissioner shall have first approved such closing.

(2) Paragraph (1) shall not be deemed to prohibit a foreign (other nation) bank which is licensed to maintain an agency or branch office from closing such office in accordance with Article 4 (commencing with Section 1775).

(b) If the commissioner finds the following with respect to an application by a foreign (other nation) bank for approval to close an agency or branch office, the commissioner shall approve such application:

(1) That it will not be unsafe or unsound for the bank to close the office; and

(2) That the closing of the office will not be substantially detrimental to the public convenience and advantage or that the closing of the office is necessary in the interests of the safety and soundness of the bank.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by a foreign (other nation) bank for approval to close an agency or branch office has been approved and all conditions precedent to such closing have been fulfilled, such bank may close such office and shall promptly thereafter surrender to the commissioner the license which authorized it to maintain the office.

SEC. 239. Section 1775 of the Financial Code is amended to read:

1775. (a) Any foreign (other nation) bank that holds a license to maintain an office may voluntarily surrender the license by filing the license and a report with the commissioner. However, any foreign (other nation) bank that holds licenses to maintain two or more offices may not voluntarily surrender less than all of the licenses.

(b) (1) Except as otherwise provided in paragraph (2), a voluntary surrender of a license shall be effective on the 30th day after the license and the report called for in subdivision (a) are filed with the commissioner or on an earlier date as the commissioner may by order specify.

(2) If a proceeding to revoke or suspend a license is pending at the time when the license and the report called for in subdivision (a) are filed with the commissioner or if a proceeding to revoke or suspend a license or to impose conditions upon the surrender of a license is instituted before the 30th day after the license and the report called for in subdivision (a) are filed with the commissioner, the voluntary surrender of the license shall become effective at the time and upon the conditions that the commissioner may by order specify.

SEC. 240. Section 1780 of the Financial Code is amended to read:

1780. If, after notice and a hearing, the commissioner finds that any person has violated any provision of this chapter or of any regulation or order issued under this chapter, the commissioner may order such person to pay to the commissioner a civil penalty in such amount as the commissioner may specify; provided, however, that the amount of such civil penalty shall not exceed one hundred dollars ($100) for each violation or, in the case of a continuing violation, one

hundred dollars ($100) for each day for which such violation continues.

SEC. 241. Section 1781 of the Financial Code is amended to read:

1781. If, after notice and a hearing, the commissioner finds any of the following with respect to a foreign (other nation) bank that is licensed to maintain an office, the commissioner may issue an order suspending or revoking the license of the bank:

(a) That the bank has violated any provision of this division or of any regulation or order issued under this division or any provision of any other applicable law, regulation, or order;

(b) That the bank, in case it is licensed to transact business in this state, is transacting the business in an unsafe or unsound manner or, in any case, is transacting business elsewhere in an unsafe or unsound manner;

(c) That the bank is in unsafe or unsound condition;

(d) That the bank has ceased to operate its office;

(e) That the bank is insolvent in that it has ceased to pay its debts in the ordinary course of business, it cannot pay its debts as they become due, or its liabilities exceed its assets;

(f) That the bank has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;

(g) That the bank has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for any such relief under any such law against the bank and the bank has by any affirmative act approved of or consented to the action or the relief has been granted;

(h) That a receiver, liquidator, or conservator has been appointed for the bank or that any proceeding for such an appointment or any similar proceeding has been initiated in the place where the bank is domiciled;

(i) That the existence of the bank or the authority of the bank to transact banking business under the laws of the place where the bank is domiciled has been suspended or terminated; or

(j) That any fact or condition exists that, if it had existed at the time when the bank applied for its license to transact business in this state, would have been grounds for denying the application.

SEC. 242. Section 1782 of the Financial Code is amended to read:

1782. (a) If the commissioner finds that any of the factors set forth in Section 1781 is true with respect to any foreign (other nation) bank that is licensed to maintain an office and that it is necessary, in case the bank is licensed to transact business in this state, for the protection of the interests of creditors of the bank's business in this state or, in any case, for the protection of the public interest that the commissioner immediately suspend or revoke the license of the bank, the commissioner may issue an order suspending or revoking the license of the bank.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), the foreign (other nation) bank to which the order is issued may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence the hearing within 15 business days after the application is filed with the commissioner (or within any longer period to which the bank consents), the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any foreign (other nation) bank to which an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the bank to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

SEC. 243. Section 1783 of the Financial Code is amended to read:

1783. Any foreign (other nation) bank whose license to maintain an office is suspended or revoked shall immediately surrender the license to the commissioner.

SEC. 244. Section 1784 of the Financial Code is amended to read:

1784. (a) Any foreign (other nation) bank to which an order is issued under Section 1781 or 1782 may apply to the commissioner to modify or rescind such order. The commissioner shall not grant the application unless he or she finds that it is in the public interest to do so and that it is reasonable to believe that the bank will, if and when it is again licensed to maintain an office, comply with all applicable provisions of this division and of any regulation or order issued under this division.

(b) The right of any foreign (other nation) bank to which an order is issued under Section 1781 or 1782 to petition for judicial review of the order shall not be affected by the failure of the bank to apply to the commissioner pursuant to subdivision (a) to modify or rescind the order.

SEC. 245. Section 1785 of the Financial Code is amended to read:

1785. (a) If the commissioner finds that any of the factors set forth in Section 1781 is true with respect to any foreign (other nation) bank which is licensed to transact business in this state and that it is necessary for the protection of the interests of the creditors of such bank's business in this state or for the protection of the public interest that he or she take immediate possession of the property and business of the bank, the commissioner may by order forthwith take possession of the property and business of the bank and retain possession until the bank resumes business in this state or is finally liquidated. The bank may, with the consent of the commissioner, resume business in this state upon such conditions as the commissioner may prescribe.

(b) (1) Whenever the commissioner takes possession of the property and business of a foreign (other nation) bank pursuant to subdivision (a), such bank may, within 10 days, apply to the superior court in the county in which the primary office of the bank is located to enjoin further proceedings. The court may, after citing the

commissioner to show cause why further proceedings should not be enjoined and after a hearing, dismiss such application or enjoin the commissioner from further proceedings and order him or her to surrender the property and business of the bank to the bank or make such further order as may be just.

(2) The judgment of the court may be appealed by the commissioner or by the bank in the manner provided by law for appeals from the judgment of a superior court. In case the commissioner appeals the judgment of the court, such appeal shall operate as a stay of the judgment, and the commissioner shall not be required to post any bond.

(c) Whenever the commissioner takes possession of the property and business of a foreign (other nation) bank pursuant to subdivision (a), the commissioner shall conserve or liquidate the property and business of such bank pursuant to Articles 1 (commencing with Section 3100), 3 (commencing with Section 3160) and 6 (commencing with Section 3220) of Chapter 17, and the provisions of such articles (except Sections 3100, 3101, 3102, and 3126) shall apply as if the bank were a bank organized under the laws of this state.

(d) When the commissioner has completed the liquidation of the property and business of a foreign (other nation) bank, the commissioner shall transfer any remaining assets to such bank in accordance with such orders as the court may issue. However, in case the bank has an office in another state of the United States which is in liquidation and the assets of such office appear to be insufficient to pay in full the creditors of the office, the court shall order the commissioner to transfer to the liquidator of the office such amount of any such remaining assets as appears to be necessary to cover such insufficiency; if there are two or more such offices and the amount of remaining assets is less than the aggregate amount of insufficiencies with respect to the offices, the court shall order the commissioner to distribute the remaining assets among the liquidators of such offices in such manner as the court finds equitable.

SEC. 246. Section 1800.3 of the Financial Code is amended to read:

1800.3. (a) No person shall engage in the business of receiving money for the purpose of transmitting the same or its equivalent to foreign countries without first obtaining a license from the commissioner.

(b) This chapter shall not apply to any of the following:

(1) A bank, the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor, or any foreign (other nation) bank which is licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 or which is authorized under federal law to maintain a federal agency or federal branch office in this state.

(2) A trust company licensed pursuant to Section 401 or a national association authorized under federal law to engage in a trust banking business.

(3) An association or federal association, as defined in Section 5102 the deposits of which are insured by the Federal Deposit Insurance Corporation or its successor.

(4) Any federally or state chartered credit union the member accounts of which are insured or guaranteed as provided in Section 14858.

(5) An industrial loan company or thrift and loan company, as defined in Section 18003, the investment certificates of which are insured by the Federal Deposit Insurance Corporation or its successor.

SEC. 247. Section 1800.4 of the Financial Code is amended to read:

1800.4. (a) The receipt of money by an incorporated telegraph company, or its agents, for immediate transmission by telegraph to foreign countries shall be exempt from licensure under this chapter until July 1, 1990, provided each of the following conditions is satisfied.

(1) The company has applied before February 1, 1990, to the commissioner for licensure under this chapter.

(2) The company, and its agents, shall comply with and be subject to all applicable provisions of this chapter.

(3) The company directly, or through agents, on or before February 1, 1989, received money for immediate transmission by telegraph to foreign countries.

(b) The commissioner may extend the licensure exemption period provided in subdivision (a) once for up to 60 days for an applicant incorporated telegraph company in the event that the commissioner is unable to approve or deny the application before July 1, 1990, provided that the applicant incorporated telegraph company shall continue to comply with paragraphs (1) to (3), inclusive, of subdivision (a) during the extension period.

SEC. 247.1. Section 1800.4 of the Financial Code is amended to read:

1800.4. The receipt of money by an incorporated telegraph company, or its agents, for immediate transmission by telegraph to foreign countries shall be exempt from licensure under this chapter until July 1, 1990, provided each of the following conditions is satisfied.

(1) The company has applied before February 1, 1990, to the commissioner for licensure under this chapter.

(2) The company, and its agents, shall comply with and be subject to all applicable provisions of this chapter.

(3) The company directly, or through agents, on or before February 1, 1989, received money for immediate transmission by telegraph to foreign countries.

SEC. 248. Section 1800.7 of the Financial Code is amended to read:

1800.7. (a) As used in this section, "designated person" means any agent, any applicant, the officers, directors, and controlling persons of any applicant or agent, and the directors and officers of the controlling persons of any applicant or agent.

(b) For the purposes of Sections 1802.2, 1803.5, and 1804, each of the following applies:

(1) The commissioner may, in the absence of the credible evidence to the contrary, presume that designated persons are each of good character and sound financial standing.

(2) The commissioner may find that a designated person is not of good character if that person has done any of the following:

(A) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty.

(B) Consented to or suffered a judgment in any civil action based on conduct involving an act of fraud or dishonesty.

(C) Consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty.

(D) Willfully made or caused to be made in any application or report filed with the commissioner or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has willfully omitted to state in any application or report any material fact which was required to be stated therein.

(E) Willfully committed any violation of, or has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of this division or of any regulation or order issued under this division.

(3) Paragraph (2) shall not be deemed to be an exclusive list of grounds upon which the commissioner may find that a designated person is not of good character.

SEC. 249. Section 1800.9 of the Financial Code is amended to read:

1800.9. The commissioner may impose on any authorization, approval, license, or order issued pursuant to this chapter any conditions that he or she deems reasonable or necessary to the public interest.

SEC. 250. Section 1801 of the Financial Code is amended to read:

1801. (a) Fees shall be paid to, and collected by, the commissioner, as follows:

(1) The fee for filing with the commissioner an application for a license is five thousand dollars ($5,000).

(2) The fee for filing with the commissioner an application for authorization to appoint an agent is seventy-five dollars ($75). This paragraph shall become inoperative as of July 1, 1991.

(3) The fee for filing with the commissioner an application for approval to acquire control of a licensee is three thousand five hundred dollars ($3,500).

(4) The fee for filing with the commissioner an application for approval to establish a branch office of a licensee is two hundred fifty dollars ($250).

(5) The fee for filing with the commissioner an application for approval to establish a branch office of an agent is fifty dollars ($50).

(6) The fee for filing with the commissioner an application for extension of an approval to establish a branch office is one hundred dollars ($100).

(7) A licensee shall pay to the commissioner annually on or before July 1, a licensee fee of two thousand five hundred dollars ($2,500).

(8) A licensee shall pay to the commissioner annually on or before July 1, one hundred twenty-five dollars ($125) for each licensee branch office.

(9) A licensee shall pay to the commissioner annually on or before July 1, twenty-five dollars ($25) for each agent headquarter office and each agent branch office.

(10) Whenever the commissioner examines a licensee or any agent of a licensee, the licensee shall pay, within 10 days after receipt of a statement from the commissioner, a fee of four hundred dollars ($400) per day for each examiner engaged in the examination plus, if it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(b) (1) Each fee for filing an application with the commissioner shall be paid at the time the application is filed with the commissioner.

(2) No fee for filing an application with the commissioner shall be refundable, regardless of whether the application is approved, denied, or withdrawn.

SEC. 251. Section 1801.1 of the Financial Code is amended to read:

1801.1. Each fiscal year the commissioner shall levy an assessment on a pro rata basis on those licensees which at any time during the preceding calendar year received transmission money. The total assessment levied on all of those licensees shall be in an amount which, when added to the fees that the commissioner collects during the fiscal year the assessment is levied, is sufficient to meet the expenses of the commissioner in administering this chapter and to provide a reasonable reserve for contingencies. The basis of the apportionment of the assessment among the licensees assessed shall be the proportion that the amount of transmission money received by the licensee bears to the total amount of transmission money received by all licensees as shown by the reports of licensees to the commissioner for the preceding calendar year, as required by Section 1807. The assessment rate shall be fixed from time to time by the

commissioner but shall not exceed one dollar ($1) per one thousand dollars ($1,000) of transmission money received by the licensee.

The commissioner shall notify each licensee by mail of the amount levied against it. The licensee shall pay the amount levied within 20 days. If payment is not made to the commissioner within that time, the commissioner shall assess and collect, in addition to the annual assessment, a penalty of 5 percent of the assessment for each month or part thereof that the payment is delinquent.

This section shall not become operative until July 1, 1990.

SEC. 252. Section 1802 of the Financial Code is amended to read:

1802. (a) An application for a license shall be in writing, under oath, and in a form prescribed by the commissioner. It shall contain the name and address of the applicant, and of every officer and director thereof. The application shall also contain any other information the commissioner may require.

(b) No person other than a corporation may apply for or be issued a license.

(c) Notwithstanding Section 1819, all licenses issued prior to January 1, 1985, to noncorporate persons shall be automatically revoked on June 30, 1985. Until June 30, 1985, the fee for filing an application for a license shall be waived if a person which controls the applicant is a noncorporate person which held a license on December 31, 1984.

SEC. 252.1. Section 1802 of the Financial Code is amended to read:

1802. (a) An application for a license shall be in writing, under oath, and in a form prescribed by the commissioner. It shall contain the name and address of the applicant, and of every officer and director thereof. The application shall also contain any other information the commissioner may require.

(b) No person other than a corporation may apply for or be issued a license.

SEC. 253. Section 1802.2 of the Financial Code is amended to read:

1802.2. If the commissioner finds, with respect to an application for a license:

(a) That the applicant has adequate capital as specified in Section 1814 to engage in the business of receiving money for transmission and that the financial condition of the applicant is otherwise such that it will be safe and sound for the applicant to engage in the business of receiving money.

(b) That the applicant, the directors, and officers of, and any person which controls the applicant, and the directors and officers of any person which controls the applicant, are of good character and sound financial standing.

(c) That the applicant is competent to engage in the business of receiving money for transmission.

(d) That the applicant's plan for engaging in the business of receiving money for transmission affords reasonable promise of successful operation.

(e) That it is reasonable to believe that the applicant, if licensed, will engage in the business of receiving money for transmission and will comply with all applicable provisions of this chapter and of any regulation or order issued under this chapter, the commissioner shall approve the application. If, after notice and a hearing, the commissioner finds otherwise, the commissioner shall deny the application.

SEC. 254. Section 1802.7 of the Financial Code is amended to read:

1802.7. If the application is approved by the commissioner he or she shall, upon the payment of the license fees, issue and deliver to the applicant a license to engage in business in accordance with this chapter.

SEC. 255. Section 1802.8 of the Financial Code is amended to read:

1802.8. (a) Before any applicant is issued a license the applicant shall file with the commissioner, in the form required by the commissioner, an irrevocable consent appointing the commissioner to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the person, that person's successor, executor, or administrator, which arises under this chapter or any regulation or order issued under this chapter after the consent has been filed.

(b) Service of process after consents have been filed pursuant to this section shall have the same force and validity as if personally served on the person.

(c) Service may be made by leaving a copy of the process at any office of the commissioner, but the service is not effective unless (1) the party making the service, who may be the commissioner, immediately sends notice of the service and a copy of the process by registered or certified mail to the party served at his or her last address on file with the commissioner, and (2) an affidavit of compliance with this section by the party making service is filed in the case on or before the return date, if any, or any further time that the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

(d) Any consent filed pursuant to this section shall be deemed to have appointed the commissioner and any successor from time to time in office.

SEC. 256. Section 1803 of the Financial Code is amended to read:

1803. No licensee shall appoint or continue any person as an agent, unless the licensee and the person have made a written contract which contains each of the following provisions:

(a) That the licensee appoints the person as its agent with authority to receive transmission money on behalf of the licensee.

(b) That the person make and keep accounts, correspondence, memorandums, papers, books, and other records as the commissioner by regulation or order requires and preserve the records for the time specified by the regulation or order.

(c) That all funds, less fees due agents provided for and expressly set forth, received by the person from the receipt of transmission money on behalf of the licensee shall be trust funds owned by and belonging to the person from whom they were received until the time that directions have been given by the licensee or its agents for payment abroad of the remittance and funds provided for the payment.

(d) Any other provisions that the commissioner may find to be necessary to carry out the provisions and purposes of this chapter.

(e) This section shall not apply to any written contract between a licensee and an agent appointed by the licensee prior to February 1, 1989, unless the commissioner, in his or her sole discretion, determines that compliance with this section is necessary and appropriate. For purpose of this subdivision only, "licensee" means an incorporated telegraph company which existed on February 1, 1989, or any wholly owned incorporated subsidiary of that telegraph company.

SEC. 257. Section 1803.5 of the Financial Code is amended to read:

1803.5. (a) Except as provided in subdivision (b), no person shall act as an agent of a licensee, or act in any other similar capacity, and no licensee shall appoint another person to act as an agent, or to act in any other similar capacity, for the receipt of transmission money on behalf of that licensee without first obtaining the authorization of the commissioner.

(b) (1) Any person appointed as an agent by a licensee before February 1, 1989, may continue to act as an agent for that licensee, without the original appointment having been authorized by the commissioner as provided in this section. However, the licensee shall notify the commissioner by March 31, 1990, of all agents appointed by the licensee prior to February 1, 1989. The commissioner may thereafter issue an order revoking or suspending any agent appointed prior to February 1, 1989, as provided by this section. With respect to any person appointed as an agent by a licensee on or after February 1, 1989, and before January 1, 1990, the licensee shall comply with the requirements for approval set forth in this section on or before March 31, 1990. However, the application fee otherwise required for the application shall be waived. This limited category of agents may continue to serve as an agent of the licensee for 45 days after filing the application with the commissioner but in no event beyond May 15, 1990, without approval of the application by the commissioner under subdivision (d).

(2) Any incorporated telegraph company which had more than 1,000 agents on February 1, 1989, or a wholly owned subsidiary of that

telegraph company, either of which applies for licensure under this chapter, shall notify the commissioner at the time of application, or, if the application was filed prior to January 1, 1990, shall notify the commissioner not later than February 1, 1990, of any agent who has been an agent with that company continuously for at least five years prior to February 1, 1989. Any agent that has been with that telegraph company continuously for at least five years prior to February 1, 1989, may, from the time the license is issued by the commissioner, continue to act as an agent for that company without the original appointment having been authorized by the commissioner as provided in this section. The commissioner may thereafter issue an order revoking or suspending any agent appointed by that company who has been an agent with the company continuously for at least five years prior to February 1, 1989, as provided by this section.

(c) An application for the appointment of an agent shall be submitted by a licensee for each proposed agent, shall be in writing, under oath, and in a form prescribed by the commissioner. The application shall contain that information which the commissioner may require.

(d) If the application for the appointment of an agent is not approved or denied within 45 days after the application is filed with the commissioner, the application shall be deemed to be approved by the commissioner as of the first day after the 45-day period.

For purposes of this subdivision, an application for the appointment of an agent is deemed to be filed with the commissioner at the time when the complete application, including any amendments or supplements, containing all the information in the form required by the commissioner, is received by the commissioner.

The commissioner may disapprove the application for the appointment of an agent by a licensee if the commissioner finds any of the following:

(1) That the operations and financial condition of the licensee indicate that the licensee is not competent to appoint the proposed agent to receive transmission money and to supervise the proposed agent.

(2) That the proposed agent, any person who controls the proposed agent, and any director or officer of the proposed agent or of any person who controls the proposed agent, if any, are not of good character or of sound financial standing.

(3) That the proposed agent is not competent to engage in the business of receiving money for transmission.

(4) That it is reasonable to believe that the proposed agent, if it becomes an agent of a licensee, will not comply with all applicable provisions of this chapter and of any regulation or order issued under this chapter.

(e) An agent of a licensee shall not appoint a subagent to receive transmission money.

(f) Each licensee shall be liable as a principal for the transmission of the transmission money at the time when the transmission money is received by the agent.

(g) The commissioner may issue an order revoking or suspending any authorization issued pursuant to this section or revoking authority to continue any agent appointed prior to February 1, 1989, if, after a hearing, the commissioner finds any of the following:

(1) The agent has violated this chapter or any regulation adopted by the commissioner under this chapter.

(2) Any fact or condition exists which would be grounds for denying an application for authorization under subdivision (d).

(3) The agent is conducting its business in an unsafe manner.

(h) (1) If the commissioner finds that any of the factors set forth in subdivision (g) is true with respect to any agent and that it is necessary for the protection of the public interest that the commissioner immediately suspend or revoke the authorization issued pursuant to this section, the commissioner may issue an order suspending or revoking the authorization issued pursuant to this section.

(2) Within 30 days after an order is issued pursuant to paragraph (1), any licensee to whom the order is issued or any agent or former agent with respect to whom the order was issued may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence a hearing within 15 business days after the application is filed with the commissioner, (or within a longer period of time agreed to by a licensee, agent, or former agent) the order shall be deemed rescinded. Within 30 days after the hearing the commissioner shall affirm, modify, or rescind the order. Otherwise the order shall be deemed rescinded. The right of any licensee to which an order has been issued under paragraph (1) or of the agent or former agent with respect to whom the order was issued to petition for judicial review of the order shall not be affected by the failure of the licensee, or the agent or former agent to apply to the commissioner for a hearing on the order pursuant to this paragraph.

(i) Section 1805 shall apply to the establishment of a branch office in this state by an agent of a licensee and Section 1805.5 shall apply to the relocation of a branch office in this state by an agent of a licensee.

SEC. 258. Section 1804 of the Financial Code is amended to read:

1804. (a) No person shall, directly or indirectly, acquire control of a licensee unless the commissioner has first approved in writing of the acquisition of control. An application to acquire control of a licensee shall be in writing, under oath, and in a form prescribed by the commissioner. The application shall contain that information which the commissioner may require.

(b) The commissioner shall not approve the application unless the commissioner finds, all of the following:

(1) The applicant and the officers and directors of the applicant are of good character and sound financial standing.

(2) The applicant is competent to engage in the business of receiving money for transmission.

(3) It is reasonable to believe that, if the applicant acquires control of the licensee, the applicant will comply with all applicable provisions of this chapter and any regulation or order issued under this chapter.

(4) The applicant's plans, if any, to make any major change in the business, corporate structure, or management of the licensee are not detrimental to the safety and soundness of the licensee.

(c) For the purposes of subdivision (b), the commissioner may find an applicant's plan to make major changes in the management of a licensee is detrimental to the licensee if the plan provides for a person who is not of good character to become a director or officer of the licensee.

The grounds specified in this subdivision shall not be deemed to be the only grounds upon which the commissioner may find, for the purposes of subdivision (b), that an applicant's plan to make a major change in the management of a licensee is detrimental to the licensee.

(d) If it appears to the commissioner that any person is violating or failing to comply with this section, the commissioner may direct the person to comply with this section by an order issued over the commissioner's official seal.

(e) Whenever it appears to the commissioner that any person has committed or is about to commit a violation of any provision of this section or of any regulation or order of the commissioner issued pursuant to this section, the commissioner may apply to the superior court for an order enjoining the person from violating or continuing to violate this section or that regulation or order, and for other equitable relief as the nature of the case or interests of the licensee, the controlling person, the creditors or shareholders of the licensee or controlling person or the public may require.

(f) The commissioner, may, for good cause, amend, alter, suspend, or revoke any approval of a proposal to acquire control of a licensee issued pursuant to this section.

(g) There shall be exempted from the provisions of this section any transaction which the commissioner by regulation or order exempts as not being comprehended within the purposes of this section and the regulation of which he or she finds is not necessary or appropriate in the public interest or for the protection of a licensee or the customers of a licensee.

SEC. 259. Section 1805 of the Financial Code is amended to read:

1805. (a) For the purposes of this section "branch office" means any office in this state, other than the headquarters office of a licensee or agent, at which the licensee receives money for transmission to a foreign country, either directly or through an agent.

(b) A licensee shall not establish a branch office without first obtaining the approval of the commissioner.

(c) An application to establish and operate a branch office shall be in writing and in a form prescribed by the commissioner. The application shall contain that information which the commissioner may require.

(d) The commissioner shall deny an application to establish and operate a branch office where the operations or financial condition of the licensee or of the agent are not satisfactory.

(e) In case an application to establish and operate a branch office is not denied or approved by the commissioner within 60 days after the application is filed with the commissioner, or, if the commissioner extends the period within which the commissioner may act, within the extended period, the application shall be deemed to be approved by the commissioner as of the first day after the 60-day period or the extended period, as the case may be.

For purposes of this subdivision, an application to establish and operate a branch office shall be deemed to be filed with the commissioner at the time when the complete application, including any amendments or supplements, containing all the information in the form required by the commissioner, is received by the commissioner.

(f) The approval of an application for authority to establish and operate a branch office shall be revoked by operation of law with respect to any branch office which the applicant does not establish and operate, as the case may be, within one year after the date of approval by the commissioner. However, for good cause on written application made before the approval is revoked, the commissioner may extend the approval for additional periods not in excess of one year.

(g) Not less than 60 days prior to discontinuing the operation of a branch office, a licensee shall provide the commissioner and the public with written notice of the discontinuance in the manner the commissioner directs. This subdivision does not apply to the discontinuance of a branch office of an agent if the discontinuance of the branch office results from termination of the agency relationship.

SEC. 260. Section 1805.5 of the Financial Code is amended to read:

1805.5. A licensee shall not change the location of a branch office without notifying the commissioner and the public in the manner as the commissioner directs at least 60 days before the date of the proposed relocation. For purposes of this section, "branch office" has the meaning specified in subdivision (a) of Section 1805.

SEC. 260.1. Section 1805.5 of the Financial Code is amended to read:

1805.5. A licensee shall not change the location of a branch office without notifying the commissioner and the public in the manner as

the commissioner directs at least 30 days before the date of the proposed relocation. For purposes of this section, "branch office" has the meaning specified in subdivision (a) of Section 1805.

SEC. 261. Section 1807 of the Financial Code is amended to read:

1807. (a) Each licensee shall, not more than 90 days after the close of each of its fiscal years or within such longer period as the commissioner may, by regulation or order specify, file with the commissioner a report containing all of the following:

(1) Financial statements (including balance sheet, income statement, statement of changes in shareholders' equity, and statement of changes in financial position) for, or as of the end of, that fiscal year, verified by two of the licensee's principal officers. The verification shall state that each of the officers making it has a personal knowledge of the matters in the report and that each of them believes that each statement on the report is true.

(2) The current address of the headquarters office and each branch office of the licensee and each agent at which the licensee receives transmission money in this state. For the purposes of this paragraph, a branch office has the meaning set forth in subdivision (a) of Section 1805.

(3) The name and business address of each person which acted as an agent of the licensee during the last quarter of that fiscal year in this state, and if the person is no longer an agent of the licensee, the date on which the relationship terminated.

(4) Such other information as the commissioner may, by regulation or order, require.

(b) Each licensee shall, not more than 45 days after the end of each quarter (except the fourth quarter of its fiscal year), or within such longer period as the commissioner may by regulation or order specify, file with the commissioner a report containing all of the following:

(1) Financial statements (including balance sheet, income statement, statement of changes in shareholders' equity, and statement of changes in financial position) for, or as of the end of, that fiscal quarter, verified by two of the licensee's principal officers, in the manner described in paragraph (1) of subdivision (a) of this section.

(2) The current address of the headquarters office and each branch office of the licensee and each agent at which the licensee receives transmission money in this state.

(3) The name and business address of each person which acted as an agent of the licensee during the quarter in this state, and if such person is no longer an agent of the licensee, the date on which such relationship terminated.

(4) Such other information as the commissioner may by regulation or order require.

(c) Each licensee shall file with the commissioner such other reports as and when the commissioner may by regulation or order require.

SEC. 261.1. Section 1807 of the Financial Code is amended to read:

1807. (a) The commissioner may by order or regulation grant exemptions from this section in case where the commissioner finds that the requirements of this section are not necessary.

(b) Each licensee shall, within 90 days after the end of each fiscal year, or within such extended time as the commissioner may prescribe, file with the commissioner an audit report for the fiscal year.

(c) The audit report called for in subdivision (b) shall comply with all of the following provisions:

(1) The audit report shall contain such audited financial statements of the licensee for or as of the end of the fiscal year prepared in accordance with generally accepted accounting principles and such other information as the commissioner may require.

(2) The audit report shall be based upon an audit of the bank conducted in accordance with generally accepted auditing standards and such other requirements as the commissioner may prescribe.

(3) The audit report shall be prepared by an independent certified public accountant or independent public accountant who is not unsatisfactory to the commissioner.

(4) The audit report shall include or be accompanied by a certificate of opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the commissioner. If the certificate or opinion is qualified, the commissioner may order the licensee to take such action as the commissioner may find necessary to enable the independent or certified public accountant or independent public accountant to remove the qualification.

(d) Each licensee shall, not more than 45 days after the end of each quarter (except the fourth quarter of its fiscal year), or within a longer period as the commissioner may by regulation or order specify, file with the commissioner a report containing all of the following:

(1) Financial statements, including balance sheet, income statement, statement of changes in shareholders' equity, and statement of cash flows, for, or as of the end of, that fiscal quarter, verified by two of the licensee's principal officers. The verification shall state that each of the officers making the verification has a personal knowledge of the matters in the report and that each of them believes that each statement on the report is true.

(2) The current address of the headquarters office and each branch office of the licensee and each agent at which the licensee receives transmission money in this state.

(3) The name and business address of each person who acted as an agent of the licensee during the quarter in this state, and if such person is no longer an agent of the licensee, the date on which such relationship terminated.

(4) Such other information as the commissioner may by regulation or order require.

(e) Each licensee shall file with the commissioner such other reports as and when the commissioner may by regulation or order require.

SEC. 262. Section 1807.5 of the Financial Code is amended to read:

1807.5. (a) Each licensee and each agent of a licensee shall make, keep, and preserve within the United States such books, accounts, and other records in such form, in such manner, and for such time as the commissioner may by regulation or order specify.

(b) All references in this chapter to financial statements, balance sheets, income statements, and statements of changes in financial position of a licensee or agent of a licensee mean financial statements, income statements, and statements of changes in financial position prepared or determined in conformity with generally accepted accounting principles then applicable, fairly presenting in conformity with generally accepted accounting principles the matters which they purport to present.

SEC. 262.1. Section 1807.5 of the Financial Code is amended to read:

1807.5. (a) Each licensee and each agent of a licensee shall make, keep, and preserve within the United States such books, accounts, and other records in such form, in such manner, and for such time as the commissioner may by regulation or order specify.

(b) All references in this chapter to financial statements, balance sheets, income statements, and statements of changes in financial position of a licensee or agent of a licensee mean financial statements, income statements, and statements of cash flows prepared or determined in conformity with generally accepted accounting principles then applicable, fairly presenting in conformity with generally accepted accounting principles the matters which they purport to present.

SEC. 263. Section 1808 of the Financial Code is amended to read:

1808. (a) The commissioner may at any time and from time to time examine the business of any licensee or any agent of a licensee in order to ascertain whether that business is being conducted in a lawful manner and whether all moneys received for transmission are properly accounted for.

(b) The directors, officers, and employees of a licensee or agent of a licensee being examined by the commissioner shall exhibit to the commissioner, on request, any or all of the licensee's accounts, books, correspondence, memoranda, papers, and other records and shall

otherwise facilitate the examination so far as it may be in their power to do so.

SEC. 264. Section 1809 of the Financial Code is amended to read:

1809. (a) Each licensee shall file with the commissioner a certified copy of every receipt form used by it or by its agents for money received for transmission. No licensee or its agents shall use any receipt, a certified copy of which has not first been filed with and approved by the commissioner.

(b) If a receipt is required by this chapter to be in English and another language, the English version of the receipt shall govern any dispute concerning the terms of the receipt. However, any discrepancies between the English version and any other version due to the translation of the receipt from English to another language including errors or ambiguities shall be construed against the licensee or its agent and the licensee or its agent shall be liable for any damages caused by these discrepancies.

(c) Any licensee violating the requirements of this section shall be subject to a fine of fifty dollars ($50) for each violation.

(d) If any licensee or its agent uses a receipt form, a certified copy of which has not first been filed with and approved by the commissioner, the licensee shall be liable for the acts of its agents whether or not the licensee authorized the agent to use that form.

SEC. 265. Section 1811 of the Financial Code is amended to read:

1811. (a) As security for the timely and proper delivery of transmission money received by it, each licensee subject to the order of the commissioner, shall deposit and thereafter maintain on deposit with the Treasurer cash in an amount not less than, or securities having a market value not less than, such amount as the commissioner may find and specify as necessary for the protection of transmission money received by such licensee. These securities are subject to the approval of the commissioner and shall consist of interest-bearing bonds, notes, or other obligations of the United States or any agency or instrumentality thereof, or of the State of California, or of any city, county, or city and county, political subdivision or district of the State of California, or which are guaranteed by the United States or the State of California.

(b) So long as a licensee which maintains securities on deposit with the Treasurer pursuant to this section is solvent, that licensee shall be entitled to receive any interest paid on such securities.

SEC. 266. Section 1812 of the Financial Code is amended to read:

1812. In lieu of the deposit of cash or securities pursuant to Section 1811, a licensee may deliver to the commissioner the bond of a surety company, in form and written by a company satisfactory to the commissioner, in an amount not less than the amount of the deposit of cash or securities required of the licensee, conditioned upon the timely and proper delivery of all transmission money received by such licensee or its agents for such purpose. The commissioner shall deposit such bond with the Treasurer.

SEC. 267. Section 1814 of the Financial Code is amended to read:

1814. (a) Except as provided by subdivision (c), each licensee shall at all times maintain tangible shareholders' equity determined to be adequate by the commissioner of at least two hundred fifty thousand dollars ($250,000).

(b) "Tangible shareholders' equity" means shareholders' equity minus intangible assets as determined in accordance with generally accepted accounting principles.

(c) All licensees licensed pursuant to this chapter before January 1, 1990, are not subject to this section until January 1, 1991.

SEC. 267.1. Section 1814 of the Financial Code is amended to read:

1814. (a) Except as provided by subdivision (c), each licensee shall at all times maintain tangible shareholders' equity determined to be adequate by the commissioner of at least two hundred fifty thousand dollars ($250,000).

(b) "Tangible shareholders' equity" means shareholders' equity minus intangible assets as determined in accordance with generally accepted accounting principles.

SEC. 268. Section 1817 of the Financial Code is amended to read:

1817. If it appears to the commissioner that a licensee is violating or failing to comply with any law of this state, the commissioner may direct such licensee to comply with the law by an order issued over his or her official seal, or if it appears to the commissioner that any licensee is conducting its business in an unsafe or injurious manner the commissioner may in like manner direct it to discontinue the unsafe or injurious practices. The order shall require the licensee to show cause before the commissioner at a time and place to be fixed by him or her why the order should not be observed.

SEC. 269. Section 1818 of the Financial Code is amended to read:

1818. If upon any hearing held pursuant to Section 1817 the commissioner finds that the licensee is violating or failing to comply with any law of this state or is conducting its business in an unsafe or injurious manner he or she may make a final order directing it to comply with the law or to discontinue the unsafe or injurious practices. Unless within 10 days after the issuance of such final order its enforcement is restrained in a proceeding brought by the licensee, it shall forthwith comply therewith.

SEC. 270. Section 1819 of the Financial Code is amended to read:

1819. The commissioner may revoke or suspend any license issued pursuant to this article, if, after a hearing, he or she finds any of the following:

(a) The licensee has violated any provision of this chapter or any rule or regulation adopted by the commissioner.

(b) Any fact or condition exists which, if it had existed at the time of the original application for the license, would be grounds for denying an application for a license under Section 1802.2.

(c) The licensee is conducting its business in an unsafe manner.

(d) The licensee has failed to obey a final order issued by the commissioner.

SEC. 271. Section 1820 of the Financial Code is amended to read:

1820. Every order, decision, or other official act of the commissioner is subject to review in accordance with law.

SEC. 272. Section 1821 of the Financial Code is amended to read:

1821. Whenever it appears to the commissioner that:

(a) Any licensee has violated any law of this state;

(b) Any licensee is conducting its business in an unsafe or unauthorized manner;

(c) Any licensee refuses to submit its books, papers, and affairs to the inspection of the commissioner;

(d) Any licensee or any officer of a licensee, if a corporation, refuses to be examined upon oath touching the concerns of such licensee;

(e) Any licensee has suspended payment of its obligations;

(f) Any licensee is in such condition that it is unsound, unsafe, or inexpedient for it to transact business; or

(g) Any licensee neglects or refuses to observe any order of the commissioner made pursuant to Section 1818 unless the enforcement of such order is restrained in a proceeding brought by the licensee;

the commissioner may forthwith take possession of the property and business of such licensee and retain possession until such licensee resumes business or its affairs be finally liquidated as herein provided. Such licensee, with the consent of the commissioner, may resume business upon such conditions as the commissioner may prescribe.

SEC. 273. Section 1822 of the Financial Code is amended to read:

1822. Whenever the commissioner has taken possession of the property and business of any licensee, such licensee, within 10 days after such taking, if it deems itself aggrieved thereby, may apply to the superior court in the county in which the head office of such licensee is located to enjoin further proceedings. The court, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing and a determination of the facts upon the merits may dismiss such application or enjoin the commissioner from further proceedings and direct him or her to surrender the property and business to such licensee.

SEC. 274. Section 1824 of the Financial Code is amended to read:

1824. An appeal may be taken from the judgment of the court by the commissioner or by the licensee in the manner provided by law for appeals from the judgment of a superior court.

SEC. 275. Section 1825 of the Financial Code is amended to read:

1825. When the commissioner takes possession of the property or business of any licensee for the purpose of liquidation or conservation, the commissioner shall liquidate or conserve the property or business pursuant to Chapter 17 of this division.

SEC. 276. Section 1826 of the Financial Code is amended to read:

1826. Any person who violates this chapter shall be liable to the people of the State of California in an action brought by the commissioner for a civil penalty not to exceed one thousand dollars ($1,000) for each violation or, in the case of a continuing violation, one thousand dollars ($1,000) for each day or part thereof during which the violation continues.

SEC. 277. Section 1827 of the Financial Code is amended to read:

1827. (a) No agent of a licensee who has actual notice that the commissioner has suspended or revoked the license of a licensee or that the commissioner has issued an order taking possession of the property and business of the licensee, shall receive any transmission money on behalf of the licensee.

(b) If any agent of a licensee, after first having actual notice that the commissioner has suspended or revoked the license of a licensee or that the commissioner has issued an order taking possession of the property and business of the licensee, receives any transmission money on behalf of the licensee, the agent shall be jointly and severally liable with the licensee for the timely and proper delivery of transmission money received by the agent of the licensee.

SEC. 278. Section 1852 of the Financial Code is amended to read:

1852. Unless the context otherwise requires, the definitions set forth in this section govern the construction of this chapter:

(a) "Agent" means any person authorized by a licensee to sell traveler's checks in this state on behalf of such licensee.

(b) "Business day" means any day other than Saturday, Sunday or any other day which is specified or provided for as a holiday in the Government Code.

(c) "Eligible security" has the meaning set forth in subdivision (a) of Section 1876.1.

(d) (1) "Foreign currency" means any currency other than United States currency.

(2) "Foreign currency," when used with respect to any traveler's check, means a traveler's check which is denominated in a foreign currency.

(e) "Licensee" means a person duly licensed by the commissioner pursuant to this chapter to issue traveler's checks.

(f) "Outstanding traveler's checks" means travelers checks sold in the United States and reported to licensee.

(g) (1) "Payment instrument" means:

(A) Any instrument (whether or not negotiable) for the transmission or payment of money which is designated on its face by the term "money order" or by any substantially similar term; or

(B) Any check, draft, or other instrument (whether or not negotiable) for the transmission or payment of money, if sold to a natural person and payable on demand.

(2) Notwithstanding the provisions of subparagraph (B) of paragraph (1) of this subdivision, "payment instrument" does not include:

(A) Any traveler's check;
(B) Any credit card voucher;
(C) Any letter of credit; or
(D) Any instrument which is redeemable by the issuer in goods or services.

(h) "Person" means any individual, partnership, unincorporated association, limited liability company, or corporation.

(i) "Travelers check" means an instrument for the payment of money which:

(1) Is designated on its face by the term "travelers check" or by any substantially similar term or is commonly known and marketed as a traveler's check by a corporation licensed as an issuer of traveler's checks in this state on or prior to January 1, 1978, and not also by the term "money order" or by any substantially similar term;

(2) (A) If issued in United States currency, is in the sum of ten dollars ($10) or a whole multiple thereof, if less than one hundred dollars ($100), or in the sum of one hundred dollars ($100) or a whole multiple thereof;

(B) If issued in any foreign currency, is in an even denomination of such currency;

(3) Contains a provision for a specimen signature of the purchaser to be completed at the time of purchase, and

(4) Contains a provision for a countersignature of the purchaser to be completed at the time of negotiation.

(j) "United States currency", when used with respect to any traveler's check, means a traveler's check which is denominated in United States currency.

SEC. 279. Section 1852.1 of the Financial Code is amended to read:

1852.1. (a) Each fee for filing an application with the commissioner shall be paid at the time when such application is filed with the commissioner.

(b) No fee for filing an application with the commissioner shall be refundable, regardless of whether such application is approved, denied, withdrawn, or abandoned.

SEC. 279.5. Section 1852.2 of the Financial Code is amended to read:

1852.2. Fees shall be paid to, and collected by, the commissioner, as follows:

(a) The fee for filing with the commissioner an application for a license shall be two thousand dollars ($2,000).

(b) The fee for issuing a license shall be twenty-five dollars ($25).

(c) Whenever the commissioner examines any licensee or any California agent of a licensee, such licensee shall pay, within 10 days after receipt of a statement from the commissioner, a fee of two hundred dollars ($200) per day for each examiner engaged in such examination plus, in case it is necessary for any examiner engaged in

such examination to travel outside this state, the travel expenses of such examiner.

SEC. 280. Section 1852.3 of the Financial Code is amended to read:

1852.3. The commissioner shall annually assess and collect from licensees an assessment in accordance with Section 33302.

SEC. 282. Section 1855 of the Financial Code is amended to read:

1855. An application for a license shall be in writing, under oath, and in a form prescribed by the commissioner. It shall contain the name and address of the applicant, the location of applicant's principal place of business and, if the applicant is a corporation, the name and address of directors and principal officers thereof.

SEC. 283. Section 1856 of the Financial Code is amended to read:

1856. Each application for a license shall be accompanied by such information and documents as the commissioner may by regulation or order reasonably require, including but not limited to:

(a) The most recent audited and unconsolidated statement of income and statement of condition of applicant as prepared by an independent certified public accountant in conformity with generally accepted accounting principles applied on a consistent basis.

(b) Description of applicant's business and mode of operation.

(c) Enumeration of names of parent and active subsidiary organizations of applicant, if any.

(d) Copies of the applicant's filings for the preceding year with the Securities and Exchange Commission, and copies of the most recent filings for the preceding year with the California Corporations Commissioner, or other California state agency.

(e) Detailed statement of eligible securities of applicant, including identification by name and present value, which applicant intends to use in the conduct of its business of issuing traveler's checks.

(f) Amount of issuer's liability for traveler's checks outstanding in California, and in the United States, as of the last business day of the preceding calendar quarter.

(g) Name and principal office of each agent, selling or to be selling traveler's checks in California.

(h) Name of other states, in which applicant has been granted a license or authorization to sell or is selling traveler's checks.

SEC. 284. Section 1857 of the Financial Code is amended to read:

1857. The commissioner shall approve an application for a license within 90 days from the date of filing unless after a duly noticed hearing, the commissioner makes any of the following findings, each of which shall constitute sufficient grounds for the denial of such application:

(a) The granting of the license will be against public interest.

(b) The applicant does not intend actively and in good faith to carry on as a business the transactions which would be permitted by the issuance of the license applied for.

(c) The applicant is not of good business reputation.

(d) The applicant is lacking in integrity.

(e) The applicant has been refused a professional, occupational or vocational license or had such a license suspended or revoked, by any licensing authority for reasons that should preclude the granting of the license applied for.

(f) The applicant or any person acting on behalf of the applicant has willfully made or caused to be made in any application or report filed with the commissioner or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has willfully omitted to state in any such application or report any material fact which is required to be stated therein.

(g) The applicant has previously engaged in a fraudulent practice or act or has conducted any business in an unlawful or dishonest manner.

(h) The applicant has shown incompetence or untrustworthiness in the conduct of any business, or has by commission of a wrongful act or practice in the course of any business exposed the public or those dealing with the applicant to the danger of loss.

(i) The applicant has knowingly failed to perform a duty expressly enjoined upon such applicant by a provision of this chapter or the regulations promulgated by the commissioner or has knowingly committed an act expressly forbidden by such a provision or such rules.

(j) The applicant has been convicted of:

(1) A felony; or

(2) Any crime involving moral turpitude.

(k) The applicant has knowingly aided or abetted any person in any act or omission which would constitute grounds for the suspension, revocation or refusal of a license issued under this chapter to the person aided or abetted.

(*l*) The applicant has knowingly permitted any person in its employ to violate any provision of this chapter.

(m) The applicant does not have an amount of shareholders' equity determined to be adequate by the commissioner but in no case shall that amount, as a condition of granting the license, be required to exceed five million dollars ($5,000,000). The amount shall be computed in accordance with generally accepted accounting principles applied on a consistent basis.

SEC. 285. Section 1857.5 of the Financial Code is amended to read:

1857.5. (a) In this section:

(1) "Control" has the meaning set forth in Section 700.

(2) "Officer" has the meaning set forth in Section 33057.

(b) For purposes of Section 1857, the commissioner may find that an applicant is lacking in integrity if the applicant, any person who controls the applicant, or any director or officer of the applicant or of any person who controls the applicant has been convicted of, or has pleaded nolo contendere to, any crime involving fraud or dishonesty.

(c) Subdivision (b) shall not be deemed to be the only grounds upon which the commissioner may find, for purposes of Section 1803, that an applicant is lacking in integrity.

SEC. 286. Section 1858 of the Financial Code is amended to read:

1858. Prior to the issuance of a license pursuant to this chapter, and as a further condition to the issuance and continuing validity of such license, each applicant shall enter into a contract with the State of California, by and through the commissioner, in form and substance satisfactory to the commissioner, which contract shall provide that applicant shall comply with the laws of the State of California, all regulations and orders issued by the commissioner and all of the provisions, obligations and requirements of this chapter, including, but not limited to, the provisions of Article 6 (commencing with Section 1877) hereof relating to examinations.

SEC. 287. Section 1859 of the Financial Code is amended to read:

1859. (a) Prior to the issuance of a license pursuant to this chapter, and as a further condition to the issuance of such license, each applicant shall file with the commissioner, in such form as the commissioner may by regulation or order require, an irrevocable consent appointing the commissioner and any successor from time to time in office to receive service of any lawful process in any noncriminal judicial or administrative proceeding against such person, his or her successor, executor, or administrator, which arises under this chapter or any regulation or order issued under this chapter after such consent has been filed.

(b) Service of process pursuant to this section shall have the same force and validity as if served personally upon the person.

(c) Service may be made by leaving a copy of the process at any office of the commissioner, but such service is not effective unless (1) the party making such service, who may be the commissioner, forthwith sends notice of such service and a copy of such process by registered or certified mail to the party served at his or her last address on file with the commissioner, and (2) an affidavit of compliance with this section by the party making service is filed in the case on or before the return date, if any, or within such further time as the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

SEC. 288. Section 1860 of the Financial Code is amended to read:

1860. If the application is approved by the commissioner, and the applicant has complied with Sections 1858 and 1859, the commissioner shall, upon the payment of the license fees, issue and

deliver to the applicant a license to engage in business in accordance with this chapter.

SEC. 289. Section 1863 of the Financial Code is amended to read:

1863. Each licensee shall file with the commissioner quarterly a report as of the end of the preceding calendar quarter which shall include:

(a) An unaudited unconsolidated statement of income and statement of condition of licensee completed in accordance with generally accepted accounting principles applied on a consistent basis;

(b) A schedule of eligible securities owned by the licensee pursuant to Section 1876.8.

(c) The names and addresses of agents appointed or terminated during such quarter.

SEC. 290. Section 1863.1 of the Financial Code is amended to read:

1863.1. Each licensee shall, not more than 90 days after the close of each of its fiscal years or within a longer period as the commissioner may by regulation or order specify, file with the commissioner a report containing all of the following:

(a) Financial statements (including balance sheet, statement of income or loss, statement of changes in shareholder's equity, and statement of changes in financial position) for or as of the end of that fiscal year, prepared with audit by an independent certified public accountant or an independent public accountant in accordance with generally accepted accounting principles.

(b) A report, certificate, or opinion of the independent certified public accountant or independent public accountant, stating that the financial statements were prepared in accordance with generally accepted accounting principles.

(c) Any other information as the commissioner may by regulation or order require.

SEC. 290.1. Section 1863.1 of the Financial Code is amended to read:

1863.1. Each licensee shall, not more than 90 days after the close of each of its fiscal years or within a longer period as the commissioner may by regulation or order specify, file with the commissioner a report containing all of the following:

(a) Financial statements, including balance sheet, statement of income or loss, statement of changes in shareholder's equity, and statement of cash flows, for or as of the end of that fiscal year, prepared with audit by an independent certified public accountant or an independent public accountant in accordance with generally accepted accounting principles.

(b) A report, certificate, or opinion of the independent certified public accountant or independent public accountant, stating that the financial statements were prepared in accordance with generally accepted accounting principles.

(c) Any other information as the commissioner may by regulation or order require.

SEC. 291. Section 1864 of the Financial Code is amended to read:

1864. The commissioner may at any time require any licensee to make and file with the commissioner a special report furnishing such relevant information as the commissioner may reasonably specify to inform the commissioner of the actual financial condition of such licensee.

SEC. 292. Section 1865 of the Financial Code is amended to read:

1865. No licensee shall issue any form of traveler's check for sale in this state unless a certified copy of the traveler's check has first been filed with the commissioner.

SEC. 293. Section 1868 of the Financial Code is amended to read:

1868. Each licensee shall at all times maintain shareholders' equity determined to be adequate by the commissioner in an amount up to five million dollars ($5,000,000).

SEC. 293.1. Section 1868 of the Financial Code is amended to read:

1868. Each licensee shall at all times maintain shareholder equity determined to be adequate by the commissioner.

SEC. 294. Section 1869 of the Financial Code is amended to read:

1869. No person shall become or continue to be an agent in California of a licensee, nor shall any licensee appoint or continue any person as its agent in California unless such person and such licensee shall have first made a written agreement setting forth the terms of the agency and including provisions:

(a) That the licensee appoints the person as its agent with authority to sell in California on behalf of the licensee traveler's checks issued by the licensee;

(b) That all funds, less fees due agents provided for and expressly set forth, received by the person from the sale of traveler's checks issued by the licensee shall be trust funds owned by and belonging to the licensee;

(c) That the person make and keep such accounts, correspondence, memorandums, papers, books and other records as the commissioner by regulation or order requires and preserve such records for the time specified by such regulation or order.

(d) That the person will comply with all applicable conditions of this chapter and regulations and orders issued under this chapter.

SEC. 295. Section 1871 of the Financial Code is amended to read:

1871. Each agent of a licensee which sells any traveler's check issued by such licensee shall, and each licensee shall require each of its agents which sells any traveler's check issued by such licensee to, report such sale within seven days after the sale and remit the face amount of such traveler's check to such licensee within three business days (or such shorter period as such agent and such licensee may specify in the agreement called for in Section 1869 or in any amendment of such contract) after such sale. This section shall not

apply to an agent which is an insured institution pursuant to the Federal Deposit Insurance Corporation Act (12 U.S.C. 1811 et seq.) or the Federal Credit Union Act (12 U.S.C. 1781 et seq.).

For the purpose of this section, remittance shall include either direct payment of such funds to licensee or its representative, or the deposit of such funds in a bank or savings association in an account in the name of such licensee specifically established for the purpose of receiving such funds. Remittance by such agency to such licensee or its representatives or deposit by such agency in such account in a bank or savings association of funds in advance of the sale of such traveler's checks but in an amount not less than the amount that such agent would normally receive from such sales of payment instruments, shall be deemed compliance with provisions of this section.

SEC. 296. Section 1876.1 of the Financial Code is amended to read:

1876.1. In this article:

(a) "Eligible security" means any United States currency eligible security or foreign currency eligible security.

(b) "Eligible securities rating service" means any securities rating service which the commissioner has by regulation or order declared to be an eligible securities rating service pursuant to Section 1876.5.

(c) "Eligible rating," when used with respect to any security or class of securities and any eligible securities rating service, means any rating assigned to the security, or class of securities, by the eligible securities rating service which the commissioner has by regulation or order declared to be an eligible rating pursuant to Section 1876.6.

(d) "Foreign currency eligible security" means any of the following which are, or are denominated in, a foreign currency and which the commissioner has not by regulation or order declared to be ineligible pursuant to Section 1876.3.

(1) Any of the following which are of comparable quality to the United States currency eligible securities specified in paragraphs (1) to (7), inclusive, of subdivision (g):

(A) Cash.

(B) Any deposit in an office of a bank located in a foreign country.

(C) Any bond, note, or other obligation.

(2) Any other security or class of securities which the commissioner has by regulation or order declared to be eligible securities pursuant to Section 1876.4.

(e) "Insured bank" means any bank the deposits of which are insured by the Federal Deposit Insurance Corporation. However, "insured bank" does not include any office of a foreign (other nation) bank other than an office which is insured by the Federal Deposit Insurance Corporation.

(f) "Insured savings association" means any savings and loan association the accounts of which are insured by the Federal Deposit Insurance Corporation.

(g) "United States currency eligible security" means any of the following which are, or are denominated in, United States currency and which the commissioner has not by regulation or order declared to be ineligible pursuant to Section 1876.3.

(1) Cash.

(2) Any deposit in an insured bank or an insured savings association.

(3) Any bond, note, or other obligation which is issued or guaranteed by the United States or by any agency of the United States.

(4) Any bond, note, or other obligation which is issued or guaranteed by any state of the United States, or by any governmental agency of or within any state of the United States, and which is assigned an eligible rating by an eligible securities rating service.

(5) Any bankers acceptance which is eligible for discount by a federal reserve bank.

(6) Any commercial paper which is assigned an eligible rating by an eligible securities rating service.

(7) Any bond, note, or other obligation or preferred stock which is assigned an eligible rating by an eligible securities rating service.

(8) Any other security or class of securities which the commissioner has by regulation or order declared to be eligible securities pursuant to Section 1876.4.

(9) Any account due to any licensee from any agent of the licensee on account of the sale by the agent of traveler's checks issued by the licensee, which the commissioner has by order declared to be an eligible security for the licensee pursuant to Section 1876.7.

(h) "Value" means:

(1) When used with respect to an eligible security owned by a licensee which consists of an account due to the licensee from an agent of the licensee on account of the sale by the agent of traveler's checks issued by the licensee which the commissioner has declared to be an eligible security for the licensee pursuant to Section 1876.7, net carrying value as determined in conformity with generally accepted accounting principles;

(2) When used with respect to any other eligible security owned by a licensee:

(A) In case the practice and policy of the licensee is to hold eligible securities to maturity, net carrying value as determined in conformity with generally accepted accounting principles;

(B) In any other case, market value.

SEC. 296.1. Section 1876.1 of the Financial Code is amended to read:

1876.1. In this article:

(a) "Eligible security" means any United States currency eligible security or foreign currency eligible security.

(b) "Eligible securities rating service" means any securities rating service which the commissioner has by regulation or order declared to be an eligible securities rating service pursuant to Section 1876.5.

(c) "Eligible rating," when used with respect to any security or class of securities and any eligible securities rating service, means any rating assigned to the security, or class of securities, by the eligible securities rating service which the commissioner has by regulation or order declared to be an eligible rating pursuant to Section 1876.6.

(d) "Foreign currency eligible security" means any of the following which are, or are denominated in, a foreign currency and which the commissioner has not by regulation or order declared to be ineligible pursuant to Section 1876.3.

(1) Any of the following which are of comparable quality to the United States currency eligible securities specified in paragraphs (1) to (7), inclusive, of subdivision (g):

(A) Cash.

(B) Any deposit in an office of a bank located in a foreign country.

(C) Any bond, note, or other obligation.

(2) Any other security or class of securities which the commissioner has by regulation or order declared to be eligible securities pursuant to Section 1876.4.

(e) "Insured bank" means any bank the deposits of which are insured by the Federal Deposit Insurance Corporation. However, "insured bank" does not include any office of a foreign (other nation) bank other than an office which is insured by the Federal Deposit Insurance Corporation.

(f) "Insured savings and loan association" means any savings and loan association the accounts of which are insured by the Federal Deposit Insurance Corporation.

(g) "United States currency eligible security" means any of the following which are, or are denominated in, United States currency and which the commissioner has not by regulation or order declared to be ineligible pursuant to Section 1876.3.

(1) Cash.

(2) Any deposit in an insured bank or an insured savings association.

(3) Any bond, note, or other obligation which is issued or guaranteed by the United States or by any agency of the United States.

(4) Any bond, note, or other obligation which is issued or guaranteed by any state of the United States, or by any governmental agency of or within any state of the United States, and which is assigned an eligible rating by an eligible securities rating service.

(5) Any bankers acceptance which is eligible for discount by a federal reserve bank.

(6) Any commercial paper which is assigned an eligible rating by an eligible securities rating service.

(7) Any bond, note, or other obligation or preferred stock which is assigned an eligible rating by an eligible securities rating service.

(8) Any share of an investment company that is an open-end management company, that is registered under the Investment Company Act of 1940 (12 U.S.C. Sec. 80a-1 et seq.), that holds itself out to investors as a money market fund, and that operates in accordance with all provisions of the Investment Company Act of 1940 and of the regulations of the Securities and Exchange Commission applicable to money market funds, including Section 270.2a-7 of the regulations of the Securities and Exchange Commission (17 C.F.R. Sec. 270.2a-7).

For purposes of this paragraph and paragraph (9), "investment company," "management company," and "open-end" have the meanings set forth in Sections 3, 4, and 5, respectively, of the Investment Company Act of 1940 (12 U.S.C. Sec. 80a-3, 80a-4, and 80a-5, respectively).

(9) Any share of an investment company that is an open-end management company, that is registered under the Investment Company Act of 1940 (12 U.S.C. Sec. 80a-1 et seq.), and that invests exclusively in securities that constitute United States currency eligible securities under the other provisions of this subdivision.

(10) Any account due to any licensee from any agent of the licensee on account of the sale by the agent of outstanding travelers checks issued by the licensee, if the account is current and not past due or otherwise doubtful of collection.

(11) Any other security or class of securities that the commissioner has by regulation or order declared to be eligible securities pursuant to Section 1876.4.

(h) "Value" means:

(1) When used with respect to an eligible security owned by a licensee which consists of an account due to the licensee from an agent of the licensee on account of the sale by the agent of outstanding travelers checks issued by the licensee, net carrying value as determined in conformity with generally accepted accounting principles. However, in computing the value of the account due to the licensee, any amount due on account of the sale of a travelers check shall be excluded if the time elapsed between the sale and the date of computation exceeds the average time that elapses between the time of sale and the time of payment of travelers checks issued by the licensee.

(2) When used with respect to any other eligible security owned by a licensee:

(A) In case the practice and policy of the licensee is to hold eligible securities to maturity, net carrying value as determined in conformity with generally accepted accounting principles.

(B) In any other case, market value.

SEC. 297. Section 1876.3 of the Financial Code is amended to read:

1876.3. If the commissioner finds that any eligible security or class of eligible securities is not of sufficient liquidity or quality to be eligible securities, the commissioner may by regulation or order declare such security or class of securities to be ineligible.

SEC. 298. Section 1876.4 of the Financial Code is amended to read:

1876.4. If the commissioner finds that any security or class of securities which is not an eligible security is of sufficient liquidity and quality to be an eligible security, the commissioner may by regulation or order declare such security or class of securities to be eligible securities.

SEC. 299. Section 1876.5 of the Financial Code is amended to read:

1876.5. If the commissioner finds that a securities rating service:

(a) Has been continuously engaged in the business of rating securities for a period of not less than three years;

(b) Is competent to rate securities and is nationally recognized for rating securities in a competent manner; and

(c) Publishes its ratings of securities on a nationwide basis:

The commissioner may by regulation or order declare such securities rating service to be an eligible securities rating service.

SEC. 300. Section 1876.6 of the Financial Code is amended to read:

1876.6. If the commissioner finds that a rating assigned to a class of securities by an eligible securities rating service indicates that such class of securities is of sufficient quality to be eligible securities, the commissioner may by regulation or order declare such rating to be an eligible rating.

SEC. 301. Section 1876.7 of the Financial Code is amended to read:

1876.7. If the commissioner finds that an account due to any licensee from any agent of such licensee on account of the sale by such agent of traveler's checks issued by the licensee is, in view of the financial condition of the agent and of the licensee, the history of such account, and such other factors as may in the opinion of the commissioner be relevant, of sufficient quality to be an eligible security for the licensee, the commissioner may by order declare such account to be an eligible security for the licensee. However, in computing the value of any such account for purposes of Section 1876.8, there shall be excluded any amount due on account of the sale of a traveler's check if the time elapsed between such sale and the date of computation exceeds the average time that elapses between the time of sale and the time of payment of traveler's checks issued by the licensee.

SEC. 302. Section 1876.9 of the Financial Code is amended to read:

1876.9. (a) In computing for purposes of Section 1876.8 the aggregate value of eligible securities owned by a licensee, there shall

be excluded the value of any eligible security if and to the extent that the value of such eligible security, when combined with the aggregate value of all other eligible securities owned by such licensee which are issued or guaranteed by the same person or by any affiliate of the same person by whom such eligible security is issued or guaranteed, exceeds 10 percent of the aggregate value of all eligible securities owned by the licensee.

(b) Subdivision (a) shall not be deemed to require the exclusion of the value of any of the following eligible securities, and each of the following eligible securities shall be exempted from the limitations of subdivision (a):

(1) The following United States currency eligible securities:

(A) Cash.

(B) Any deposit in an insured bank or an insured savings association.

(C) Any bond, note, or other obligation for the payment of which the full faith and credit of the United States are pledged.

(2) Any eligible security which the commissioner, in view of the financial condition of the obligor or issuer and such other factors as may in the opinion of the commissioner be relevant, finds to be of such quality that exclusion of the value of such eligible security pursuant to subdivision (a) is not necessary for the purposes of this division and which the commissioner by regulation or order exempts from the limitations of subdivision (a).

SEC. 302.1. Section 1876.9 of the Financial Code is amended to read:

1876.9. (a) In computing for purposes of Section 1876.8 the aggregate value of eligible securities owned by a licensee, all of the following shall be excluded:

(1) The value of any eligible security if and to the extent that the value of such eligible security, when combined with the aggregate value of all other eligible securities owned by such licensee which are issued or guaranteed by the same person or by any affiliate of the same person by whom such eligible security is issued or guaranteed, exceeds 10 percent of the aggregate value of all eligible securities owned by the licensee.

(2) The aggregate value of all eligible securities of the type described in paragraph (10) of subdivision (g) of Section 1876.1 if and to the extent that that aggregate value exceeds 10 percent of the aggregate value of all eligible securities owned by the licensee or any higher percentage, up to a maximum of 20 percent, that the superintendent may approve for the licensee.

(b) Subdivision (a) shall not be deemed to require the exclusion of the value of any of the following eligible securities, and each of the following eligible securities shall be exempted from the limitations of subdivision (a):

(1) The following United States currency eligible securities:

(A) Cash.

(B) Any deposit in an insured bank or an insured savings association.

(C) Any bond, note, or other obligation for the payment of which the full faith and credit of the United States are pledged.

(2) Any eligible security which the commissioner, in view of the financial condition of the obligor or issuer and such other factors as may in the opinion of the commissioner be relevant, finds to be of such quality that exclusion of the value of such eligible security pursuant to subdivision (a) is not necessary for the purposes of this division and which the commissioner by regulation or order exempts from the limitations of subdivision (a).

SEC. 303. Section 1876.12 of the Financial Code is amended to read:

1876.12. (a) (1) Upon application, the commissioner may exempt from this article a licensee, or an applicant for licensure under this chapter.

(2) An application for an exemption shall be in writing and in a form prescribed by the commissioner and shall contain whatever information may be necessary to process the application.

(3) The commissioner shall approve an application for exemption if he or she finds that the financial condition, operations, and management of the licensee are satisfactory; otherwise the commissioner shall deny the application.

(b) The commissioner may suspend or revoke any exemption granted pursuant to this section if he or she finds that the financial condition, operations, or management of the licensee is not satisfactory.

SEC. 304. Section 1877 of the Financial Code is amended to read:

1877. (a) The commissioner in his or her discretion may at any time make such examinations within or outside of this state of any licensee under this chapter as he or she deems reasonably necessary to determine whether any person has violated any provision of this chapter or any regulation or order hereunder, or to aid in the enforcement of this chapter.

(b) The officers and employees of a licensee under this chapter being examined by the commissioner shall exhibit to the commissioner, or any officer designated by him or her, on request, any or all of its accounts, books, correspondence, papers, memorandums, agreements or other documents or records relevant or material to the examination and shall otherwise facilitate such examination so far as it may be in their power to do so.

(c) For the purposes of any examination or proceeding under this chapter, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, and may by issuance of a subpoena, compel the appearance of any person, and require the production of any books, papers, correspondence, memorandums, agreements or other documents or records relevant or material to the examination or proceeding.

(d) Where the principal place of business of any licensee under this chapter is located in another state, the commissioner may, in his or her discretion, in lieu of any examination provided for herein, accept a certified copy of the report of examination completed by the licensing or other authority having regulatory jurisdiction over the issuance and sale of traveler's checks of another state.

SEC. 305. Section 1880.5 of the Financial Code is amended to read:

1880.5. (a) No order issued by the commissioner under Section 1883, 1885, or 1886 shall become effective earlier than the 10th business day after the issuance of such order.

(b) No order issued by the commissioner under subdivision (a) of Section 1884 or subdivision (a) or (b) of Section 1887 shall become effective earlier than the fifth business day after the issuance of such order.

SEC. 306. Section 1881 of the Financial Code is amended to read:

1881. (a) Whenever it appears to the commissioner that any person has violated, or that there is reasonable cause to believe that any person is about to violate, any provision of this chapter or of any regulation or order issued under this chapter, the commissioner may bring an action in the name of the people of this state in the superior court to enjoin such violation or to enforce compliance with this chapter or with any regulation or order issued under this chapter. Upon a proper showing, a restraining order, preliminary or permanent injunction, or writ of mandate shall be granted, and a receiver or conservator may be appointed for the defendant or the defendant's assets.

(b) Any receiver or conservator appointed by the court pursuant to subdivision (a) may, with the approval of the court, exercise all of the powers of the defendant's directors, officers, partners, trustees, or persons who exercise similar powers and perform similar duties, including the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the commissioner or such receiver or conservator by reason of the exercise of such powers or the performance of such duties pursuant to the order, or with the approval of, the court.

(c) The commissioner may include in any action authorized under subdivision (a) a claim for ancillary relief, including a claim for restitution or damages on behalf of the persons injured by the act constituting the subject matter of such action, and the court shall have jurisdiction to award such additional relief.

SEC. 307. Section 1882 of the Financial Code is amended to read:

1882. (a) If the commissioner finds that any person has violated, or that there is reasonable cause to believe that any person is about to violate, Section 1853, the commissioner may order such person to cease and desist from such violation unless and until such person is issued a license.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), the person to whom such order is issued may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence such hearing within 15 business days after such application is filed with the commissioner (or within such longer period to which such person consents), the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any person to whom an order is issued under subdivision (a) to petition for judicial review of such order shall not be affected by the failure of such person to apply to the commissioner for hearing on the order pursuant to paragraph (1) of this subdivision.

SEC. 308. Section 1883 of the Financial Code is amended to read:

1883. If, after notice and a hearing, the commissioner finds:

(a) That any licensee or any California agent of a licensee has engaged or participated, is engaging or participating, or that there is reasonable cause to believe that any licensee or any California agent of a licensee is about to engage or participate, in any unsafe or unsound act with respect to the business of such licensee; or

(b) That any licensee or any California agent of a licensee has violated, is violating, or that there is reasonable cause to believe that any licensee or any California agent of a licensee is about to violate, any provision of this chapter or of any regulation or order issued under this chapter or any provision of any other applicable law:

The commissioner may order such licensee or such California agent to cease and desist from such action or violation. The order may require the licensee or such California agent to take affirmative action to correct any condition resulting from the action or violation.

SEC. 309. Section 1884 of the Financial Code is amended to read:

1884. (a) If the commissioner finds that any of the factors set forth in Section 1883 is true with respect to any licensee or any California agent of a licensee and that such action or violation is likely:

(1) To cause the insolvency of the licensee;

(2) To cause substantial dissipation of the assets or earnings of the licensee;

(3) To seriously weaken the condition of the licensee; or

(4) To otherwise seriously prejudice the interests of purchasers or holders of traveler's checks issued by the licensee:

The commissioner may order such licensee or such California agent to cease and desist from such action or violation. Such order may require the licensee or the California agent to take affirmative action to correct any condition resulting from the action or violation.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), any licensee or California agent of a licensee to whom such order is issued may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence such

hearing within 15 business days after such application is filed with the commissioner (or within such longer period to which such licensee or California agent consents), the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any licensee or California agent of a licensee to whom an order is issued under subdivision (a) to petition for judicial review of such order shall not be affected by the failure of such licensee or California agent of a licensee to apply to the commissioner for a hearing on the order pursuant to paragraph (1) of this subdivision.

SEC. 310. Section 1885 of the Financial Code is amended to read:

1885. If, after notice and a hearing, the commissioner finds:

(a) (1) That any subject person of a licensee has engaged or participated in any unsafe or unsound act with respect to the business of such licensee;

(2) That any subject person of a licensee has violated any provision of this chapter or of any regulation or order issued under this chapter or any provision of any other applicable law relating to the business of such licensee; or

(3) That any subject person of a licensee has engaged or participated in any act which constitutes a breach of his fiduciary duty as a subject person; and

(b) (1) That such act, violation, or breach of fiduciary duty has caused or is likely to cause substantial financial loss or other damage to the licensee;

(2) That such action, violation, or breach of fiduciary duty has seriously prejudiced, or is likely to seriously prejudice, the interests of purchasers or holders of traveler's checks issued by the licensee; or

(3) That the subject person has received financial gain by reason of such act, violation, or breach of fiduciary duty; and

(c) That such act, violation, or breach of fiduciary duty either involves dishonesty on the part of the subject person or demonstrates the subject person's gross negligence with respect to the business of the licensee or a willful disregard for the safety and soundness of the licensee:

The commissioner may order the licensee to suspend or remove the subject person from his or her office, if any, with the licensee and to preclude such person from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner.

SEC. 311. Section 1886 of the Financial Code is amended to read:

1886. If, after notice and a hearing, the commissioner finds that any subject person of a licensee has, by engaging or participating in any act with respect to any financial or other business institution which resulted in financial loss or other damage, demonstrated:

(a) (1) Dishonesty;

(2) Gross negligence with respect to the operations of such institution; or

(3) Willful disregard for the safety and soundness of such institution; and

(b) Unfitness to continue as a subject person of such licensee or participate in the conduct of the business of such licensee:

The commissioner may order the licensee to remove the subject person from his or her office, if any, with the licensee and to preclude him or her from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner.

SEC. 312. Section 1887 of the Financial Code is amended to read:

1887. (a) If the commissioner finds:

(1) That any subject person of a licensee has been charged in an indictment issued by a grand jury or in an information, complaint, or similar pleading issued by a United States attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with a crime which is punishable by imprisonment for a term exceeding one year and which involves dishonesty or breach of trust; and

(2) That such subject person's continuing to serve as a subject person of the licensee may pose a threat to the interests of purchasers or holders of traveler's checks issued by the licensee or may threaten to impair public confidence in the licensee:

The commissioner may order such licensee to suspend such subject person from his or her office, if any, with the licensee and to preclude such person from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner. In case the criminal proceedings are terminated other than by a judgment of conviction, such order shall be deemed rescinded.

(b) If the commissioner finds:

(1) That any subject person or former subject person of a licensee with respect to whom an order was issued pursuant to subdivision (a) or any other subject person of a licensee has been finally convicted of a crime which is punishable by imprisonment for a term exceeding one year and which involves dishonesty or breach of trust; and

(2) That such person's continuing to serve or resumption of service as a subject person of the licensee may pose a threat to the interests of purchasers or holders of traveler's checks issued by the licensee or may threaten to impair confidence in the licensee:

The commissioner may order such licensee to suspend or remove such subject person or former subject person from his or her office, if any, with the licensee and to preclude him or her from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner.

(c) (1) Within 30 days after an order is issued pursuant to subdivision (a) or (b), any licensee to which such order is issued or any subject person or former subject person of a licensee with respect to whom such order is issued may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence such hearing within 15 business days after such application is filed with the commissioner (or within such longer period to which such licensee, subject person, or former subject person consents), the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any licensee to which an order is issued under subdivision (a) or (b) or of any subject person or former subject person of a licensee with respect to whom such an order is issued to petition for judicial review of such order shall not be affected by the failure of such person to apply to the commissioner for a hearing on the order pursuant to paragraph (1) of this subdivision.

(d) The fact that any subject person of a licensee charged with a crime involving dishonesty or breach of trust is not finally convicted of such crime shall not preclude the commissioner from issuing an order regarding such licensee or such subject person pursuant to any other section of this chapter.

SEC. 313. Section 1888 of the Financial Code is amended to read:

1888. (a) Any licensee to which an order is issued under Section 1885, 1886, or 1887 or any subject person or former subject person of a licensee with respect to whom such an order is issued may apply to the commissioner to modify or rescind such order. The commissioner shall not grant such application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that such subject person or former subject person will, if and when he or she becomes a subject person of a licensee, comply with all applicable provisions of this chapter and of any regulation or order issued under this chapter.

(b) The right of any licensee to which an order is issued under Section 1885, 1886, or 1887 or any subject person or former subject person of a licensee with respect to whom such an order is issued to petition for judicial review of such order shall not be affected by the failure of such licensee, subject person, or former subject person to apply to the commissioner pursuant to subdivision (a) to modify or rescind the order.

SEC. 314. Section 1889 of the Financial Code is amended to read:

1889. If, after notice and a hearing, the commissioner finds:

(a) That any licensee has violated any provision of this chapter or of any regulation or order issued under this chapter or any provision of any other applicable law;

(b) That any licensee is conducting its business in an unsafe or unsound manner;

(c) That any licensee is in such condition that it is unsafe or unsound for it to transact the business of selling in this state payment instruments issued by it;

(d) That any licensee has ceased to transact the business of selling in this state payment instruments issued by it;

(e) That any licensee is insolvent;

(f) That any licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;

(g) That any licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for any such relief under any such law against any licensee and such licensee has by any affirmative act approved of or consented to such action or such relief has been granted; or

(h) That any fact or condition exists which, if it had existed at the time when any licensee applied for its license, would have been grounds for denying such application:

The commissioner may issue an order suspending or revoking the license of such licensee.

SEC. 315. Section 1890 of the Financial Code is amended to read:

1890. (a) If the commissioner finds that any of the factors set forth in Section 1889 is true with respect to any licensee and that it is necessary for the protection of the interests of purchasers or holders of traveler's checks issued by such licensee or for the protection of the public interest that he or she immediately suspend or revoke the license of such licensee, the commissioner may issue an order suspending or revoking the license of such licensee.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), any licensee to whom such order is issued may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence such hearing within 15 business days after such application is filed with the commissioner (or within such longer period to which such licensee consents), the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any licensee to which an order is issued under subdivision (a) to petition for judicial review of such order shall not be affected by the failure of such licensee to apply to the commissioner for a hearing on the order pursuant to paragraph (1) of this subdivision.

SEC. 316. Section 1891 of the Financial Code is amended to read:

1891. Any person whose license is suspended or revoked shall immediately deliver such license to the commissioner.

SEC. 317. Section 1892 of the Financial Code is amended to read:

1892. (a) Any person to whom an order is issued under Section 1889 or 1890 may apply to the commissioner to modify or rescind such

order. The commissioner shall not grant such application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that such person will, if and when it becomes a licensee, comply with all applicable provisions of this division and of any regulation or order issued under this division.

(b) The right of any person to whom an order is issued under Section 1889 or 1890 to petition for judicial review of such order shall not be affected by the failure of such person to apply to the commissioner pursuant to subdivision (a) to modify or rescind the order.

SEC. 318. Section 1893 of the Financial Code is amended to read:

1893. (a) If the commissioner finds that any of the factors set forth in Section 1889 is true with respect to any licensee and that it is necessary for the protection of the interests of purchasers or holders of traveler's checks issued by the licensee or for the protection of the public interest that the commissioner take immediate possession of the property and business of the licensee, the commissioner may by order forthwith take possession of the property and business of the licensee and retain possession until the licensee resumes business or is finally liquidated. The licensee may, with the consent of the commissioner, resume business upon such conditions as the commissioner may prescribe.

(b) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the licensee may, within 10 days, apply to the superior court in any county of this state in which an office of the licensee is located (or, in case the licensee has no office in this state, in the County of Sacramento, in the City and County of San Francisco, or in the County of Los Angeles) to enjoin further proceedings. The court may, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, dismiss the application or enjoin the commissioner from further proceedings and order the commissioner to surrender the property and business of the licensee to the licensee or make such further order as may be just. The judgment of the superior court may be appealed by the commissioner or by the licensee in the manner provided by law for appeals from the judgment of a superior court.

(c) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the commissioner shall conserve or liquidate the property and business of the licensee pursuant to Article 1 (commencing with Section 3100) of Chapter 17, and the provisions of that article (except Sections 3100, 3101, and 3102) apply as if the licensee were a bank.

SEC. 319. Section 1894 of the Financial Code is amended to read:

1894. (a) No California agent of a licensee who has actual notice that the commissioner has suspended or revoked the license of such licensee or that the commissioner has issued an order taking

possession of the property and business of the licensee, shall sell any traveler's check issued by the licensee.

(b) If any California agent of a licensee, after first having actual notice that the commissioner has suspended or revoked the license of such licensee or that the commissioner has issued an order taking possession of the property and business of the licensee, sells any traveler's check issued by the licensee, such agent shall be jointly and severally liable with the licensee for the payment of such traveler's check.

SEC. 320. Section 1897 of the Financial Code is amended to read:

1897. Any person who violates any provision of this chapter shall be liable to the people of the State of California in an action brought by the commissioner in an amount not to exceed one thousand dollars ($1,000) for each violation or, in the case of a continuing violation, an amount not to exceed one thousand dollars ($1,000) for each day for which such violation continues.

SEC. 321. Section 1900 of the Financial Code is amended to read:

1900. (a) (1) For purposes of this subdivision, an examination made by the commissioner in conjunction with or with assistance from a bank regulatory agency of the United States, of a state of the United States, or of a foreign nation is deemed to be an examination caused by the commissioner.

(2) No provision of this subdivision shall be deemed to require that the commissioner cause an examination to be made onsite at the offices of a bank.

(3) The commissioner shall cause every California state bank, every California state trust company, the trust department of every California state title insurance company doing a trust business, and the business in this state of every foreign (other nation) bank licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 to be examined to the extent and whenever and as often as the commissioner shall deem it advisable, but in no case less than once every two calendar years.

(b) The commissioner may at any time examine any of the following:

(1) Any foreign (other state) state bank that maintains a branch office in this state.

(2) Any facility (as defined in Section 3800) that a foreign (other state) bank that does not maintain a branch office in this state, maintains in this state.

(3) Any representative office (as defined in Section 1700) that a foreign (other nation) bank is licensed under Article 2 (commencing with Section 1725) of Chapter 13.5 to maintain in this state.

(c) The officers and employees of every California state bank, California state trust company, California state title company's trust department, and foreign bank being examined shall exhibit to the examiners, on request, any or all of its securities, books, records, and

accounts and shall otherwise facilitate the examination so far as it may be in their power.

SEC. 321.1. Section 1900 of the Financial Code is amended to read:

1900. (a) (1) For purposes of this subdivision, an examination made by the commissioner in conjunction with or with assistance from a bank regulatory agency of the United States, of a state of the United States, or of a foreign nation is deemed to be an examination caused by the commissioner.

(2) No provision of this subdivision shall be deemed to require that the commissioner cause an examination to be made onsite at the offices of a bank.

(3) The commissioner shall cause every California state bank, every California state trust company, and the business in this state of every foreign (other nation) bank licensed under Article 3 (commencing with Section 1750) of Chapter 13.5 to be examined to the extent and whenever and as often as the commissioner shall deem it advisable, but in no case less than once every two calendar years.

(b) The commissioner may at any time examine any of the following:

(1) Any foreign (other state) state bank that maintains a branch office in this state.

(2) Any facility (as defined in Section 3800) that a foreign (other state) bank that does not maintain a branch office in this state, maintains in this state.

(3) Any representative office (as defined in Section 1700) that a foreign (other nation) bank is licensed under Article 2 (commencing with Section 1725) of Chapter 13.5 to maintain in this state.

(c) The officers and employees of every California state bank, California state trust company, and foreign bank being examined shall exhibit to the examiners, on request, any or all of its securities, books, records, and accounts and shall otherwise facilitate the examination so far as it may be in their power.

SEC. 322. Section 1901 of the Financial Code is amended to read:

1901. (a) Whenever, in the judgment of the commissioner, the condition of any bank, trust company, or foreign banking corporation renders it necessary or expedient to make an extra examination or to devote any extraordinary attention to its affairs, he or she has the authority to make any necessary extra examinations and to devote any necessary extra attention to the conduct of its affairs and to charge for extra services an amount not exceeding two hundred dollars ($200) a day for each examiner engaged in the examination of the bank.

(b) Whenever in the judgment of the commissioner it is necessary or expedient for any examiner engaged in any examination to travel outside this state, the commissioner may charge for the travel expenses of the examiner.

SEC. 323. Section 1902 of the Financial Code is amended to read:

1902. The board of every bank and of every trust company, or a committee thereof composed of at least three directors, none of whom is an officer of such bank or trust company, shall examine such bank or trust company at least once in each calendar year. No such examination shall be commenced within three months of the completion of the examination for the preceding year. Such examination shall show the actual financial condition of the bank or trust company and shall set forth such matters and shall be in such form as the commissioner may require. Such examination shall include an examination of the books, papers, and affairs of the bank and particularly of its loans and discounts and of the security given therefor. The board may employ such assistance in making any examination as it deems necessary. Within 30 days after the examination is completed, a report thereof, verified by the directors who made it, shall be filed with the board and thereafter shall be kept available for inspection by the commissioner.

SEC. 323.1. Section 1902 of the Financial Code is amended to read:

1902. (a) The commissioner may by order or regulation grant exemptions from this section in cases where the commissioner finds that the requirements of this section are not necessary.

(b) Each California state bank shall, within 90 days after the end of each fiscal year, or within such extended time as the commissioner may prescribe, file with the commissioner an audit report for the fiscal year.

(c) The audit report called for in subdivision (b) shall comply with all of the following provisions:

(1) The audit report shall contain those audited financial statements of the bank for or as of the end of the fiscal year prepared in accordance with generally accepted accounting principles and any other information that the commissioner may require.

(2) The audit report shall be based upon an audit of the bank conducted in accordance with generally accepted auditing standards and any other requirements that the commissioner may prescribe.

(3) The audit report shall be prepared by an independent certified public accountant or independent public accountant who is not unsatisfactory to the commissioner.

(4) The audit report shall include or be accompanied by a certificate or opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the commissioner. If the certificate or opinion is qualified, the commissioner may order the bank to take such action as the commissioner may find necessary to enable the independent certified public accountant or independent public accountant to remove the qualification.

SEC. 324. Section 1903 of the Financial Code is amended to read:

1903. If the board of any bank or trust company fails to make such examination or to cause it to be made or to file copies of the report

in the manner and within the time required by Section 1902, the commissioner may cause an extra examination of such bank or trust company to be made at its expense.

SEC. 325. Section 1904 of the Financial Code is amended to read:

1904. In lieu of an examination pursuant to Section 1902, the board of any bank or trust company may request the commissioner to cause a special examination or audit to be made. Within 60 days after the receipt of a certified copy of the board's resolution requesting such examination, the commissioner shall cause a special examination or audit to be made either by the department or by certified public accountants at the expense of such bank or trust company. Within 30 days after the completion of the examination or audit, the commissioner shall deliver to the board a true copy of the report of the examination or audit.

SEC. 326. Section 1905 of the Financial Code is amended to read:

1905. In lieu of a directors' examination for any year, the commissioner may accept any examination of a bank or trust company made during such year by the Federal Reserve Bank if such bank or trust company is a member thereof, by the Federal Deposit Insurance Corporation or any equivalent federal corporation or agency insuring deposits if such bank or trust company is a member thereof, or by a clearing house association of which such bank or trust company is a member.

SEC. 327. Section 1906 of the Financial Code is amended to read:

1906. The commissioner, whenever in his or her opinion the condition of the bank, trust company, or foreign banking corporation is such as to require such audit, may require any bank, trust company, or foreign banking corporation to employ a certified public accountant to make a special audit of the affairs of such bank or trust company at its expense.

SEC. 328. Section 1907 of the Financial Code is amended to read:

1907. The commissioner, for good cause, at any time and from time to time may employ appraisers to appraise the value of any investment, asset, or property held or upon which a lien is held as security for a loan. The bank, trust company, or foreign banking corporation shall pay to the commissioner on demand the cost of such appraisal.

SEC. 329. Section 1908 of the Financial Code is amended to read:

1908. The commissioner, a deputy commissioner, and every examiner assigned to an examination may administer an oath to any person whose testimony is required for the purposes of any examination authorized by this division and may by issuance of subpena compel the appearance of any person and the production of any evidence for the purposes of the examination.

SEC. 330. Section 1909 of the Financial Code is amended to read:

1909. (a) In this section, "governmental agency" includes, without limitation, any agency of this state, of any other state of the United States, of the United States, or of any foreign nation.

(b) The commissioner may furnish information to a governmental agency that regulates financial institutions.

(c) The commissioner may furnish to a governmental agency that administers a loan guarantee or similar program, information relating to a person who participates in the program.

(d) The commissioner may furnish to a governmental agency that regulates business activities, other than the type described in subdivision (b), information relating to:

(1) A suspected violation of a law administered by the agency.

(2) A person involved in an application to the agency for a license, approval, or other authorization.

(e) The commissioner may furnish to a governmental agency that is a law enforcement agency, information relating to a suspected crime.

(f) This section does not prescribe the only circumstances under which the commissioner may furnish information.

SEC. 331. Section 1910 of the Financial Code is amended to read:

1910. If a deputy commissioner or any examiner has knowledge of the insolvency or unsafe condition of any bank, trust company, or foreign banking corporation and fails or neglects to forthwith report such fact to the commissioner in writing over his or her signature, he or she is guilty of a felony.

SEC. 332. Section 1911 of the Financial Code is amended to read:

1911. A national banking association doing business in this state and receiving deposits of any bank organized under the laws of this state, at the request of the commissioner, shall submit to an examination by him or her, at the expense of such association, should he or she deem it necessary or desirable that such examination be made. If any such association refuses to permit such an examination to be made, the commissioner shall notify every bank depositing its funds with such association to withdraw its deposits therefrom and the banks so notified shall comply with his or her order.

SEC. 333. Section 1912 of the Financial Code is amended to read:

1912. If it appears to the commissioner that a bank, trust company, or foreign banking corporation is violating or failing to comply with its articles or with any applicable law, the commissioner may direct the bank, trust company, or foreign banking corporation to comply with its articles or with the law by an order issued over his or her official seal, or if it appears to the commissioner that any bank, trust company, or foreign banking corporation is conducting its business in an unsafe or injurious manner the commissioner may in like manner direct it to discontinue the unsafe or injurious practices. The order shall require the bank, trust company, or foreign banking corporation to show cause before the commissioner at a time and place to be fixed by him or her why the order should not be observed.

SEC. 334. Section 1913 of the Financial Code is amended to read:

1913. If upon any hearing held pursuant to Section 1912 it appears to the commissioner that the bank, trust company, or foreign banking

corporation is violating or failing to comply with its articles or with any applicable law or is conducting its business in an unsafe or injurious manner the commissioner may make a final order directing it to comply with its articles or with the law or to discontinue the unsafe or injurious practices. Unless within 10 days after the issuance of the final order its enforcement is restrained in a proceeding brought by the bank, trust company, or foreign banking corporation, it shall forthwith comply with the order.

SEC. 335. Section 1913.5 of the Financial Code is amended to read:

1913.5. (a) For the purposes of this section, the following definitions are applicable:

(1) "Account holder" includes, in the case of a deposit account, the depositor; in the case of a trust account, each trustor and beneficiary of the trust account; and, in the case of any other fiduciary account, each person who occupies, with respect to the account, a position that is similar to the position that a trustor or beneficiary occupies with respect to a trust account.

(2) "Bank" means the following:

(A) Any commercial bank or trust company incorporated under the laws of this state.

(B) Any foreign (other state) state bank that maintains a branch office in this state, with respect to the branch office and any other office in this state.

(C) Any foreign (other state) state bank that is licensed by the commissioner under Article 4 (commencing with Section 3860) of Chapter 22 to maintain a facility (as defined in Section 3800) in this state, with respect to any such office.

(D) Any foreign (other nation) bank that is licensed by the commissioner under Chapter 13.5 (commencing with Section 1700) to maintain an office in this state, with respect to any such office.

(E) Any corporation incorporated under the laws of this state that is incorporated for the purpose of engaging in, or that is authorized by the commissioner to engage in, business under Article 1 (commencing with Section 3500) of Chapter 19.

(F) Any foreign corporation that is licensed by the commissioner under Article 1 (commencing with Section 3500) of Chapter 19 to maintain an office in this state and to transact at that office business under Article 1 (commencing with Section 3500) of Chapter 19, with respect to that office.

(3) "Order" means any approval, consent, authorization, permit, exemption, denial, prohibition, or requirement applicable to a specific case issued by the commissioner, including, without limitation, any condition thereof. "Order" does not include any certificate of authority or license issued by the commissioner but does include any condition of a license and any written agreement made by any person with the commissioner under this division.

(4) "Subject person of a bank" means any director, officer, or employee of the bank, or any person who participates in the conduct of the business of the bank. However, "subject person of a bank" does not include a controlling person of the bank that is registered as a bank holding company with the Board of Governors of the Federal Reserve System pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. Sections 1841, et seq.). "Subject person of a bank" does not include an individual who is a director, officer, or employee of a controlling person of the bank unless the individual is a director, officer, or employee of the bank or participates in the conduct of the business of the bank. For purposes of this paragraph, "controlling person" has the meaning set forth in Section 700.

(5) "Violation" includes, without limitation, any act done, alone or with one or more persons, for or toward causing, bringing about, participating in, counseling, aiding, or abetting a violation.

(b) If, after notice and a hearing, the commissioner finds the following, the commissioner may issue an order suspending or removing a subject person of a bank from his or her office with the bank and prohibiting the subject person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:

(1) (A) That the subject person has violated any provision of this division or of any regulation or order issued under this division, or any provision of any other applicable law relating to the business of the bank; or

(B) That the subject person has engaged or participated in any unsafe or unsound act with respect to the business of the bank; or

(C) That the subject person has committed or engaged in any act that constitutes a breach of his or her fiduciary duty as a subject person; and

(2) (A) That the bank has suffered or will probably suffer substantial financial loss or other damage by reason of the violation, act, or breach of fiduciary duty; or

(B) That the interests of the bank's accountholders have been or are likely to be seriously prejudiced by reason of the violation, act, or breach of fiduciary duty; or

(C) That the subject person has received financial gain by reason of the violation, act, or breach of fiduciary duty; and

(3) That the violation, act, or breach of fiduciary duty is one involving personal dishonesty on the part of the subject person, or one that demonstrates a willful or continuing disregard for the safety or soundness of the bank.

(c) If, after notice and a hearing, the commissioner finds the following, the commissioner may issue an order suspending or removing a subject person of a bank from his or her office with the bank and prohibiting the subject person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:

(1) That the subject person's conduct or practice with respect to another bank or business institution has resulted in substantial financial loss or other damage; and

(2) That the conduct or practice has evidenced personal dishonesty or willful or continuing disregard for the safety and soundness of the other bank or business institution; and

(3) That the conduct or practice is relevant in that it demonstrates unfitness to continue as a subject person of the bank.

(d) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of a bank from his or her office with the bank and prohibiting the subject person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:

(1) That it is necessary for the protection of the bank or the interests of the bank's accountholders that the commissioner issue the order immediately; and

(2) (A) That any of the factors set forth in paragraph (1) of subdivision (b), any of the factors set forth in paragraph (2) of subdivision (b), and any of the factors set forth in paragraph (3) of subdivision (b) are true with respect to the subject person; or

(B) That any of the factors set forth in paragraph (1) of subdivision (c), any of the factors set forth in paragraph (2) of subdivision (c), and the factor set forth in paragraph (3) of subdivision (c) are true with respect to the subject person.

(e) (1) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of a bank from his or her office with the bank and prohibiting the subject person from further participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:

(A) That the subject person has been charged in an indictment issued by a grand jury or in an information, complaint, or similar pleading issued by a United States attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with a crime that is punishable by imprisonment for a term exceeding one year and that involves dishonesty or breach of trust; and

(B) That the person's continuing to serve as a subject person of the bank may pose a material threat to the interests of the bank's accountholders or may threaten to materially impair public confidence in the bank. In case the criminal proceedings are terminated other than by a judgment of conviction, the order shall be deemed rescinded.

(2) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of a bank, or a former subject person of a bank, from his or her office, if any, with the bank and prohibiting the person from further

participating in any manner in the conduct of the business of the bank, except with the prior consent of the commissioner:

(A) That the person has been finally convicted of a crime that is punishable by imprisonment for a term exceeding one year and that involves dishonesty or breach of trust; and

(B) That the person's continuing to serve or resumption of service as a subject person of the bank may pose a material threat to the interests of the bank's accountholders or may threaten to materially impair public confidence in the bank.

(3) The fact that any subject person of a bank charged with a crime involving dishonesty or breach of trust is not finally convicted of that crime shall not preclude the commissioner from issuing an order regarding the subject person pursuant to other provisions of this division.

(f) (1) Within 30 days after an order is issued pursuant to subdivision (d) or (e), the person to whom the order is issued may file with the commissioner an application for a hearing on the order. The commissioner shall, upon the written request of the person, extend the 30-day period by an additional 30 days provided the request is filed with the commissioner within 30 days after the order is issued. If the commissioner fails to commence the hearing within 15 business days after the application is filed, or within a longer period to which the person consents, the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any person to whom an order is issued under subdivision (d) or (e) to petition for judicial review of the order shall not be affected by the failure of that person to apply to the commissioner for a hearing on the order pursuant to this subdivision.

(g) (1) Any person to whom an order is issued under subdivision (b), (c), (d), or (e) may apply to the commissioner to modify or rescind that order. The commissioner shall not grant that application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that the person will, if and when he or she becomes a subject person of a bank, comply with all applicable provisions of this division and of any regulation or order issued thereunder.

(2) The right of any person to whom an order is issued under subdivision (b), (c), (d), or (e) to petition for judicial review of that order shall not be affected by the failure of the person to apply to the commissioner pursuant to paragraph (1) to modify or rescind the order.

(h) (1) A notice issued under this section shall state the facts constituting the grounds for removal, suspension, or prohibition.

(2) A hearing held before the commissioner pursuant to this section shall be private unless the commissioner, in his or her discretion, after fully considering the view of the party afforded the

hearing, determines that a public hearing is necessary to protect the public interest.

(i) (1) It is unlawful for any subject person of a bank or former subject person of a bank to whom an order is issued under subdivision (b), (c), (d), or (e) to do any of the following, except with the prior consent of the commissioner, so long as the order is effective:

(A) To serve or act as a director, officer, employee, or agent of any bank.

(B) To vote any shares or other securities of a bank having voting rights, for the election of any person as a director of the bank.

(C) Directly or indirectly, to solicit, procure, or transfer or attempt to transfer, or vote any proxy, consent, or authorization with respect to any shares or other securities of any bank having voting rights.

(D) Otherwise to participate in any manner in the conduct of the business of any bank.

(2) Any person who violates paragraph (1) shall, upon conviction, be punished by a fine of not more than five thousand dollars ($5,000) or imprisoned in the state prison, or in a county jail not to exceed one year, or by both that fine and imprisonment.

(3) If, after notice and a hearing, the commissioner finds that any person has violated paragraph (1), the commissioner may order that person to pay to the commissioner a civil penalty in an amount as the commissioner may specify; provided, however, that the amount of the civil penalty shall not exceed one thousand dollars ($1,000) for each violation or, in the case of a continuing violation, one thousand dollars ($1,000) for each day for which the violation continues.

In determining the amount of a civil penalty to be paid to the commissioner under this paragraph, the commissioner shall consider the financial resources and good faith of the person charged, the gravity of the violation, the history of previous violations by the person, and other factors that in the opinion of the commissioner may be relevant.

SEC. 336. Section 1914 of the Financial Code is amended to read:

1914. Whenever he or she deems it expedient, the commissioner may call a meeting of the stockholders of any bank or trust company. Notice of the time and place of the meeting shall be given to each stockholder by a notice mailed to the stockholder by registered mail at the stockholder's last known address at least 15 days before the date of the meeting. Any expenses of such meeting shall be borne by the bank or trust company.

SEC. 337. Section 1915 of the Financial Code is amended to read:

1915. During any emergency period declared by the President of the United States, each bank shall conform to any order of the commissioner directed to it, relating to and conforming with regulations, limitations, or restrictions which are applicable thereto prescribed by the Secretary of the Treasury, the Comptroller of the Currency, or the Board of Governors of the Federal Reserve System

regulating or governing the operations of banks which are members of the Federal Reserve System.

SEC. 338. Section 1916 of the Financial Code is amended to read:

1916. During any emergency period declared by the Governor no bank shall transact any banking business except to such extent and subject to such regulations, limitations, or restrictions as may be prescribed by the commissioner, which, as to member banks, shall be as consistent as the exigencies of the situation permit with the provisions of the Federal Reserve Act and regulations issued thereunder or, as to insured banks, shall be as consistent as the exigencies of the situation permit with the rules and regulations governing banks whose deposits are insured by the Federal Deposit Insurance Corporation.

SEC. 339. Section 1930 of the Financial Code is amended to read:

1930. Every bank and every trust company shall make and file with the commissioner whenever required by him or her a report in such form as he or she may prescribe, verified by two of its principal officers, showing its financial condition and such other information as the commissioner may require at the close of business on any past day designated by him or her. The verification shall state that each of the officers making it has a personal knowledge of the matters in the report and that each of them believes that each statement in the report is true.

SEC. 340. Section 1931 of the Financial Code is amended to read:

1931. The commissioner shall call for the report specified in Section 1930 from all California state banks and trust companies at least three times each year, and for at least three times each year shall designate as the day as of which the reports shall be made the day designated by the Comptroller of the Currency for reports from national banking associations.

SEC. 341. Section 1934 of the Financial Code is amended to read:

1934. The commissioner may at any time require any bank or trust company to make and file with him or her a special report furnishing such information as he or she may specify when necessary to inform him or her fully of the actual financial condition and affairs of the bank or trust company.

SEC. 342. Section 1935 of the Financial Code, as added by Section 88 of Chapter 480 of the Statutes of 1995, is repealed.

SEC. 343. Section 1935 of the Financial Code, as added by Section 5.5 of Chapter 754 of the Statutes of 1995, is amended to read:

1935. (a) A California state bank shall prominently display in the lobby of its head office and each branch office, except an automated teller machine branch office, as defined in Section 550, a notice that any person may obtain a financial report from the bank. The notice shall include the address and telephone number of the person or office to be contacted for a financial report. The bank shall, after receiving a request for a financial report, promptly mail or otherwise

furnish the financial report to the requester. The first financial report shall be provided without charge.

(b) The financial report called for in this section shall contain either (1) the information that the commissioner may require by regulation or (2) in the absence of a regulation the last balance sheet and income statement, each without any schedules, that the bank filed with the commissioner pursuant to Section 1931.

SEC. 343.1. Section 1935 of the Financial Code is amended to read:

1935. (a) A California state bank shall prominently display in the lobby of its main office and each branch office, except an automated teller machine branch office, as defined in Section 550, a notice that any person may obtain a financial report from the bank. The notice shall include the address and telephone number of the person or office to be contacted for a financial report. The bank shall, promptly after receiving a request for a financial report, mail or otherwise furnish the financial report to the requester. The first financial report shall be provided without charge.

(b) The financial report called for in this section shall contain either (1) the information that the commissioner may require by regulation or (2) in the absence of a regulation, the last balance sheet and income statement, each without any schedules, that the bank filed with the commissioner pursuant to Section 1931.

SEC. 344. Section 1936 of the Financial Code is amended to read:

1936. Every California state bank shall keep its corporate records, financial records, and books of account in words and figures of the English language and in form satisfactory to the commissioner.

SEC. 345. Section 1938 of the Financial Code is amended to read:

1938. Each report required under this article, Chapter 13.5 (commencing with Section 1700), or Chapter 22 (commencing with Section 3800) shall be filed with the commissioner at the time that the commissioner may by regulation or order require. If any bank, trust company, or foreign bank fails to make any report required by this article, Chapter 13.5 (commencing with Section 1700), or Chapter 22 (commencing with Section 3800) at the time specified by the commissioner or fails to include therein any matter required by this article, Chapter 13.5 (commencing with Section 1700), or Chapter 22 (commencing with Section 3800) or by the commissioner, it shall be liable to the people of this state in the sum of not more than one hundred dollars ($100) for each day that the report is delayed or withheld by the failure or neglect of the bank, trust company, or foreign bank.

SEC. 346. Section 1939 of the Financial Code is amended to read:

1939. (a) Every bank shall file with the commissioner one copy of all material filed by such bank with the Board of Governors of the Federal Reserve System or the Federal Deposit Insurance Corporation pursuant to Section 78(*l*) of Title 15, United States Code,

and Section 1817(j) of Title 12, United States Code, and regulations issued thereunder.

(b) Every bank which is required to file information with the appropriate federal banking agency pursuant to Section 907 of the International Lending Supervision Act (12 U.S.C. Sec. 3907), shall file with the commissioner one copy of all material filed with the federal banking agency pursuant to the act.

(c) Each copy required to be filed pursuant to subdivisions (a) and (b) shall be filed with the commissioner on or before the date upon which the original is filed with the Board of Governors of the Federal Reserve System or the Federal Deposit Insurance Corporation, and shall be available for inspection by the public except to the extent the information contained therein is accorded confidential treatment under federal law or regulations issued thereunder by the Board of Governors of the Federal Reserve System or the Federal Deposit Insurance Corporation. All such material shall be open for inspection by the Attorney General.

SEC. 347. Section 1945 of the Financial Code is amended to read:

1945. Every bank shall notify the commissioner of any change in the managing officer of the bank.

SEC. 348. Section 1952 of the Financial Code is amended to read:

1952. The commissioner at any time may require a bank to write down any asset held by it to a valuation which will represent its then fair market value.

SEC. 349. Section 3100 of the Financial Code is amended to read:

3100. Whenever it appears to the commissioner that:

(a) The contributed capital of any bank is impaired;

(b) Any bank has violated its articles or any law of this state;

(c) Any bank is conducting its business in an unsafe or unauthorized manner;

(d) Any bank refuses to submit its books, papers, and affairs to the inspection of any examiner;

(e) Any officer of any bank refuses to be examined upon oath touching the concerns of such bank;

(f) Any bank has suspended payment of its obligations;

(g) Any bank is in such condition that it is unsound, unsafe, or inexpedient for it to transact business; or

(h) Any bank neglects or refuses to observe any order of the commissioner made pursuant to Section 1913 unless the enforcement of such order is restrained in a proceeding brought by the bank;

the commissioner may forthwith take possession of the property and business of such bank and retain possession until such bank resumes business or its affairs are finally liquidated as herein provided. Such bank, with the consent of the commissioner, may resume business upon such conditions as the commissioner may prescribe. The term "bank" wherever used in this chapter includes trust companies.

SEC. 350. Section 3101 of the Financial Code is amended to read:

3101. Whenever the commissioner has taken possession of the property and business of any bank, such bank, within 10 days after such taking, if it deems itself aggrieved thereby, may apply to the superior court in the county in which the head office of such bank is located to enjoin further proceedings. The court, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing and a determination of the facts upon the merits may dismiss such application or enjoin the commissioner from further proceedings and direct him or her to surrender the property and business to such bank.

SEC. 351. Section 3102 of the Financial Code is amended to read:

3102. An appeal may be taken from the judgment of the court by the commissioner or by the bank in the manner provided by law for appeals from the judgment of a superior court.

SEC. 352. Section 3103 of the Financial Code is amended to read:

3103. Upon taking possession of the property and business of any bank, the commissioner shall forthwith give notice of such fact to all persons holding or having in their possession any assets of such bank. No person knowing of such taking or who has been notified thereof shall have a lien or charge upon any assets of the bank for any payment, advance, or clearance thereafter made or for any liability thereafter incurred.

The giving of notice in accordance with this section shall not be deemed to be a prerequisite to the taking of possession of the property and business of the bank.

SEC. 353. Section 3104 of the Financial Code is amended to read:

3104. Upon taking possession of the property and business of any bank, the commissioner has authority and it is his or her duty to collect all moneys due to such bank and to do such other acts as are necessary or expedient to collect, conserve, or protect its assets, property, and business and he or she shall proceed to conserve or liquidate the affairs thereof as herein provided.

SEC. 354. Section 3106 of the Financial Code is amended to read:

3106. The commissioner, from time to time, under his or her official seal, may appoint one or more special deputy commissioners as his or her agent or agents with the powers specified in the certificate of appointment to assist him or her in the duty of conservation or of liquidation and distribution. The certificate of appointment shall be filed in the office of the commissioner and a certified copy in the office of the clerk of the county in which the head office of the bank is located. The commissioner may employ such counsel and procure such expert assistance and advice as may be necessary in the liquidation and distribution of the assets of the bank and for that purpose may retain such of the officers or employees of the bank as he or she may deem necessary.

SEC. 355. Section 3107 of the Financial Code is amended to read:

3107. The compensation of special deputies, counsel, and other employees and assistants appointed to assist in the liquidation of any

bank and the distribution of its assets and all expenses of supervision and liquidation shall be fixed by the commissioner and shall be paid out of the funds of such bank in the hands of the commissioner. Such expenses of liquidation must be reported to the court upon each application for payment of a dividend.

SEC. 356. Section 3108 of the Financial Code is amended to read:

3108. Upon the commissioner taking possession of the business and property of any bank the superior court of the State of California for the county in which the head office of such bank is located shall have exclusive original jurisdiction of all proceedings relating thereto and of any action or other proceedings brought under the provisions of this chapter. All papers relating to such proceeding, including copies of the certificate of appointment of any special deputy and the inventories required to be filed, shall be filed and be made a part of the record of such proceeding without the payment of any additional fees therefor. No damages may be awarded in such proceeding but, if sought, may only be recovered in a separate action.

SEC. 357. Section 3109 of the Financial Code is amended to read:

3109. The commissioner may sell, compromise, or compound any bad or doubtful debt owing the bank, which is for a principal sum not exceeding five hundred dollars ($500), upon such terms as the commissioner may deem proper, and, if the principal sum thereof exceeds five hundred dollars ($500), the commissioner may compromise, compound, or sell the same upon such terms as the court may approve. If it appears improbable that a recovery on any debt can be had and that the costs of an action to collect would be lost and the principal sum thereof does not exceed five hundred dollars ($500), the commissioner may determine that no suit thereon shall be brought, and if the principal sum thereof exceeds five hundred dollars ($500), the commissioner may determine that no suit thereon be brought after obtaining approval of the court.

SEC. 358. Section 3110 of the Financial Code is amended to read:

3110. The commissioner may sell any real or personal property of the bank for cash or on credit and on such other terms and conditions as the commissioner may deem proper, subject to the approval of the court.

SEC. 359. Section 3110.1 of the Financial Code is amended to read:

3110.1. (a) The commissioner may, with the approval of the court and of the commissioner, sell any part or the whole of the business of the bank to any other bank. Such purchase and sale shall be approved by the purchasing bank, as follows:

(1) In case the purchasing bank is a bank organized under the laws of this state, by two-thirds of all of its directors.

(2) In case the bank is any bank other than a bank organized under the laws of this state, in accordance with the laws of the jurisdiction under the laws of which the bank is organized.

(b) (1) Subject to any applicable federal statutes and regulations, any bank organized under the laws of this state may, with the approval of two-thirds of all of its directors and of the commissioner, purchase from the receiver of a national banking association the whole or any part of the business of such national banking association.

(2) Subject to any applicable federal statutes and regulations and any applicable laws of the jurisdiction under the laws of which such foreign banking corporation is organized, any foreign banking corporation which is licensed by the commissioner under Article 1 (commencing with Section 1750) of Chapter 14 to transact banking business in this state and which is authorized under Sections 1756 and 1756.1 to accept deposits in this state, may, with the approval of the commissioner, purchase from the receiver of a national banking association the whole or any part of the business of such national banking association.

(c) The provisions of Chapter 12 (commencing with Section 1200) and Chapter 13 (commencing with Section 1300) of Division 1 of Title 1 of the Corporations Code shall not apply to any purchase and sale of the type described in subdivision (a) or (b).

(d) When a purchase and sale of the type described in subdivision (a) or (b) becomes effective or, in case the receiver of a national banking association sells the whole or any part of the business of such national banking association to another national banking association, when such purchase and sale becomes effective, the purchasing bank shall, ipso facto and by operation of law and without further transfer, substitution, act, or deed, to the extent provided in the agreement of the purchase and sale or in the order of the court approving the purchase and sale and except as withheld or limited by such agreement or by such order:

(1) Succeed to the rights, obligations, properties, assets, investments, deposits, demands, and agreements of the bank whose business is sold, subject to the right of every depositor of such bank whose deposit is sold to withdraw his or her deposit in full on demand after such sale, irrespective of the terms under which the deposit was made;

(2) Succeed to the rights, obligations, properties, assets, investments, deposits, demands, and agreements of the bank whose business is sold under all trusts, executorships, administrations, guardianships, conservatorships, agencies, and other fiduciary or representative capacities, to the same extent as though the purchasing bank had originally assumed, acquired, or owned the same, subject to the rights of trustors and beneficiaries under the trusts so sold to nominate another or succeeding trustee of the trust so sold after the sale; and

(3) Succeed to and be entitled to take and execute the appointment to executorships, trusteeships, guardianships, conservatorships, and other fiduciary and representative capacities to which the bank whose business is sold is or may be named in wills,

whenever probated, or to which it is or may be named or appointed by any other instrument.

(e) For purposes of subdivision (d), any purchase and sale of the type referred to in subdivision (d) shall be deemed to be effective at such time as is provided in the agreement of such purchase and sale or in the order of the court approving the purchase and sale.

SEC. 360. Section 3111 of the Financial Code is amended to read:

3111. Within six months after taking possession of the property and business of any bank the commissioner may terminate or adopt any executory contract to which the bank may be a party including leases of real or personal property. Claims for damages resulting from the termination of any such contract or lease may be filed and allowed, but no claim of a landlord for damages resulting from the rejection of an unexpired lease of real property or under any covenant of such lease shall be allowed in an amount exceeding the rent reserved by the lease, without acceleration, for the year succeeding the date of the surrender of the premises plus the amount of any unpaid accrued rent without acceleration. Any such claim must be filed within 30 days of the date of such termination or within the time that claims must be filed under Section 3118, whichever is longer.

SEC. 361. Section 3112 of the Financial Code is amended to read:

3112. The commissioner in his or her own name or in the name of the bank may execute, acknowledge, and deliver any and all conveyances and other instruments necessary or appropriate to effectuate the sale of any real or personal property or to effectuate any other transaction in connection with the liquidation of the bank or the distribution of its assets. Any conveyance or other instrument executed by the commissioner pursuant to this authority shall be valid and effectual for all purposes as though the same had been executed by the officers of the bank by authority of its board of directors. Whenever the commissioner sells any real property of the bank a certified copy of the order of the court approving the same shall be recorded in the county in which any part of such real property is located.

SEC. 362. Section 3113 of the Financial Code is amended to read:

3113. The commissioner in the name of the delinquent bank or in his or her own name may prosecute and defend any and all actions and other legal proceedings appropriate or necessary to the liquidation of such bank.

SEC. 363. Section 3114 of the Financial Code is amended to read:

3114. The commissioner from time to time shall deposit all moneys coming into his or her hands in the course of the liquidation of the bank in one or more state banks and in the event of the suspension or insolvency of the depositary they shall be preferred before all other deposits.

SEC. 364. Section 3115 of the Financial Code is amended to read:

3115. The commissioner shall make an inventory of the assets of the bank in duplicate and file one in the office of the commissioner and one with the clerk of the county in which the head office of the bank is located to be filed with the papers in the liquidation proceedings. Such inventory shall be open for inspection at all reasonable times.

SEC. 365. Section 3116 of the Financial Code is amended to read:

3116. When the time fixed for the presentation of claims has expired the commissioner shall make in duplicate a full and complete list of all claims presented, including and specifying such claims as have been rejected by the commissioner, and a list of all claims of depositors as shown by the books or records of said bank for which claims have not yet been presented, and shall file one copy of said list in the commissioner's office and one with the clerk of the county in which the head office of the bank is located to be filed with the papers in the liquidation proceedings. Before each application to the court for leave to declare a dividend the commissioner shall file a supplemental list of claims presented since the last preceding list was filed, including and specifying such claims as have been rejected by him or her. Such list of claims and of claims of depositors as shown by the books or records of the bank shall be open for inspection at all reasonable times.

SEC. 366. Section 3117 of the Financial Code is amended to read:

3117. The commissioner shall cause notice to be given by advertisement in such newspapers of general circulation as he or she may select weekly for three consecutive months, calling on all persons who have claims against the bank to present the same to the commissioner and make legal proof thereof at a place to be specified therein and within four months of the date of the first publication of such notice, which date shall be specified in the notice. Such notice shall also state that all claims other than those of depositors appearing upon the books or records of the bank shall be forever barred if not filed within said four months' period and that all claims of depositors appearing upon the books or records of the bank will be forever barred, except as herein provided, if not filed prior to the filing of a petition for a final dividend. The commissioner shall also mail a similar notice to all persons, including depositors, whose names appear as creditors upon the books of the bank and whose addresses appear upon the books or records of the bank and shall enclose therewith a printed form of notice of claim.

SEC. 367. Section 3118 of the Financial Code is amended to read:

3118. All claims of every kind against the bank or against any property owned or held by such bank shall be presented to the commissioner in writing verified by the claimant or someone in his or her behalf within four months of the date of the first publication of the notice to creditors. Any claim, other than the claim of a depositor whose claim appears upon the books or records of the bank, not so presented within said four months' period shall be forever

barred and any claim of a depositor whose claim appears upon the books or records of the bank which is not so presented prior to the date of the filing of the petition of the commissioner with the court for approval of the payment of the final dividend shall be forever barred except as to any moneys remaining after all debts for which claims were duly filed have been paid in full with interest. If the commissioner doubts the validity of any claim he or she may reject the same and serve notice of such rejection upon the claimant either by mail or personally. An affidavit of the mailing or personal service of such notice shall be prima facie evidence of the receipt thereof and shall be filed with the commissioner. Any action upon a claim so rejected must be brought within three months after the date of mailing or personal service of the notice of rejection.

SEC. 368. Section 3119 of the Financial Code is amended to read:

3119. At any time and from time to time after the expiration of the time fixed for the presentation of claims, the commissioner, after obtaining approval of the court, may declare and pay one or more dividends upon all approved claims out of the funds remaining in his or her hands after the payment of expenses and after setting aside an amount sufficient to pay to all depositors, who have not yet filed claims but whose claims appear upon the books or records of the bank, their pro rata share of the funds then available for the payment of a dividend. At any time after the expiration of one year from the date of the first publication of notice to creditors and after obtaining the approval of the court the commissioner may declare and pay a final dividend.

SEC. 369. Section 3120 of the Financial Code is amended to read:

3120. Objections to any claim not rejected by the commissioner may be made by any person interested by filing a copy of such objections with the commissioner, who shall present the same to the court at the time of the next application for approval of the declaration of a dividend. The court shall thereupon dispose of said objections or may order a reference for that purpose, and should the objections to any claim be sustained by the court or by the referee, such claim shall not be allowed by the commissioner until the claimant has established the claim by judgment.

SEC. 370. Section 3121 of the Financial Code is amended to read:

3121. Dividends remaining unpaid and any sums available for payment of deposits for which no claim was filed, which remain in the hands of the commissioner six months after the order for the payment of a final dividend, shall be deposited in the State Treasury. Such deposits shall be deemed to have been received under the provisions of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure, and shall be subject to claim or other disposition as provided in said Chapter 7 (commencing with Section 1500) of Title 10. The commissioner may pay over the moneys so held by him or her to the persons respectively entitled thereto at any time

prior to such deposit, upon being furnished satisfactory evidence of their right to the same.

SEC. 371. Section 3121.5 of the Financial Code is amended to read:

3121.5. Whenever, under the provisions of this chapter, the commissioner is required to transmit unclaimed money or other unclaimed property to any state officer for deposit in the State Treasury, the commissioner, upon request of the Controller, shall transmit to the Controller all signature cards and such other identifying information as may be available from the records of the bank, covering such money or other property. Upon receipt by the Controller of such signature cards or other identifying information, the bank and the commissioner shall be relieved of all responsibility therefor. Such signature cards and other identifying information may be destroyed or otherwise disposed of by the Controller whenever, in his or her discretion, their further retention by him or her is no longer required in the interest of the depositors or this state.

SEC. 372. Section 3122 of the Financial Code is amended to read:

3122. All approved claims of depositors and other creditors shall bear interest at the rate provided by law on judgments from the date that the commissioner takes possession of the property and business of the bank.

SEC. 373. Section 3123 of the Financial Code is amended to read:

3123. Should the bank have in its possession for safekeeping or storage any jewelry, plate, money, specie, bullion, stocks, bonds, securities, valuable papers, or other valuable personal property or should it have rented any vaults, safes, or safe-deposit boxes, the commissioner shall cause to be mailed by registered mail, postage prepaid, to any known person claiming to be or appearing on the books of the bank to be the owner of such property or to the person in whose name the safe, vault, or box stands a notice notifying such person to remove all such personal property within a specified fixed period of not less than 60 days.

SEC. 374. Section 3125 of the Financial Code is amended to read:

3125. If any property be not removed within the time fixed by notice mailed by the commissioner, the commissioner may make such disposition of the property as the court on application thereto shall direct. The commissioner may cause any safe, vault, or box to be opened in his or her presence or in the presence of one of the special deputy commissioners and of a notary public not an officer or employee of the bank or of the commissioner. The contents thereof, if any, shall be sealed up by such notary public in a package upon which such notary public shall distinctly mark the name and address of the person in whose name such safe or box stands upon the books of the bank and shall attach thereto a list and a description of the property therein. The package so sealed and addressed, together with the list and description may be kept by the commissioner in one or more of the safes or boxes of the bank or elsewhere until delivered

to the person whose name it bears or until otherwise disposed of as directed by the court.

SEC. 375. Section 3126 of the Financial Code is amended to read:

3126. (a) When the commissioner has completed the liquidation of the bank, he or she shall petition the court for an order declaring the bank duly wound up and dissolved.

(b) After such notice as the court may direct and a hearing, the court may make an order declaring the bank duly wound up and dissolved. Such order shall declare:

(1) That the bank has been duly wound up;

(2) That any tax or penalty due under the Bank and Corporation Tax Law has been paid or secured and that the bank's other known debts and liabilities have been paid or adequately provided for, or that such taxes, penalties, debts, and liabilities have been paid so far as the bank's assets permitted, as the case may be. If there are known debts or liabilities for the payment of which adequate provision has been made, the order shall describe such provision, setting forth such information as may be necessary to enable the creditor or other person to whom payment is to be made to appear and claim payment of the debt or liability;

(3) That all known assets of the bank have been distributed to its shareholders or wholly applied on account of the bank's debts and liabilities; and

(4) That the bank is dissolved.

(c) The court may make such additional orders and grant such further relief as it deems proper upon the evidence submitted.

(d) Upon the making of the order declaring the bank dissolved, the corporate existence of the bank shall cease, except for the purposes of any necessary further winding up.

(e) Upon the making of the order declaring the bank dissolved, the commissioner shall forthwith file with the Secretary of State a copy of such order, certified by the clerk of the court. Notwithstanding the provisions of Section 23334 of the Revenue and Taxation Code, there need not be filed with the Secretary of State any certificate of satisfaction of the Franchise Tax Board that all taxes due from the bank have been paid or secured.

SEC. 376. Section 3131 of the Financial Code is amended to read:

3131. Whenever pursuant to the provisions of this chapter the approval of the court is required of any step in the liquidation proceedings such approval shall be given after a hearing had upon such notice as the court may direct. At any such hearing the court may by order approve the actions of the commissioner for which he or she has petitioned the court's approval or it may, by appropriate order, otherwise direct the commissioner in the matter in connection with which the petition was filed.

SEC. 377. Section 3132 of the Financial Code is amended to read:

3132. Whenever in the opinion of the commissioner the liquidation or reorganization of any bank taken in charge by him or

her would be facilitated thereby, or the public interests and the interests of depositors or stockholders would be served thereby, the commissioner shall have power to borrow money in behalf of such bank from any federal agency authorized to lend money to receivers, trustees, liquidating agents, or other agents or supervisory authorities in charge of banks which are closed or in process of liquidation, and with approval of the court, the commissioner may secure such borrowings by the pledge of the assets of any such bank in such manner and amount as may to the commissioner seem necessary, proper, or expedient.

SEC. 378. Section 3150 of the Financial Code is amended to read:

3150. Any bank which voluntarily has ceased to do a banking business shall immediately notify the commissioner thereof and shall then proceed to liquidate its affairs. Any deposit or other sum which has not been paid to the person entitled thereto within six months after the bank ceased to conduct a banking business shall be paid into the State Treasury. Such deposits shall be deemed to have been received under the provisions of Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure, and shall be subject to claim or other disposition as provided in said Chapter 7 (commencing with Section 1500) of Title 10. If the commissioner has reason to conclude that the liquidation of such bank is not being safely or expeditiously conducted, he or she may take possession of the business and property of such bank in the same manner and with the same effect and subject to the same rights accorded the bank as if he or she had taken possession pursuant to the provisions of Article 1 of this chapter, and he or she may proceed to liquidate its affairs in the same manner as provided in said Article 1. When such bank has been completely liquidated, its corporate existence shall be dissolved in the manner provided by law.

SEC. 379. Section 3160 of the Financial Code is amended to read:

3160. Whenever any bank or trust company is being liquidated or whenever the trust business of any bank or trust company has been discontinued and the bank or trust company has in its possession money or other property held by it in trust or for safekeeping and the beneficiaries or persons entitled thereto are unknown or cannot be found, the commissioner or the bank or trust company, upon obtaining approval of the superior court of the county in which the liquidation proceedings are pending or in which the head office of such trust company or bank is situated, may:

(a) In the case of money, deliver the same to the Treasurer;

(b) In the case of other property, deliver the same to the Controller for deposit in the State Treasury.

SEC. 380. Section 3180 of the Financial Code is amended to read:

3180. Whenever the commissioner deems it necessary in order to conserve the assets of any bank for the benefit of the depositors and other creditors, he or she may appoint a conservator of such bank and require of the conservator such bond as the commissioner deems

proper. The conservator, under the direction of the commissioner, shall take possession of the books, records, and assets of every description of such bank and take such action as the conservator may deem necessary to conserve the assets of such bank pending further disposition of its business.

SEC. 381. Section 3181 of the Financial Code is amended to read:

3181. A conservator so appointed has all of the powers and rights with relation to the business and the property of the bank for which he or she is appointed conservator as are possessed by the commissioner under Article 1 of this chapter with relation to a bank of which he or she has taken possession and the conservator is subject to the same obligations as are imposed upon the commissioner under that article. Upon the appointment of a conservator the bank shall have the same rights as are granted by Sections 3101 and 3102 hereof to a bank whose business and assets have been taken possession of by the commissioner. During the time that the conservator remains in possession of such bank the rights of the bank and of all persons with respect thereto, subject to the other provisions of this article, are the same as if the commissioner had taken possession of the property and business of such bank for the purposes of liquidation. All expenses of any such conservatorship shall be paid out of the assets of the bank and shall be a lien thereon which shall be prior to any other lien. The conservator shall receive a salary in an amount no greater than that which would be paid by the commissioner to a special deputy in charge of the liquidation of a bank.

SEC. 382. Section 3182 of the Financial Code is amended to read:

3182. The commissioner shall cause to be made and completed at the earliest possible date such an examination of the affairs of a bank for which the commissioner has appointed a conservator as shall be necessary to inform the commissioner as to its financial condition.

SEC. 383. Section 3183 of the Financial Code is amended to read:

3183. While any bank is in the hands of a conservator the commissioner may require the conservator to set aside and make available for withdrawal by depositors and for payment to other creditors on a ratable basis such amounts as in the opinion of the commissioner may safely be used for that purpose.

SEC. 384. Section 3184 of the Financial Code is amended to read:

3184. The commissioner in his or her discretion may permit the conservator to receive deposits but any deposits received while the bank is in the hands of a conservator shall be held as trust funds and shall not be subject to any limitation as to payment or withdrawal. Such deposits shall be segregated and shall not be used to liquidate any indebtedness of such bank existing at the time such conservator was appointed or for the payment of any later indebtedness incurred for the purpose of liquidating any indebtedness of such bank existing at the time such conservator was appointed. Such deposits shall be kept on hand in cash, invested in direct obligations of the United States, or deposited with the Federal Reserve Bank.

SEC. 385. Section 3185 of the Financial Code is amended to read:

3185. If the commissioner becomes satisfied that it may safely be done and that it would be in the public interest he or she may terminate the conservatorship and permit the bank for whom a conservator was appointed to resume the transaction of its business under the direction of its board, subject to such terms, conditions, restrictions, and limitations as he or she may prescribe.

SEC. 386. Section 3186 of the Financial Code is amended to read:

3186. In any case in which a bank for which a conservator has been appointed has been permitted to accept deposits since the appointment of a conservator, the conservator, before the date upon which the bank may be permitted to resume business under direction of its board, shall cause to be published in a newspaper selected by him or her as most likely to give proper notice, a notice giving the date on which the affairs of the bank will be returned to its board and stating that the provisions of Section 3184 will not be effective after 30 days from such date. The form of such notice and the newspaper in which the same is to be published shall be first approved by the commissioner. On the date of the publication of such notice the conservator shall mail to every person who made any deposit in such bank after the date of the appointment of the conservator a copy of such notice addressed to such person at the address appearing upon the books of the bank and shall mail a similar notice to every person making a deposit in the bank after the date of the publication of such notice and prior to the time when the affairs of the bank are returned to its board.

SEC. 387. Section 3187 of the Financial Code is amended to read:

3187. The commissioner is authorized to assess and collect from all banks as may become subject to the provisions of this article their ratable share of the costs incurred in the administration thereof.

SEC. 388. Section 3200 of the Financial Code is amended to read:

3200. Any bank, including a bank of which the commissioner has taken possession pursuant to Article 1 hereof or a bank for which a conservator has been appointed pursuant to Article 4 hereof may be reorganized under a plan which requires the consent:

(a) Of depositors and other creditors of such bank representing at least 75 percent in amount of its total deposits and other liabilities as shown by the books of the bank, excluding deposits and other liabilities which are to be satisfied in full under the provisions of the plan; or

(b) Of stockholders owning at least two-thirds of the outstanding capital stock as shown by the books of the bank; or

(c) Of depositors and other creditors of such bank representing at least 75 percent in amount of its total deposits and other liabilities as shown by the books of the bank, excluding deposits and other liabilities which are to be satisfied in full under the provisions of the plan, and of stockholders owning at least two-thirds of its outstanding capital stock as shown by the books of the bank.

SEC. 389. Section 3201 of the Financial Code is amended to read:

3201. All depositors, creditors, stockholders, and other interested persons shall be given notice of any proposed plan of reorganization in such manner and at such times as the commissioner directs.

SEC. 390. Section 3202 of the Financial Code is amended to read:

3202. No plan of reorganization shall become effective until the commissioner finds that the plan is fair and equitable to all depositors, creditors, and stockholders and is in the public interest and until the commissioner approves the same in writing, subject to such conditions, restrictions, and limitations as he or she may prescribe.

SEC. 391. Section 3204 of the Financial Code is amended to read:

3204. When any plan of reorganization becomes effective all books, records, and assets of such bank shall be disposed of in accordance with the provisions of the plan and the affairs of the bank shall be conducted by its board in the manner provided by the plan and under the conditions, restrictions, and limitations which may have been prescribed by the commissioner. When any plan of reorganization adopted and approved as herein provided becomes effective all depositors and other creditors and stockholders of the bank, whether or not they have consented to the plan of reorganization, shall be fully and in all respects subject to and bound by its provisions and claims of all depositors and other creditors shall be treated as if they had consented to the plan of reorganization.

SEC. 392. Section 3221 of the Financial Code is amended to read:

3221. The commissioner, when he or she has taken possession of the property and assets of a closed insured bank for the purpose of liquidation and if he or she deems it advisable, may tender to the corporation the appointment as receiver of such bank.

SEC. 393. Section 3223 of the Financial Code is amended to read:

3223. The corporation as such receiver shall possess with respect to such closed insured bank all the powers, rights, and privileges given the commissioner under Article 1 of this chapter with respect to the liquidation of a bank the property and assets of which he or she has taken possession, except insofar as the same may be in conflict with the provisions of the Federal Deposit Insurance Act, as amended.

SEC. 394. Section 3225 of the Financial Code is amended to read:

3225. When acting as the receiver of a closed insured bank, the corporation with the consent of the commissioner and the approval of the court may sell to the corporation any part or all of the assets of the bank or borrow from the corporation and furnish any part or all of the assets of the bank as security for the loan.

SEC. 395. Section 3353 of the Financial Code is amended to read:

3353. Any director, officer, agent, or employee of a bank who knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false, or having the custody of its books wilfully refuses or neglects to make any proper entry in such

books as required by law, or to exhibit or allow the same to be inspected or extracts to be taken therefrom by the commissioner or his or her deputies or examiners, is guilty of a felony.

SEC. 396. Section 3354 of the Financial Code is amended to read:

3354. (a) In this section, "subject person," when used with respect to a bank, means any director or officer of the bank, any controlling person of the bank, or any director or officer of a controlling person of the bank. For purposes of this subdivision, "controlling person" has the meaning set forth in subdivision (c) of Section 700.

(b) No bank shall purchase any real or personal property or any interest in real or personal property, including, but not limited to, a leasehold, or any contract arising from the sale of real or personal property or any note or bond in which any subject person of such bank is personally or financially interested, directly or indirectly, for such person's own account, for such person, or as the partner or agent of others, without first obtaining the written consent of the commissioner.

SEC. 397. Section 3356 of the Financial Code is amended to read:

3356. (a) In this section, "subject person" has the meaning set forth in subdivision (a) of Section 3354.

(b) No subject person of a bank shall purchase, directly or indirectly, or be interested in the purchase of any of the bank's obligations or assets for an amount less than the book value thereof, unless all the directors of such bank previously approve such purchase by resolution, and a copy of such resolution is transmitted to the commissioner immediately after adoption. Every person violating this section shall be liable to the people of the state, for each offense, for twice the face value of the assets so purchased.

SEC. 398. Section 3357 of the Financial Code is amended to read:

3357. Whenever by the terms of this division a penalty, liability, or forfeiture is imposed, such penalty, liability, or forfeiture shall be recovered in an action brought at the request of the commissioner, by the Attorney General, in the name of the people of the state, and the sum recovered shall be paid into the State Banking Account in the Financial Institutions Fund and used in payment of claims against such fund. Any pecuniary penalty incurred by any bank or person because of the violation of any provision of this division may be compromised and a lesser amount than that prescribed by this division may be accepted by the commissioner at any time prior to the institution of action to recover the same.

SEC. 399. Section 3359 of the Financial Code is amended to read:

3359. (a) For purposes of this section, the following terms have the following meanings:

(1) "Carrying a security" means maintaining, reducing, or retiring indebtedness originally incurred to acquire a security.

(2) "Controlling person" has the same meaning specified in Section 700.

(3) "Security" has the following meanings:

(A) When used with respect to a bank, "security" has the same meaning set forth in subdivision (c) of Section 690.

(B) When used with respect to any other person, "security" has the same meaning set forth in Section 25019 of the Corporations Code.

(b) No bank shall acquire, hold, extend credit on the security of, or extend credit for the purpose of acquiring or carrying, any security of the bank or of any controlling person of the bank.

(c) (1) Any bank which acquires or holds securities in violation of this section shall be liable to the people of this state for twice the market, book, or face value of the securities, whichever is greatest.

(2) Any bank which extends credit in violation of this section shall be liable to the people of this state for twice the amount of the credit so extended.

(d) This section does not apply to any of the following transactions:

(1) Any acquisition or extension of credit by a bank which is necessary to reduce or prevent loss to the bank on debts previously contracted in good faith.

(2) Any redemption by a bank of any of its redeemable shares in accordance with applicable provisions of this division and of Division 1 (commencing with Section 100) of Title 1 of the Corporations Code.

(3) Any acquisition by a bank of any of its shares, other than an acquisition of the type described in paragraph (1) or (2), if the acquisition is approved in advance by the commissioner.

SEC. 400. Section 3371 of the Financial Code is amended to read:

3371. As used in this article:

(a) "Bank" means:

(1) Any commercial bank or trust company incorporated under the laws of this state.

(2) Any foreign bank that is licensed by the commissioner under Article 3 (commencing with Section 1750) of Chapter 13.5 of this division to maintain a depositary agency or branch office (as defined in Section 1700) in this state, with respect to any office of that type.

(3) Any corporation incorporated under the laws of this state that is incorporated for the purpose of engaging in, or that is authorized by the commissioner to engage in, business under Article 1 (commencing with Section 3500) of Chapter 19.

(4) Any foreign corporation that is licensed by the commissioner under Article 1 (commencing with Section 3500) of Chapter 19 of this division to maintain an office in this state and to transact at the office business under that article, with respect to any office of that type.

(5) When used to designate a person that extends credit, any subsidiary of a bank, as defined in paragraph (1), (2), (3), or (4).

(b) "Company" has the meaning set forth in subdivision (b) of Section 215.2 of Regulation O.

(c) "Executive officer" has the meaning set forth in paragraph (1) of subdivision (e) of Section 215.2 of Regulation O. Also, "executive officer," when used with respect to any bank of the type described in paragraph (2) or (4) of subdivision (a), includes the manager of each office of the type referred to in paragraph (2) or (4) of subdivision (a) that the bank maintains in this state.

(d) "Extension of credit" has the meaning set forth in Section 215.3 of Regulation O. However, for purposes of this subdivision, the term "member bank," as used in Section 215.3, means a bank.

(e) "Regulation O" means Regulation O (12 C.F.R., Part 215) of the Board of Governors of the Federal Reserve System, as in effect on July 1, 1995.

(f) "Subsidiary" has the meaning set forth in Section 1841(d) of Title 12 of the United States Code. However, for purposes of this subdivision, the term "bank holding company," as used in Section 1841(d) of Title 12 of the United States Code, means a bank holding company, as defined in Section 1841(a) of Title 12 of the United States Code, or a bank, and the term "board," as used in Section 1841(d) of Title 12 of the United States Code, means the commissioner.

SEC. 400.1. Section 3371 of the Financial Code is amended to read:

3371. As used in this article:

(a) "Bank" means:

(1) Any commercial bank or trust company incorporated under the laws of this state.

(2) Any foreign (other nation) bank that is licensed by the commissioner under Article 3 (commencing with Section 1750) of Chapter 13.5 of this division to maintain a depositary agency or branch office (as defined in Section 1700) in this state, with respect to any office of that type.

(3) Any corporation incorporated under the laws of this state that is incorporated for the purpose of engaging in, or that is authorized by the commissioner to engage in, business under Article 1 (commencing with Section 3500) of Chapter 19.

(4) Any foreign corporation that is licensed by the commissioner under Article 1 (commencing with Section 3500) of Chapter 19 of this division to maintain an office in this state and to transact at the office business under that article, with respect to any office of that type.

(5) When used to designate a person that extends credit, any subsidiary of a bank, as defined in paragraph (1), (2), (3), or (4).

(b) "Company" has the meaning set forth in subdivision (b) of Section 215.2 of Regulation O.

(c) "Executive officer" has the meaning set forth in paragraph (1) of subdivision (e) of Section 215.2 of Regulation O. Also, "executive officer," when used with respect to any bank of the type described in paragraph (2) or (4) of subdivision (a), includes the manager of each office of the type referred to in paragraph (2) or (4) of subdivision (a) that the bank maintains in this state.

(d) "Extension of credit" has the meaning set forth in Section 215.3 of Regulation O. However, for purposes of this subdivision, the term "member bank," as used in Section 215.3, means a bank.

(e) "Regulation O" means Regulation O (12 C.F.R., Part 215) of the Board of Governors of the Federal Reserve System, as in effect on July 1, 1995.

(f) "Subsidiary" has the meaning set forth in Section 1841(d) of Title 12 of the United States Code. However, for purposes of this subdivision, the term "bank holding company," as used in Section 1841(d) of Title 12 of the United States Code, means a bank holding company, as defined in Section 1841(a) of Title 12 of the United States Code, or a bank, and the term "board," as used in Section 1841(d) of Title 12 of the United States Code, means the commissioner.

SEC. 401. Section 3373 of the Financial Code is amended to read:

3373. (a) Notwithstanding any other provisions of this article, whenever Section 215.2, 215.3, 215.4, 215.5, 215.7, or 215.8 is changed by the Board of Governors of the Federal Reserve System, the commissioner may by regulation adopt that same change. Any regulation adopted under this section shall expire at 12 p.m. on December 31 of the year following the calendar year in which it becomes effective.

(b) For the purpose of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, regulations adopted under this section are subject only to the provisions of Sections 11343.4, 11346.1, and 11349.6 of the Government Code.

SEC. 401.1. Section 3373 of the Financial Code is amended to read:

3373. (a) Notwithstanding any other provisions of this article, whenever Section 215.2, 215.3, 215.4, 215.5, 215.7, or 215.8 is changed by the Board of Governors of the Federal Reserve System, the commissioner may by regulation adopt that same change. Any regulation adopted under this section shall expire at 12 p.m. on December 31 of the year following the calendar year in which it becomes effective.

(b) (1) Section 11343.4 and Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code do not apply to any regulation adopted under subdivision (a).

(2) The commissioner shall file any regulation adopted pursuant to subdivision (a), together with a citation to subdivision (a) as authority for the adoption and a citation to the provisions of federal law made applicable by the regulation, with the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations.

(c) A regulation adopted pursuant to subdivision (a) does not expire as provided by subdivision (a) and is not subject to subdivision (b) if the commissioner complies with all of the provisions of Chapter

3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code in adopting the regulation, including those listed in paragraph (1) of subdivision (b).

SEC. 402. Section 3390 of the Financial Code is amended to read:

3390. No person which has not received a certificate from the commissioner authorizing it to engage in the banking business shall solicit or receive deposits, issue certificates of deposit with or without provision for interest, make payments on check, or transact business in the way or manner of a commercial bank or trust company.

SEC. 403. Section 3391 of the Financial Code is amended to read:

3391. No person which has not received a certificate from the commissioner authorizing it to engage in the banking business shall advertise that it is accepting deposits, and issuing notes or certificates therefor, or make use of any office sign, at the place where its business is transacted, having thereon any artificial or corporate name, or other words indicating that such place or office is the place or office of a bank or trust company, that deposits are received there or payments made on check, or any other form of banking business transacted, nor shall any such person make use of or circulate any letterheads, billheads, blank notes, blank receipts, certificates, or circulars, or any written or printed paper, whatever, having thereon any artificial or corporate name or other words indicating that such business is the business of a bank, commercial bank or trust company, or transact business in such a way or manner as to lead the public to believe that its business is that of a bank or trust company, except to the extent expressly authorized by this division.

SEC. 404. Section 3392 of the Financial Code is amended to read:

3392. No person which has not received a certificate from the commissioner authorizing it to engage in the banking business shall transact business under any name or title which contains the word "bank" or "banker" or "banking" or "savings bank" or "trust" or "trustee" or "trust company" and which indicates that such business is the business of a bank or trust company. Any building and loan association or savings association having in its corporate name words not clearly indicating the nature of its business shall state, on all signs, letterheads, and advertising matter, "This is a building and loan association" or "This is a savings association" or words to that effect.

SEC. 405. Section 3392.5 of the Financial Code is amended to read:

3392.5. No provision of Section 3390, 3391, or 3392 prohibits any of the following from transacting any business or performing any activity if it is authorized by applicable law to transact the business or perform the activity and is not prohibited by any applicable law (other than Sections 3390, 3391, and 3392) from transacting the business or performing the activity:

(a) Any California state commercial bank or trust company.

(b) Any national bank.

(c) Any insured foreign (other state) state bank.

(d) Any foreign (other state) state bank that is licensed by the commissioner under Article 4 (commencing with Section 3860) of Chapter 22 to maintain a facility (as defined in Section 3800) in this state.

(e) Any foreign (other nation) bank that is licensed by the commissioner under Chapter 13.5 (commencing with Section 1700) to maintain an office in this state.

(f) Any foreign (other nation) bank that maintains a federal agency (as defined in subdivision (g) of Section 1700) or federal branch (as defined in subdivision (h) of Section 1700) in this state.

(g) Any California state corporation that is incorporated for the purpose of engaging in, and that is authorized by the commissioner to engage in, business under Article 1 (commencing with Section 3500) of Chapter 19.

(h) Any corporation incorporated under Section 25A of the Federal Reserve Act (12 U.S.C. Sec. 612 et seq.).

(i) Any foreign corporation that is licensed by the commissioner under Article 1 (commencing with Section 3500) of Chapter 19 to maintain an office in this state and to transact at that office business under Article 1 (commencing with Section 3500) of Chapter 19.

(j) Any industrial loan company that is organized under the laws of this state and authorized by the commissioner under Division 7 (commencing with Section 18000) to engage in the industrial loan business or that is organized under the laws of another state of the United States and is insured by the Federal Deposit Insurance Corporation.

SEC. 406. Section 3395 of the Financial Code is amended to read:

3395. Any person or any bank violating any provision of the foregoing sections of this article shall be liable to the people of the state in the amount of one hundred dollars ($100) a day or part thereof during which such violation continues. Any court of competent jurisdiction in a proceeding brought by the commissioner may enjoin any person from using words in violation of the provisions of this article or from transacting business in violation of this division or in such a way or manner as to lead the public to believe that its business is that of a bank, commercial bank or trust company.

SEC. 407. Section 3396 of the Financial Code is amended to read:

3396. No person shall represent by advertisement, circular, or otherwise, or in any manner mislead anyone to believe, that any securities are legal investments for savings banks in this state or conform to the requirements of law relating to such investments, unless such securities are in fact at such time legal investments for such banks or do in fact so conform to such requirements or, unless such person, in making such representation, has acted in good faith and in reliance upon a certificate issued by the commissioner pursuant to Section 1371 issued within one year, upon published reports of the public or private corporations issuing such securities, upon information furnished by a public official in his or her official

capacity or upon information furnished by any established statistical agency approved for this purpose by the commissioner. Any person violating the provisions of this section shall be guilty of a misdemeanor and shall be punishable by a fine of not more than one thousand dollars ($1,000) or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

SEC. 408. Section 3501 of the Financial Code is amended to read:

3501. When authorized by the previous written consent of the commissioner as provided by Chapter 3 (commencing with Section 350) one or more persons may organize a corporation.

SEC. 409. Section 3503 of the Financial Code is amended to read:

3503. The articles of incorporation shall be submitted to the commissioner for his or her approval before they are filed with the Secretary of State pursuant to the Corporations Code. After the articles have been filed with the Secretary of State the corporation shall file with the commissioner a copy thereof, certified by the Secretary of State, and, after the organization meeting of the directors, a copy of its bylaws certified by its secretary.

SEC. 410. Section 3504 of the Financial Code is amended to read:

3504. Each corporation shall have power, under such rules and regulations as the commissioner may prescribe:

(a) To purchase, sell, discount, and negotiate, with or without its endorsement or guaranty, notes, drafts, checks, bills of exchange, acceptances, including bankers' acceptances, cable transfers, and other evidences of indebtedness; to purchase and sell, with or without its endorsement or guaranty, securities, including the obligations of the United States or of any state thereof but not including shares of stock in any corporation except as herein provided; to accept bills or drafts drawn upon it subject to such limitations and restrictions as the commissioner may impose; to issue letters of credit; to purchase and sell coin, bullion, and exchange; to borrow and to lend money; to issue debentures, bonds, and promissory notes under such general conditions as to security and such limitations as the commissioner may prescribe; to receive deposits outside of the United States and to receive only such deposits in this state or in any other state of the United States as may be incidental to or for the purpose of carrying out transactions in foreign countries or dependencies or insular possessions of the United States.

(b) Generally, to exercise such powers as are incidental to the powers conferred by this article or as may be usual, in the determination of the commissioner, in connection with the transaction of the business of banking or other financial operations in the countries, colonies, dependencies, or possessions in which it shall transact business and not inconsistent with the power specifically granted herein. Nothing contained in this article shall be construed to prohibit the commissioner, under his or her power to prescribe rules and regulations, from limiting the aggregate amount

of liabilities of any or all classes incurred by the corporation and outstanding at any one time.

(c) To establish and maintain for the transaction of its business branches or agencies in foreign countries, their dependencies or colonies, and in any state of the United States, and in the dependencies or insular possessions of the United States, at such places as may be approved by the commissioner and under such rules and regulations as he or she may prescribe, including any state of the United States, or countries or dependencies not specified in the original organization certificate.

(d) With the consent of the commissioner to purchase and hold stock or other certificates of ownership in any other corporation organized under the laws of this state for the purpose of transacting business pursuant to this article, or under the laws of the United States, or under the laws of any foreign country or a colony of dependency thereof, or under the laws of any state, dependency or insular possession of the United States but not engaged in the general business of buying or selling goods, wares, merchandise, or commodities in the United States, and not transacting any business in the United States except such as in the judgment of the commissioner may be incidental to its international or foreign business.

SEC. 411. Section 3505 of the Financial Code is amended to read:

3505. Except with the approval of the commissioner, no corporation shall invest in any one corporation an amount in excess of 10 per centum of its own shareholders' equity, except in a corporation engaged in the business of banking, when 15 per centum of its shareholders' equity may be so invested.

SEC. 412. Section 3507 of the Financial Code is amended to read:

3507. Nothing contained in this article shall prevent corporations from purchasing and holding stock in any corporation where such purchase shall be necessary to prevent a loss upon a debt previously contracted in good faith; and stock so purchased or acquired in corporations shall within six months from such purchase be sold or disposed of at public or private sale unless the time to so dispose of same is extended by the commissioner as provided by Section 762.

SEC. 413. Section 3508 of the Financial Code is amended to read:

3508. No corporation shall carry on any part of its business in the United States except such as, in the judgment of the commissioner, shall be incidental to its international or foreign business. Except such as is incidental and preliminary to its organization no corporation shall exercise any of the powers conferred by this article until it has been duly authorized by the commissioner to commence business under the provisions of this article.

SEC. 414. Section 3514 of the Financial Code is amended to read:

3514. (a) In this section, "foreign bank" means any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin

Islands, which engages in the business of banking, or any subsidiary or affiliate, organized under such laws, of any such company. "Foreign bank" includes, without limitation, foreign commercial banks, foreign merchant banks, and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized or operating.

(b) Except as otherwise provided in subdivision (c), a majority of the shares of the capital stock of any corporation shall at all times be held and owned by citizens of the United States, by corporations the controlling interest in which is owned by citizens of the United States, chartered under the laws of the United States or of a state of the United States, or by firms or companies, the controlling interest in which is owned by citizens of the United States.

(c) Notwithstanding the provisions of subdivision (b), one or more foreign banks, institutions organized under the laws of foreign countries which own or control foreign banks, or banks organized under the laws of the United States, the states of the United States, or the District of Columbia, the controlling interests in which are owned by any such foreign banks or institutions, may, with the approval of the commissioner and upon such terms and conditions and subject to such rules and regulations as the commissioner may prescribe, own and hold 50 percent or more of the shares of the capital stock of any corporation.

SEC. 415. Section 3515 of the Financial Code is amended to read:

3515. Whenever it shall appear to the commissioner that any corporation has violated the provisions of its articles of incorporation or any law of this state, or is conducting its business in an unsafe or unauthorized manner, or if the contributed capital of any such corporation is impaired, or if the corporation shall refuse to submit its books, papers and concerns to the inspection of any examiner of the department or if any officer thereof shall refuse to be examined upon oath touching the concerns of the corporation or if the corporation shall suspend payment of its obligations, or if from any examination or report provided for by this article the commissioner shall have reason to conclude that the corporation is in an unsound or unsafe condition to transact the business for which it is organized, or that it is unsafe and inexpedient for it to continue business, or if any corporation shall neglect or refuse to observe any order of the commissioner specified in Section 662, 1912, or 1913, the commissioner may forthwith take possession of the property and business of such corporation and retain such possession until such corporation shall resume business, or its affairs be finally liquidated as provided by this code for the liquidation of banks.

SEC. 416. Section 3520 of the Financial Code is amended to read:

3520. Every corporation shall conform its methods of keeping its books and records to such orders in respect thereto as have been made and promulgated by the commissioner. Any corporation that

refuses or neglects to obey such order shall be subject to a penalty of one hundred dollars ($100) for each day it so refuses or neglects.

SEC. 417. Section 3521 of the Financial Code is amended to read:

3521. Each official communication directed by the commissioner to a corporation or to any officer thereof, relating to an examination or investigation conducted by the department or containing suggestions or recommendations as to the conduct of the business of such corporation, shall be submitted, by the officer receiving it, to the board at the next meeting of such board, and duly noted in the minutes of the meetings of such board.

SEC. 418. Section 3522 of the Financial Code is amended to read:

3522. On or before the first day of February in each year, each corporation and every foreign corporation licensed by the commissioner to transact the business of such a corporation in this state, shall make a written report to the commissioner which shall contain a statement of its condition on the morning of the first day of January in that year and shall be in the form and contain the matters prescribed by the commissioner. The commissioner may, however, in his or her discretion, accept from a corporation, which has branches in a foreign country or countries, a report containing a statement of its condition as of a date not later than the first day of January and not earlier than the first day of November in the preceding year. Every report shall be verified by the oaths of the two principal officers in charge of the affairs of the corporation or foreign corporation at the time of the verification, which shall state that the report is true and correct in all respects to the best of the knowledge and belief of the persons verifying it, and that the usual business of the corporation or foreign corporation has been transacted at the location required by this article and not elsewhere.

SEC. 419. Section 3523 of the Financial Code is amended to read:

3523. Every corporation and foreign corporation shall also make such other special reports to the commissioner as he or she may from time to time require, which shall be in such form and filed at such date as may be prescribed by the commissioner and shall, if required by the commissioner, be verified in such manner as he or she may prescribe.

SEC. 420. Section 3524 of the Financial Code is amended to read:

3524. If any corporation or foreign corporation shall fail to make any report required by this article on or before the day designated for the making thereof, or shall fail to include therein any matter required by the commissioner, it shall forfeit to the people of the state the sum of one hundred dollars ($100) for every day that such report shall be delayed or withheld, and for every day that it shall fail to report any such omitted matter, unless the time therefor shall have been extended by the commissioner.

SEC. 421. Section 3526 of the Financial Code is amended to read:

3526. Every corporation shall keep at its main office, or if its main office is to be located outside of this state, at its branch or other office

in this state, books containing the names of all stockholders thereof, and the names and addresses of the members of its board of directors, together with copies of all reports made by it to the commissioner.

SEC. 422. Section 3527 of the Financial Code is amended to read:

3527. Every corporation shall make reports to the commissioner at such times and in such form as the commissioner may require and is subject to examination by examiners appointed by the commissioner, to the extent and whenever and as often as the commissioner shall deem it advisable, but in no case less than once every two calendar years. The cost of such examinations shall be fixed by the commissioner and be paid by the corporation examined.

SEC. 423. Section 3531 of the Financial Code is amended to read:

3531. Every officer, director, clerk, employee, or agent of any corporation who embezzles, abstracts, or willfully misapplies any of the moneys, funds, credits, securities, evidence of indebtedness or assets of any character of such corporation, or who, without authority from the directors, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, debenture, draft, bill of exchange, mortgage, judgment, or decree, or who makes any false entry in any book, report, or statement of such corporation with intent, in either case, to injure or defraud such corporation or any other company, body politic or corporate, or any individual person, or to deceive any officer of such corporation, the commissioner, or any agent or examiner appointed to examine the affairs of any such corporation; and every receiver of any corporation and every clerk or employee of such receiver who shall embezzle, abstract, or willfully misapply or wrongfully convert to his or her own use any moneys, funds, credits, or assets of any character which may come into his or her possession or under his or her control in the execution of his or her trust or the performance of the duties of his or her employment; and every such receiver or clerk or employee of such receiver who shall, with intent to injure or defraud any person, body politic or corporate, or to deceive or mislead the commissioner or any agent or examiner appointed to examine the affairs of such receiver, shall make any false entry in any book, report, or record of any matter connected with the duties of such receiver; and every person who with like intent aids or abets any officer, director, clerk, employee, or agent of any corporation, or receiver or clerk or employee of such receiver as aforesaid in any violation of this article shall upon conviction thereof be imprisoned for two, three, or four years, and may also be fined not more than five thousand dollars ($5,000), in the discretion of the court.

SEC. 424. Section 3534 of the Financial Code is amended to read:

3534. Every foreign corporation before being licensed by the commissioner to transact in this state the business of a corporation, or any part thereof, shall subscribe and acknowledge and submit to

the commissioner at his or her office, an application certificate in duplicate, which shall specifically state:

(a) The name of such foreign corporation.

(b) The place where its business is to be transacted in this state.

(c) The amount of its capital stock actually paid in cash and the amount subscribed for and unpaid.

(d) A complete and detailed statement of its financial condition as of a date within 60 days prior to the date of such application certificate.

SEC. 425. Section 3535 of the Financial Code is amended to read:

3535. At the time the application certificate is first submitted to the commissioner, such corporation shall also submit a duly authenticated copy of its charter, or articles, and its bylaws.

SEC. 426. Section 3536 of the Financial Code is amended to read:

3536. No foreign corporation shall transact in this state the business defined in this article or any part thereof, unless such corporation shall have:

(a) Been authorized by its charter to carry on such business and shall have complied with the laws of the state or country under which it is incorporated.

(b) Made the deposit with the State Treasurer required by this article.

(c) Designated the commissioner, by an instrument in writing duly executed, its true and lawful attorney upon whom all process in any action or proceeding by any resident of this state against it may be served with the same effect as if it were a domestic corporation and had been lawfully served with process within this state.

(d) Received a license duly issued to it by the commissioner.

SEC. 427. Section 3537 of the Financial Code is amended to read:

3537. When the commissioner shall have issued a license to any foreign corporation, it may engage in the business of a corporation of the kind authorized by this article at the location specified in the license.

SEC. 428. Section 3538 of the Financial Code is amended to read:

3538. Every foreign corporation, before receiving a license to transact business in this state, shall deposit with the State Treasurer of the State of California upon authorization of the commissioner, in trust as security for the depositors with and creditors of such corporation in this state, lawful money of the United States or securities of the kind and character described in Article 3 (commencing at Section 1540) of Chapter 12 of this division, of the value of one hundred thousand dollars ($100,000). Such foreign corporation so long as it shall continue solvent and comply with the laws of this state, may be permitted by the commissioner to collect the interest on the securities so deposited and from time to time to exchange such securities for others, and examine and compare such securities, as provided by said article.

SEC. 429. Section 3540 of the Financial Code is amended to read:

3540. Every foreign corporation, duly licensed by the commissioner to transact in this state the business defined and authorized in this article, or any part thereof, shall within 30 days after the date of such license, submit to the commissioner a statement verified by two of its principal officers, which shall contain the full name and business address of every individual, partnership or unincorporated association, who is acting or whom it proposes to have act as its agent or representative in this state. Whenever any such corporation shall engage any person to act for it in this state and the name and address of such person is not contained in such verified statement submitted to the commissioner, such foreign corporation shall forthwith submit to the commissioner an amended statement verified in the same manner as the original. A violation of this provision shall subject such foreign corporation to a forfeiture of one thousand dollars ($1,000) for each offense.

SEC. 430. Section 3541 of the Financial Code is amended to read:

3541. Whenever the commissioner shall have revoked the license of any such foreign corporation and shall have taken the action to make such revocation effective, all the rights and privileges of the foreign corporation to transact business in this state shall forthwith cease and determine.

SEC. 431. Section 3543 of the Financial Code is amended to read:

3543. An international or foreign banking or financing corporation organized under the laws of the United States may convert into a state international or foreign banking or financing corporation with the approval of the commissioner which he or she shall not grant unless he or she is satisfied that such international or foreign banking or financing corporation organized under the laws of the United States meets all of the requirements set forth in this article for the establishment of a state international or foreign banking or financing corporation.

SEC. 432. Section 3546 of the Financial Code is amended to read:

3546. Whenever a state international or foreign banking or financing corporation survives the merger of one or more international or foreign banking or financing corporations and the agreement for merger has been filed with the Secretary of State with the approval of the commissioner endorsed thereon, a copy thereof, certified by the Secretary of State, shall immediately be filed with the commissioner and upon, but not until, such filing the merger shall be and become effective for all purposes.

SEC. 433. Section 3560 of the Financial Code is amended to read:

3560. Any bank may, with the consent of the commissioner, upon such conditions and under such regulations as he or she may prescribe, invest in the stock of one or more corporations organized under the laws of the United States for the purpose of engaging in international or foreign banking or other international or foreign financial operations, or in banking or other financial operations in a dependency or insular possession of the United States, either directly

or through the agency, ownership or control of local institutions in foreign countries, or in such dependencies or insular possessions and to act when required by the Secretary of the Treasury of the United States as fiscal agents of the United States; provided, however, that the aggregate amount of stock held in all corporations engaged in business of the kind described in this chapter, together with such bank's investment in foreign branches established under the provisions of Article 2 (commencing at Section 530) of Chapter 4, shall not exceed 10 per centum of the subscribing bank's shareholders' equity.

SEC. 433.1. Section 3560 of the Financial Code is amended to read:

3560. Any bank may, with the consent of the commissioner, upon such conditions and under such regulations as the commissioner may prescribe, invest in the stock of one or more corporations organized under the laws of the United States for the purpose of engaging in international or foreign banking or other international or foreign financial operations, or in banking or other financial operations in a dependency or insular possession of the United States, either directly or through the agency, ownership or control of local institutions in foreign countries, or in dependencies or insular possessions of the United States and to act when required by the Secretary of the Treasury of the United States as fiscal agents of the United States; provided, however, that the aggregate amount of stock held in all corporations engaged in business of the kind described in this chapter shall not exceed 10 per centum of the subscribing bank's shareholders' equity.

SEC. 434. Section 3561 of the Financial Code is amended to read:

3561. Every bank investing in the capital stock of any corporation described in Section 3560 shall be required to furnish information concerning the condition of such corporation to the commissioner upon demand, and the commissioner may order special examinations of said corporation at such time or times as he or she may deem appropriate. The cost of such special examinations shall be paid by said corporation.

SEC. 435. Section 3562 of the Financial Code is amended to read:

3562. Before any bank shall be permitted to purchase stock in any corporation described in Section 3560 the said corporation shall enter into an agreement or undertaking with the commissioner to restrict its operations or conduct of its business in such manner or under such limitations and restrictions as the said commissioner may prescribe for the place or places wherein such business is to be conducted. If at any time the commissioner shall ascertain that the regulations prescribed by him or her are not being complied with, said commissioner is hereby authorized and shall have power to institute an investigation of the matter and to send for persons and papers, subpoena witnesses and administer oaths in order to satisfy himself or herself as to the actual nature of the transactions referred to.

Should such investigation result in establishing the failure of the corporation in question, or any bank which may be a stockholder therein, to comply with the regulations laid down by the said commissioner, said bank may be required to dispose of its stockholding in the said corporation upon reasonable notice.

SEC. 436. Section 3570 of the Financial Code is amended to read:

3570. Any bank may, with the consent of the commissioner, upon such conditions and under such regulations as the commissioner may prescribe, invest in the stock of one or more corporations organized under the laws of any state of the United States (other than a corporation organized under the laws of this state for the purposes of transacting business under the provisions of Article 1 (commencing with Section 3500) of this chapter) and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States either directly or through the agency, ownership, or control of local institutions in foreign countries, or in such dependencies or insular possessions; provided, however, that said stock at the time of the acquisition would constitute a permissible investment for a national bank; and provided, further, that the aggregate amount of stock held in all corporations engaged in business of the kind described in this chapter, together with such bank's investment in foreign branches established under the provisions of Article 2 (commencing with Section 530) of Chapter 4, shall not exceed 10 percent of the subscribing bank's shareholders' equity. Nothing in this section shall be construed in any way to limit the powers conferred by Section 3513.

SEC. 436.1. Section 3570 of the Financial Code is amended to read:

3570. Any bank may, with the consent of the commissioner, upon such conditions and under such regulations as the commissioner may prescribe, invest in the stock of one or more corporations organized under the laws of any state of the United States (other than a corporation organized under the laws of this state for the purposes of transacting business under the provisions of Article 1 (commencing with Section 3500) of this chapter) and principally engaged in international or foreign banking, or banking in a dependency or insular possession of the United States either directly or through the agency, ownership, or control of local institutions in foreign countries, or in dependencies or insular possessions of the United States; provided, however, that the stock at the time of the acquisition would constitute a permissible investment for a national bank; and provided, further, that the aggregate amount of stock held in all corporations engaged in business of the kind described in this chapter shall not exceed 10 percent of the subscribing bank's shareholders' equity. Nothing in this section shall be construed in any way to limit the powers conferred by Section 3513.

SEC. 437. Section 3580 of the Financial Code is amended to read:

3580. Any bank may, with the consent of the commissioner, upon such conditions and under such regulations as the commissioner may prescribe, acquire and hold, directly or indirectly, the stock or other evidences of ownership in one or more banks organized under the laws of a foreign country or a dependency or insular possession of the United States and not engaged, directly or indirectly, in any activity in the United States except as, in the judgment of the commissioner, shall be incidental to the international or foreign business of such bank. An application for such consent shall be in such form and contain such information as the commissioner may require, and be accompanied by a fee of five hundred dollars ($500). The aggregate amount invested by any bank in such stock or other evidences of ownership shall not in any way be subject to, or included in, the limitations prescribed in Sections 535, 3513, 3560, and 3570, but such aggregate amount invested directly or indirectly (other than through a corporation organized under the laws of this state for the purpose of transacting business under Article 1 (commencing with Section 3500) or operating under Article 2 (commencing with Section 3560) or Article 3 (commencing with Section 3570) in the stock or other evidences of ownership of all foreign banks, taken together with investments by the subscribing bank in the shares of corporations organized under the laws of this state for the purpose of transacting business under Article 1 (commencing with Section 3500) or operating under Article 2 (commencing with Section 3560) or Article 3 (commencing with Section 3570) and in foreign branches established under the provisions of Article 2 (commencing with Section 530) of Chapter 4, shall not at any one time exceed 25 percent of the subscribing bank's shareholders' equity.

SEC. 437.1. Section 3580 of the Financial Code is amended to read:

3580. Any bank may, with the consent of the commissioner, upon such conditions and under such regulations as the commissioner may prescribe, acquire and hold, directly or indirectly, the stock or other evidences of ownership in one or more banks organized under the laws of a foreign country or a dependency or insular possession of the United States and not engaged, directly or indirectly, in any activity in the United States except as, in the judgment of the commissioner, shall be incidental to the international or foreign business of the bank. An application for consent shall be in such form and contain such information as the commissioner may require, and be accompanied by a fee of five hundred dollars ($500). The aggregate amount invested by any bank in the stock or other evidences of ownership shall not in any way be subject to, or included in, the limitations prescribed in Sections 3513, 3560, and 3570, but the aggregate amount invested directly or indirectly (other than through a corporation organized under the laws of this state for the purpose of transacting business under Article 1 (commencing with Section 3500) or operating under Article 2 (commencing with Section 3560) or Article

3 (commencing with Section 3570) in the stock or other evidences of ownership of all foreign banks, taken together with investments by the subscribing bank in the shares of corporations organized under the laws of this state for the purpose of transacting business under Article 1 (commencing with Section 3500) or operating under Article 2 (commencing with Section 3560) or Article 3 (commencing with Section 3570), shall not at any one time exceed 25 percent of the subscribing bank's shareholders' equity.

SEC. 438. Section 3602 of the Financial Code is amended to read:

3602. Whenever the commissioner determines that an extraordinary situation exists anywhere in this state the commissioner may, by proclamation, authorize banks located in the affected area or areas to close any or all of their offices. The office or offices so closed shall remain closed until the commissioner proclaims that the extraordinary situation has ended or until such earlier time as the officers of the bank determine that one or more closed offices should reopen and in either event for such further time thereafter as may reasonably be required to reopen.

SEC. 439. Section 3603 of the Financial Code is amended to read:

3603. (a) Whenever the officers of a bank are of the opinion that an extraordinary situation exists which affects or may affect one or more of a bank's offices, they shall have the authority in the reasonable and proper exercise of their discretion to determine not to open such offices on any business or banking day, or, if such offices have opened to close one or more of them during the continuation of such extraordinary situation even if the commissioner has not issued and does not issue a proclamation of extraordinary situation. The office or offices so closed shall remain closed until such time as the officers determine with respect to each such office that the extraordinary situation has ended and for such further time thereafter as may reasonably be required to be reopened; however, in no case shall such office or offices remain closed for more than 48 consecutive hours excluding other legal holidays without requesting the approval of the commissioner nor, in case such request is denied by the commissioner, for more than 24 consecutive hours excluding other legal holidays after such denial.

(b) The officers of a bank may close one or more of the bank's offices on any day or days designated for mourning, rejoicing, or other special observance by proclamation of the Governor or the President of the United States.

SEC. 440. Section 3604 of the Financial Code is amended to read:

3604. A bank closing an office or offices pursuant to the authority granted under subdivision (a) of Section 3603 shall give prompt notice of its action to the commissioner, by any means available.

SEC. 441. Section 3700 of the Financial Code is amended to read:

3700. "Bank holding company" means:

(a) Any person or company which:

(1) Directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding stock of any domestic bank, or 10 percent or more of the outstanding stock of any domestic bank together with 10 percent or more of the shares or proxy of shares of any national bank located in California;

(2) Controls in any manner whether by the holding of proxy, or otherwise, the election of a majority of the directors of any domestic bank, or of both any domestic bank and any national bank located in California; or

(3) The commissioner determines, after reasonable notice and opportunity for hearing, directly or indirectly exercises, or has power to exercise, a controlling influence over the management and policies of any domestic bank, or of both any domestic bank and any national bank located in California.

(b) Any company which controls in any manner any company which is or becomes a bank holding company by virtue of this chapter.

(c) Bank holding company does not include a title insurance company authorized to transact a trust business under the provisions of Article 4 (commencing with Section 12390) of Chapter 1, Part 6, of Division 2 of the Insurance Code, or a trust company controlled by or under common control with a title insurance company.

SEC. 441.1. Section 3700 of the Financial Code is amended to read:

3700. "Bank holding company" means:

(a) Any person or company which:

(1) Directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding stock of any domestic bank, or 10 percent or more of the outstanding stock of any domestic bank together with 10 percent or more of the shares or proxy of shares of any national bank located in California.

(2) Controls in any manner whether by the holding of proxy, or otherwise, the election of a majority of the directors of any domestic bank, or of both any domestic bank and any national bank located in California.

(3) The commissioner determines, after reasonable notice and opportunity for hearing, directly or indirectly exercises, or has power to exercise, a controlling influence over the management and policies of any domestic bank, or of both any domestic bank and any national bank located in California.

(b) Any company which controls in any manner any company which is or becomes a bank holding company by virtue of this chapter.

(c) Bank holding company does not include a trust company controlled by or under common control with a title insurance company.

SEC. 442. Section 3703 of the Financial Code is amended to read:

3703. The commissioner may from time to time require, under oath or otherwise, reports from any bank holding company and its subsidiaries in such form and as to such matters as the commissioner may deem necessary and appropriate, and which are relevant to the jurisdiction and responsibilities of the commissioner under this division.

SEC. 443. Section 3704 of the Financial Code is amended to read:

3704. Each bank holding company and its subsidiaries shall be subject to examination by the commissioner. The commissioner may use, for this purpose, his or her own examiners or independent public accountants who are disinterested persons. In lieu of making an examination, the commissioner may accept the examination of any holding company made by any federal agency, any other agency of this state, or any agency of any other state of the United States and may examine any such holding company in conjunction with these agencies. If the commissioner examines a bank holding company or any of its subsidiaries, other than a domestic bank, using the commissioner's own examiners, the bank holding company shall pay, within 10 days after receipt of a statement from the commissioner, a fee of two hundred dollars ($200) per day for each examiner engaged in the examination plus, in the event it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner. If the commissioner examines a bank holding company or any of its subsidiaries, other than a domestic bank, using independent public accountants, the bank holding company shall pay, within 10 days after receipt of a statement from the commissioner, the fee of the independent public accountants.

SEC. 444. Section 3705 of the Financial Code is amended to read:

3705. With respect to a title insurance company authorized to transact a trust business under the provisions of Article 4 (commencing with Section 12390) of Chapter 1, Part 6, of Division 2 of the Insurance Code or a trust company controlled by or under common control with a title insurance company, the commissioner in cooperation with the Insurance Commissioner shall adopt reasonable rules and regulations for the conduct of the inspection and examination authorized by Sections 3702 and 3704. Any such examination or inspection shall be conducted pursuant to the provisions of Article 4.7 (commencing with Section 1215) of Chapter 2, Part 2, of Division 1 of the Insurance Code.

SEC. 444.1. Section 3705 of the Financial Code is amended to read:

3705. With respect to a trust company controlled by or under common control with a title insurance company, the commissioner in cooperation with the Insurance Commissioner shall adopt reasonable rules and regulations for the conduct of the inspection and examination authorized by Sections 3702 and 3704. Any such examination or inspection shall be conducted pursuant to the

provisions of Article 4.7 (commencing with Section 1215) of Chapter 2, Part 2, of Division 1 of the Insurance Code.

SEC. 445. Section 3706 of the Financial Code is amended to read:

3706. Nothing in this chapter shall be construed to authorize the commissioner to require reports from a national bank or to examine a national bank contrary to federal law.

SEC. 446. Section 3750 of the Financial Code is amended to read:

3750. This chapter does not apply to any of the following transactions:

(a) An acquisition of control of a California state bank that requires the approval of the commissioner under Article 7 (commencing with Section 700) of Chapter 5.

(b) A sale or merger that requires the approval of the commissioner under Division 1.5 (commencing with Section 4800).

SEC. 447. Section 3751 of the Financial Code is amended to read:

3751. Each application filed with the commissioner for an approval under this chapter shall be in the form, shall contain the information, shall be signed in the manner, and shall, if the commissioner requires by regulation or order, be verified in the manner that the commissioner may by regulation or order require.

SEC. 448. Section 3752 of the Financial Code is amended to read:

3752. The fee for filing with the commissioner an application for an approval under this chapter is two thousand five hundred dollars ($2,500).

SEC. 449. Section 3753 of the Financial Code is amended to read:

3753. (a) The definitions that are set forth in or are applicable to Section 3(d) of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1842(d)) apply to this section.

(b) The commissioner may approve an acquisition by a bank holding company that is subject to Section 3(d)(2)(B) and (D)(ii) of the Bank Holding Company Act of 1956 (12 U.S.C. Sec. 1842(d)(2)(B) and (D)(ii)) if the commissioner finds that the acquisition is consistent with the public convenience and advantage in this state.

SEC. 450. Section 3754 of the Financial Code is amended to read:

3754. (a) The definitions that are set forth in or are applicable to Section 44 of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1831u) apply to this section.

(b) This section does not apply if each bank involved in an interstate merger transaction (including each insured depository institution that is an affiliate of the surviving, resulting, or purchasing bank) that is organized under the laws of this state, that is organized under federal law and maintains its main or head office in this state, or that maintains a branch office in this state, is an industrial loan company (as defined in Section 4805.10).

(c) The commissioner may approve an interstate merger transaction that is subject to Section 44(b)(2)(B) and (D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1831u(b)(2)(B) and

(D)(ii)) if the commissioner finds that the transaction is consistent with the public convenience and advantage in this state.

SEC. 450.1. Section 3754 of the Financial Code is amended to read:

3754. (a) The definitions that are set forth in or are applicable to Section 44 of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1831u) apply to this section.

(b) This section does not apply if each bank involved in an interstate merger transaction (including each insured depository institution that is an affiliate of the surviving, resulting, or purchasing bank) that is organized under the laws of this state or that maintains a branch office in this state, is an industrial loan company (as defined in Section 4805.10).

(c) The commissioner may approve an interstate merger transaction that is subject to Section 44(b)(2)(B) and (D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1831u(b)(2)(B) and (D)(ii)) if the commissioner finds that the transaction is consistent with the public convenience and advantage in this state.

SEC. 451. Section 3800 of the Financial Code is amended to read:

3800. In this chapter, unless the context otherwise requires:

(a) "Branch business unit" has the meaning set forth in subdivision (a) of Section 4840.

(b) "Core banking business" means the business of receiving deposits, paying checks, making loans, and other activities that the commissioner may specify by order or regulation. "Core banking business," when used to describe the trust business, includes receiving fiduciary assets and administering fiduciary accounts.

(c) "Facility," when used with respect to a foreign (other state) bank, means an office in this state at which the bank engages in noncore banking business but at which it does not engage in core banking business.

(d) "California industrial loan company" means a corporation of the type described in Section 18003 organized under the laws of this state.

(e) "Noncore banking business" means all activities permissible for commercial banks or trust companies, except core banking business, and except those activities prohibited by law or determined by the commissioner by regulation or order not to be noncore banking business.

(f) "Whole business unit" has the meaning set forth in subdivision (g) of Section 4840.

SEC. 452. Section 3801 of the Financial Code is amended to read:

3801. Each application filed with the commissioner under this chapter or under any regulation or order issued under this chapter shall be in the form, shall contain the information, shall be signed in the manner, and shall (if the commissioner requires by regulation or order) be verified in the manner that the commissioner may by regulation or order require.

SEC. 453. Section 3802 of the Financial Code is amended to read:

3802. (a) Each foreign (other state) bank that maintains a facility or a California branch office shall file with the commissioner such reports as and when the commissioner may by regulation or order require.

(b) Each report filed with the commissioner under this chapter or under any regulation or order issued under this chapter shall be in the form, shall contain the information, shall be signed in the manner, and shall (if the commissioner requires by regulation or order) be verified in the manner that the commissioner may by regulation or order require.

SEC. 454. Section 3803 of the Financial Code is amended to read:

3803. Each foreign (other state) bank that maintains a facility (other than a foreign (other state) national bank that maintains a California branch office) and each foreign (other state) state bank that maintains a California branch office shall make, keep, and preserve at the facility or branch office or at another place that the commissioner may by regulation or order approve, the books, accounts, and other records relating to the business of the office, in the form, in the manner, and for the time that the commissioner may by regulation or order provide.

SEC. 455. Section 3804 of the Financial Code is amended to read:

3804. Fees shall be paid to and collected by the commissioner as follows:

(a) The fee for filing with the commissioner an application by an uninsured foreign (other state) bank for approval to establish a facility is two hundred fifty dollars ($250).

(b) The fee for filing with the commissioner an application by an uninsured foreign (other state) bank that is licensed pursuant to Article 4 (commencing with Section 3860) to maintain a facility for approval to relocate or to close the facility is one hundred dollars ($100).

(c) The fee for issuing a license pursuant to Article 4 (commencing with Section 3860) is twenty-five dollars ($25).

(d) Each foreign (other state) state bank that on June 1 of any year maintains one or more California branch offices shall pay, on or before the following July 1, a fee of one thousand dollars ($1,000) per California branch office; provided, however, that the minimum fee paid by a foreign (other state) state bank under this subdivision shall be not less than three thousand dollars ($3,000) and the maximum fee shall be not more than fifty thousand dollars ($50,000).

(e) Each foreign (other state) bank that on June 1 of any year maintains a facility but no California branch office shall pay, on or before the following July 1, a fee of two hundred fifty dollars ($250) for each facility.

(f) If the commissioner makes an examination in connection with a pending application, as described in subdivision (a) or (b), the applicant shall pay a fee for the examination of two hundred dollars

($200) per day for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(g) If the commissioner makes an examination of a foreign (other state) state bank that maintains a California branch office, the bank shall pay a fee for the examination of fifty dollars ($50) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(h) If the commissioner makes an examination of a facility of an uninsured foreign (other state) bank licensed under Article 4 (commencing with Section 3860), the bank shall pay a fee for the examination of fifty dollars ($50) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(i) If the commissioner makes an examination of a facility of an insured foreign (other state) bank that does not maintain a California branch office, the bank shall pay a fee for the examination of fifty dollars ($50) per hour for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

SEC. 456. Section 3826 of the Financial Code is amended to read:

3826. The minimum age requirement set forth in Section 3825 does not apply in any case in which the factor set forth in subdivision (a) and any of the factors set forth in subdivision (b) apply.

(a) The foreign (other state) bank, by itself or in concurrent transactions with other depository corporations (as defined in Section 4805.06), acquires the whole business unit of the California bank or California industrial loan company or, if the California bank or California industrial loan company has been closed or placed in conservatorship, all or substantially all of the insured deposits of the California bank or California industrial loan company.

(b) (1) If the California bank is a national bank, one of the following:

(A) The bank is in default or in danger of default, as defined in Section 3(x) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(x)).

(B) The purchase or merger is one with respect to which the Federal Deposit Insurance Corporation provides assistance under Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1823(c)).

(2) If the California bank is a state bank, one of the following:

(A) The commissioner has taken possession of the property and business of the bank pursuant to Section 3100.

(B) The purchase or merger is one with respect to which the Federal Deposit Insurance Corporation provides assistance under Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1823(c)).

(C) The commissioner finds that one or more of the factors listed in Section 3100 exists and that imposing the minimum age requirement of Section 3825 is not in the public interest.

(3) In the case of a California industrial loan company, one of the following:

(A) The commissioner has taken possession of the property and business of the industrial loan company pursuant to Section 18415.

(B) The purchase or merger is one with respect to which the Federal Deposit Insurance Corporation provides assistance under Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1823(c)).

(C) The commissioner finds that one or more of the factors listed in Section 18415 exists and that imposing the minimum age requirement of Section 3825 is not in the public interest.

SEC. 457. Section 3842 of the Financial Code is amended to read:

3842. Not less than 30 days before an insured foreign (other state) bank establishes a facility, it shall file with the commissioner a report and the appointment called for in Section 3843.

SEC. 458. Section 3843 of the Financial Code is amended to read:

3843. (a) Not less than 30 days before establishing a facility, an insured foreign (other state) bank shall file with the commissioner, in the form that the commissioner may by regulation or order require, an appointment irrevocably appointing the commissioner and the commissioner's successor from time to time in office to be the bank's attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the bank or any of its successors that arises out of the activities in this state of the facility after the appointment has been filed, with the same force and validity as if served personally on the bank or its successors, as the case may be.

(b) Any insured foreign (other state) bank that maintains a facility and that has not filed with the commissioner an appointment pursuant to subdivision (a) is deemed by the maintenance of the facility to have appointed the commissioner as its attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against the bank or any of its successors that arises out of the activities in this state of the facility, with the same force and validity as if served personally on the bank or its successor, as the case may be.

(c) Service may be made on an uninsured foreign (other state) bank that has appointed or is deemed to have appointed the commissioner as its attorney for service of process by leaving a copy

of the process at any office of the commissioner. However, the service is not effective unless (1) the party making the service, who may be the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the bank served at the last address on file with the commissioner for any of the bank's offices in this state or at its head office, and (2) an affidavit of compliance with this subdivision by the party making the service is filed in the case on or before the return date, if any, or within any further time that the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

SEC. 459. Section 3844 of the Financial Code is amended to read:

3844. Not less than 30 days before an insured foreign (other state) bank relocates a facility, it shall file a report with the commissioner.

SEC. 460. Section 3845 of the Financial Code is amended to read:

3845. Not less than 30 days before an insured foreign (other state) bank closes a facility, it shall file a report with the commissioner.

SEC. 461. Section 3861 of the Financial Code is amended to read:

3861. (a) In this section, "act" includes (without limitation) omission.

(b) For purposes of making findings on an application by an uninsured foreign (other state) bank for approval to establish a facility:

(1) The commissioner may, in the absence of credible evidence to the contrary, presume that the directors, executive officers, and any controlling person of the bank, the directors and executive officers of any controlling person of the bank, and the members of the proposed management of the facility are each of good character and sound financial standing.

(2) The commissioner may find that the bank, a director, executive officer, or controlling person of the bank, a director or executive officer of a controlling person of the bank, or any member of the proposed management of the facility is not of good character if the person has done any of the following:

(A) Has been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty.

(B) Has consented to or suffered a judgment in any civil action based upon conduct involving an act of fraud or dishonesty.

(C) Has consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty.

(D) Has willfully made or caused to be made in any application or report filed with the commissioner or in any proceeding before the commissioner any statement that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has willfully omitted to state in any such application or report any material fact that was required to be stated in the application or report.

(E) Has willfully committed any violation of, or has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of this division or of any regulation or order issued under this division.

(c) Paragraph (2) of subdivision (b) is not an exclusive list of the grounds upon which the commissioner may find, for purposes of making findings on an application by an uninsured foreign (other state) bank for approval to establish a facility, that the bank, a director, executive officer, or controlling person of the bank, a director or executive officer of a controlling person of the bank, or any member of the proposed management of the facility is not of good character.

SEC. 462. Section 3863 of the Financial Code is amended to read:

3863. (a) No uninsured foreign (other state) bank may establish or maintain a facility unless the commissioner has first approved the establishment of the office and issued a license authorizing the bank to maintain the office.

(b) If the commissioner finds all the following with respect to an application by an uninsured foreign (other state) bank for approval to establish a facility, the commissioner shall approve the application:

(1) The bank, any controlling person of the bank, the directors and executive officers of the bank or of any controlling person of the bank, and the proposed management of the office are each of good character and sound financial standing.

(2) The financial history and condition of the bank are satisfactory.

(3) The management of the bank and the proposed management of the office are adequate.

(4) It is reasonable to believe that, if licensed to maintain the office, the bank will operate the office in compliance with all applicable laws, regulations, and orders.

(5) The bank's establishment and maintenance of the office will promote the public convenience and advantage.

(6) The activities in which the bank proposes to engage at the office are noncore banking business and do not constitute core banking business.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by an uninsured foreign (other state) bank for approval to establish a facility has been approved and all conditions precedent to the issuance of a license authorizing the bank to maintain the office have been fulfilled, the commissioner shall issue the license.

SEC. 463. Section 3864 of the Financial Code is amended to read:

3864. (a) No uninsured foreign (other state) bank that is licensed to maintain a facility may relocate the office unless the commissioner has first approved the relocation and issued a license authorizing the bank to maintain the office at the new site.

(b) If the commissioner finds the following with respect to an application by an uninsured foreign (other state) bank for approval to relocate a facility, the commissioner shall approve the application:

(1) In case the new site of the office is in the same vicinity as the old site, that the relocation of the office will not be substantially detrimental to the public convenience.

(2) In case the new site of the office is not in the same vicinity as the old site, both of the following:

(A) The relocation of the office from the old site will not be substantially detrimental to the public convenience and advantage in the area that is primarily served by the office at the old site.

(B) The relocation of the office to the new site will promote the public convenience and advantage.

If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by an uninsured foreign (other state) bank for approval to relocate a facility has been approved and all conditions precedent to the issuance of a license authorizing the bank to maintain the office at the new site have been fulfilled, the commissioner shall issue the license.

(d) Promptly after an uninsured foreign (other state) bank that is licensed to maintain a facility relocates the office, the bank shall surrender to the commissioner the license that authorized it to maintain the office at the old site.

SEC. 464. Section 3865 of the Financial Code is amended to read:

3865. An uninsured foreign (other state) bank that is licensed to maintain a facility may, subject to any regulations that the commissioner may prescribe, engage in any noncore banking business at the office but may not solicit deposits, receive deposits, pay checks, make loans, or otherwise conduct core banking business at the office.

SEC. 465. Section 3866 of the Financial Code is amended to read:

3866. (a) (1) No uninsured foreign (other state) bank that is licensed to maintain a facility may close the office unless the commissioner has first approved the closing.

(2) Paragraph (1) does not prohibit an uninsured foreign (other state) bank that is licensed to maintain a facility from closing the office in accordance with Section 3867.

(b) If the commissioner finds, with respect to an application by an uninsured foreign (other state) bank for approval to close a facility, that the closing of the office will not be substantially detrimental to the public convenience and advantage, the commissioner shall approve the application. If the commissioner finds otherwise, the commissioner shall deny the application.

(c) Whenever an application by an uninsured foreign (other state) bank for approval to close a facility has been approved and all conditions precedent to the closing have been fulfilled, the bank may

close the office and shall promptly thereafter surrender to the commissioner the license that authorized it to maintain the office.

SEC. 466. Section 3867 of the Financial Code is amended to read:

3867. (a) Any uninsured foreign (other state) bank that holds a license to maintain a facility may voluntarily surrender the license by filing the license and a report with the commissioner. However, any uninsured foreign (other state) bank that holds licenses to maintain two or more facilities may not voluntarily surrender fewer than all of the licenses.

(b) (1) Except as provided in paragraph (2), a voluntary surrender of a license is effective on the 30th day after the license and the report called for in subdivision (a) are filed with the commissioner, or on any earlier date that the commissioner may by order specify.

(2) If a proceeding to revoke or suspend a license is pending when the license and the report called for in subdivision (a) are filed with the commissioner, or if a proceeding to revoke or suspend a license or to impose conditions upon the surrender of a license is instituted before the 30th day after the license and the report called for in subdivision (a) are filed with the commissioner, the voluntary surrender of the license is effective at the time and upon the conditions that the commissioner may by order specify.

SEC. 467. Section 3868 of the Financial Code is amended to read:

3868. (a) (1) No uninsured foreign (other state) bank may be issued a license to maintain a facility unless it has first filed with the commissioner, in the form that the commissioner may by regulation or order require, an appointment irrevocably appointing the commissioner and the commissioner's successor from time to time in office as the bank's attorney to receive service of process in any noncriminal judicial or administrative proceeding against the bank or any of its successors that arises out of the activities in this state of the facility after the appointment has been filed, with the same force and validity as if served personally on the bank or its successors, as the case may be.

(2) Any uninsured foreign (other state) bank that maintains a facility and that has not filed with the commissioner an appointment pursuant to paragraph (1) is deemed by the maintenance of the facility to have appointed the commissioner and the commissioner's successor from time to time in office as its attorney to receive service of any lawful process in a noncriminal judicial or administrative proceeding against the bank or any of its successors that arises out of the activities in this state of the facility with the same force and validity as if served personally on the bank or its successors, as the case may be.

(b) Service may be made on an uninsured foreign (other state) bank that has appointed or is deemed to have appointed the commissioner as its attorney for service of process by leaving a copy of the process at an office of the commissioner. However, the service

is not effective unless (1) the party making the service, who may be the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the bank served at the last address on file with the commissioner for any of its offices in this state or at its head office, and (2) an affidavit of compliance with this subdivision by the party making the service is filed in the case on or before the return date, if any, or within any further time that the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

SEC. 468. Section 3901 of the Financial Code is amended to read:

3901. An application for a certificate of approval of the subject name of a nonbank corporation shall be in such form, shall contain such information, shall be signed in such manner, and shall (if the commissioner so requires by regulation or order) be verified in such manner, as the commissioner may by regulation or order require.

SEC. 469. Section 3902 of the Financial Code is amended to read:

3902. The fee for filing with the commissioner an application for a certificate of approval of the subject name of a nonbank corporation shall be twenty-five dollars ($25).

SEC. 470. Section 3903 of the Financial Code is amended to read:

3903. If the commissioner finds, with respect to an application for a certificate of approval of the subject name of a nonbank corporation, that such subject name does not indicate that such nonbank corporation is engaged in the banking or trust business, the commissioner shall issue a certificate of approval of the subject name. If the commissioner finds otherwise, the commissioner shall deny the application.

SEC. 471. Section 3904 of the Financial Code is amended to read:

3904. Promptly after the articles of a nonbank corporation, with the certificate of approval of the subject name of such nonbank corporation attached thereto, are filed with the Secretary of State, such nonbank corporation shall file with the commissioner a copy of such articles certified by the Secretary of State.

SEC. 472. Section 4805.02 of the Financial Code is repealed.

SEC. 472.5. Section 4805.055 is added to the Financial Code, to read:

4805.055. "Commissioner" means the Commissioner of Financial Institutions.

SEC. 472.6. Section 4805.10 of the Financial Code is repealed.

SEC. 472.7. Section 4805.14 of the Financial Code is repealed.

SEC. 473. Section 4824 of the Financial Code is amended to read:

4824. In determining for purposes of this division whether the shareholders' equity of a California state depository corporation will be adequate:

(a) In case the corporation is, or is to convert into, a California state bank, the commissioner shall consider the factors specified in Section 660.

(b) In case the corporation is, or is to convert into, a California state savings association or a California industrial loan company, the commissioner shall consider factors equivalent to those specified in Section 660.

SEC. 474. Section 4827 of the Financial Code is amended to read:

4827. Except as expressly provided otherwise in this division:

(a) (1) No sale of a whole business unit (as defined in Section 4840) or merger in which the selling or disappearing depository corporation is a California state savings association or a California industrial loan company, in which the purchasing or surviving depository corporation is a California state bank or a California state-licensed foreign (other nation) bank, and which may be effected with the approval of the commissioner pursuant to this division is prohibited or restricted by any provision of Division 2 (commencing with Section 5000) or of Division 7 (commencing with Section 18000) or requires any approval, consent, or other authorization of the commissioner pursuant to Division 2 or Division 7.

(2) No conversion in which the converting depository corporation is a California state savings association or a California industrial loan company, in which the resulting depository corporation is a California state bank, and which may be effected with the approval of the commissioner pursuant to this division is prohibited or restricted by any provision of Division 2 (commencing with Section 5000) or of Division 7 (commencing with Section 18000) or requires any approval, consent, or other authorization of the commissioner pursuant to Division 2 or Division 7.

(b) (1) No sale of a whole business unit (as defined in Section 4840) or merger in which the selling or disappearing depository corporation is a California state bank, a California state-licensed foreign (other nation) bank, or a California industrial loan company, in which the purchasing or surviving depository corporation is a California state savings association, and which may be effected with the approval of the commissioner pursuant to this division is prohibited or restricted by any provision of Division 1 (commencing with Section 99) or of Division 7 (commencing with Section 18000) or requires any approval, consent, or other authorization of the commissioner pursuant to Division 1 or Division 7.

(2) No conversion in which the converting depository corporation is a California state bank or a California industrial loan company, in which the resulting depository corporation is a California state savings association, and which may be effected with the approval of the commissioner pursuant to this division is prohibited or restricted by any provision of Division 1 (commencing with Section 99) or of Division 7 (commencing with Section 18000) or requires any approval, consent, or other authorization of the commissioner pursuant to Division 1 or Division 7.

(c) (1) No sale of a whole business unit (as defined in Section 4840) or merger in which the selling or disappearing depository corporation is a California state bank, a California state-licensed foreign (other nation) bank, or a California state savings association, in which the purchasing or surviving depository corporation is a California industrial loan company, and which may be effected with the approval of the commissioner pursuant to this division is prohibited or restricted by any provision of Division 1 (commencing with Section 99) or of Division 2 (commencing with Section 5000) or requires any approval, consent, or other authorization of the commissioner pursuant to Division 1 or Division 2.

(2) No conversion in which the converting depository corporation is a California state bank or a California state savings association, in which the resulting depository corporation is a California industrial loan company, and which may be effected with the approval of the commissioner pursuant to this division is prohibited or restricted by any provision of Division 1 (commencing with Section 99) or of Division 2 (commencing with Section 5000) or requires any approval, consent, or other authorization of the commissioner pursuant to Division 1 or Division 2.

SEC. 474.1. Section 4827 of the Financial Code is amended to read:

4827. Except as expressly provided otherwise in this division:

(a) (1) No sale of a whole business unit (as defined in Section 4840) or merger in which the selling or disappearing depository corporation is a California state savings association or a California industrial loan company, in which the purchasing or surviving depository corporation is a California state bank or a California state-licensed foreign (other nation) bank, and which may be effected with the approval of the commissioner pursuant to this division is prohibited or restricted by any provision of Division 2 (commencing with Section 5000) or of Division 7 (commencing with Section 18000), except the provisions of Chapter 10 (commencing with Section 18660) of Division 7, or requires any approval, consent, or other authorization of the commissioner pursuant to Division 2 (commencing with Section 5000) or Division 7 (commencing with Section 18000), except as may be required under the provisions of Chapter 10 (commencing with Section 18660) of Division 7.

(2) No conversion in which the converting depository corporation is a California state savings association or a California industrial loan company, in which the resulting depository corporation is a California state bank, and which may be effected with the approval of the commissioner pursuant to this division is prohibited or restricted by any provision of Division 2 (commencing with Section 5000) or of Division 7 (commencing with Section 18000), except the provisions of Chapter 10 (commencing with Section 18660) of Division 7, or requires any approval, consent, or other authorization of the commissioner pursuant to Division 2 or Division 7, except as

may be required under the provisions of Chapter 10 (commencing with Section 18660) of Division 7.

(b) (1) No sale of a whole business unit (as defined in Section 4840) or merger in which the selling or disappearing depository corporation is a California state bank, a California state-licensed foreign (other nation) bank, or a California industrial loan company, in which the purchasing or surviving depository corporation is a California state savings association, and which may be effected with the approval of the commissioner pursuant to this division is prohibited or restricted by any provision of Division 1 (commencing with Section 99), except the provisions of Chapter 22 (commencing with Section 3800) of Division 1, or of Division 7 (commencing with Section 18000), except the provisions of Chapter 10 (commencing with Section 18660) of Division 7, or requires any approval, consent, or other authorization of the commissioner pursuant to Division 1, except as may be required under the provisions of Chapter 22 (commencing with Section 3800) of Division 1, or pursuant to Division 7, except as may be required under the provisions of Chapter 10 (commencing with Section 18660) of Division 7.

(2) No conversion in which the converting depository corporation is a California state bank or a California industrial loan company, in which the resulting depository corporation is a California state savings association, and which may be effected with the approval of the commissioner pursuant to this division is prohibited or restricted by any provision of Division 1 (commencing with Section 99), except the provisions of Chapter 22 (commencing with Section 3800) of Division 1, or of Division 7 (commencing with Section 18000), except the provisions of Chapter 10 (commencing with Section 18660) of Division 7, or requires any approval, consent, or other authorization of the commissioner pursuant to Division 1, except as may be required under the provisions of Chapter 22 (commencing with Section 3800) of Division 1, or pursuant to Division 7, except as may be required under the provisions of Chapter 10 (commencing with Section 18660) of Division 7.

(c) (1) No sale of a whole business unit (as defined in Section 4840) or merger in which the selling or disappearing depository corporation is a California state bank, a California state-licensed foreign (other nation) bank, or a California state savings association, in which the purchasing or surviving depository corporation is a California industrial loan company, and which may be effected with the approval of the commissioner pursuant to this division is prohibited or restricted by any provision of Division 1 (commencing with Section 99), except the provisions of Chapter 22 (commencing with Section 3800) of Division 1, or of Division 2 (commencing with Section 5000), or requires any approval, consent, or other authorization of the commissioner pursuant to Division 1, except as may be required under the provisions of Chapter 22 (commencing with Section 3800) of Division 1, or Division 2.

(2) No conversion in which the converting depository corporation is a California state bank or a California state savings association, in which the resulting depository corporation is a California industrial loan company, and which may be effected with the approval of the commissioner pursuant to this division is prohibited or restricted by any provision of Division 1 (commencing with Section 99), except the provisions of Chapter 22 (commencing with Section 3800) of Division 1, or of Division 2 (commencing with Section 5000) or requires any approval, consent, or other authorization of the commissioner pursuant to Division 1, except as may be required under the provisions of Chapter 22 (commencing with Section 3800) of Division 1, or Division 2.

SEC. 475. Section 4828 of the Financial Code is amended to read:

4828. Subject to the provisions of Sections 4827.3 and 4827.7 but notwithstanding any other provision of law:

(a) (1) If, as a result of any sale, merger, or conversion effected pursuant to the provisions of this division, a California state bank acquires any asset or liability, or becomes engaged in any activity, which was permitted to the selling, disappearing, or converting depository corporation but which is prohibited to California state banks, the commissioner may permit the California state bank a reasonable period of time, not to exceed 12 months, within which to divest itself of the asset, liability, or activity or to conform it to law. On a case-by-case basis, the commissioner may permit the California state bank a reasonable period of time in excess of 12 months if the commissioner finds that the bank cannot reasonably accomplish the divestment or conformity within the 12-month period.

(2) If, as a result of any sale or merger effected pursuant to the provisions of this division, a California state-licensed foreign (other nation) bank acquires any asset or liability, or becomes engaged in any activity, which was permitted to the selling or disappearing depository corporation but which is prohibited to California state-licensed foreign (other nation) banks, the commissioner may permit the California state-licensed foreign (other nation) bank a reasonable period of time, not to exceed 12 months, within which to divest itself of the asset, liability, or activity or to conform it to law. On a case-by-case basis, the commissioner may permit the California state-licensed foreign (other nation) bank a reasonable period of time in excess of 12 months if the commissioner finds that the bank cannot reasonably accomplish the divestment or conformity within the 12-month period.

(b) If, as a result of a sale, merger, or conversion effected pursuant to the provisions of this division, a California state savings association acquires any asset or liability, or becomes engaged in any activity, which was permitted to the selling, disappearing, or converting depository corporation but which is prohibited to California state savings associations, the commissioner may permit the California state savings association a reasonable period of time, not to exceed 12

months, within which to divest itself of the asset, liability, or activity or to conform it to law. On a case-by-case basis, the commissioner may permit the state savings association a reasonable period of time in excess of 12 months if the commissioner finds that the savings association cannot reasonably accomplish the divestment or conformity within the 12-month period.

(c) If, as a result of a sale, merger, or conversion effected pursuant to the provisions of this division, a California industrial loan company acquires any asset or liability, or becomes engaged in any activity, which was permitted to the selling, disappearing, or converting depository corporation but which is prohibited to California industrial loan companies, the commissioner may permit the California industrial loan company a reasonable period of time, not to exceed 12 months, within which to divest itself of the asset, liability, or activity or to conform it to law. On a case-by-case basis, the commissioner may permit the California industrial loan company a reasonable period of time in excess of 12 months if the commissioner finds that the industrial loan company cannot reasonably accomplish the divestment or conformity within the 12-month period.

SEC. 475.1. Section 4828 of the Financial Code is amended to read:

4828. Subject to the provisions of Sections 4827.3 and 4827.7 but notwithstanding any other provision of law:

(a) (1) If, as a result of any sale, merger, or conversion effected pursuant to the provisions of this division, a California state bank acquires any asset or liability, or becomes engaged in any activity, which was permitted to the selling, disappearing, or converting depository corporation but which is prohibited to California state banks, the commissioner may permit the California state bank a reasonable period of time, not to exceed 12 months, within which to divest itself of the asset, liability, or activity or to conform it to law. On a case-by-case basis, the commissioner may permit the California state bank a reasonable period of time in excess of 12 months if the commissioner finds that the bank cannot reasonably accomplish the divestment or conformity within the 12-month period.

(2) If, as a result of any sale or merger effected pursuant to the provisions of this division, a California state-licensed foreign (other nation) bank acquires any asset or liability, or becomes engaged in any activity, which was permitted to the selling or disappearing depository corporation but which is prohibited to California state-licensed foreign (other nation) banks, the commissioner may permit the California state-licensed foreign (other nation) bank a reasonable period of time, not to exceed 12 months, within which to divest itself of the asset, liability, or activity or to conform it to law. On a case-by-case basis, the commissioner may permit the California state-licensed foreign (other nation) bank a reasonable period of time in excess of 12 months if the commissioner finds that the bank

cannot reasonably accomplish the divestment or conformity within the 12-month period.

(b) If, as a result of a sale, merger, or conversion effected pursuant to the provisions of this division, a California state savings association acquires any asset or liability, or becomes engaged in any activity, which was permitted to the selling, disappearing, or converting depository corporation but which is prohibited to California state savings associations, the commissioner may permit the California state savings association a reasonable period of time, not to exceed 12 months, within which to divest itself of the asset, liability, or activity or to conform it to law. On a case-by-case basis, the commissioner may permit the California state savings association a reasonable period of time in excess of 12 months if the commissioner finds that the savings association cannot reasonably accomplish the divestment or conformity within the 12-month period.

(c) If, as a result of a sale, merger, or conversion effected pursuant to the provisions of this division, a California industrial loan company acquires any asset or liability, or becomes engaged in any activity, which was permitted to the selling, disappearing, or converting depository corporation but which is prohibited to California industrial loan companies, the commissioner may permit the California industrial loan company a reasonable period of time, not to exceed 12 months, within which to divest itself of the asset, liability, or activity or to conform it to law. On a case-by-case basis, the commissioner may permit the California industrial loan company a reasonable period of time in excess of 12 months if the commissioner finds that the industrial loan company cannot reasonably accomplish the divestment or conformity within the 12-month period.

SEC. 476. Section 4828.3 of the Financial Code is amended to read:

4828.3. A California state bank may, with the approval of the commissioner and its board and, if the transaction constitutes a reorganization as defined in Section 181 of the Corporations Code, subject to the provisions of Chapter 12 (commencing with Section 1200) of Division 1 of Title 1 of the Corporations Code, acquire in a single transaction all (except directors' qualifying shares, if any) of the outstanding shares of another bank in accordance with a plan that provides either of the following:

(a) That the other bank shall (1) immediately sell its whole business unit (as defined in Section 4840) to the California state bank and (2) shall thereafter wind up and dissolve or, if the other bank is a California state bank and if the commissioner so approves, change into a nonbank corporation by amending its articles and changing its name.

(b) That the other bank shall immediately merge into the California state bank.

SEC. 476.1. Section 4828.3 of the Financial Code is amended to read:

4828.3. A California state bank may, with the approval of the commissioner and its board and, if the transaction constitutes a reorganization as defined in Section 181 of the Corporations Code, subject to the provisions of Chapter 12 (commencing with Section 1200) of Division 1 of Title 1 of the Corporations Code, acquire in a single transaction all (except directors' qualifying shares, if any) of the outstanding shares of another depository corporation in accordance with a plan that provides either of the following:

(a) That the other depository corporation shall (1) immediately sell its whole business unit (as defined in Section 4840) to the California state bank and (2) shall thereafter wind up and dissolve or, if the other depository corporation is a California state bank and if the commissioner so approves, change into a nonbank corporation by amending its articles and changing its name.

(b) That the other depository corporation shall immediately merge into the California state bank.

SEC. 477. Section 4828.7 of the Financial Code is amended to read:

4828.7. (a) The definitions in Section 4840 apply to this section.

(b) In case a California state-licensed foreign (other nation) bank sells all or substantially all of its business in this state to another California state-licensed or federally licensed foreign (other nation) bank as part of the sale of a larger partial business unit or the whole business unit of the seller:

(1) No provision of Chapter 3 (commencing with Section 4840) applies except as follows:

(A) If the sale is of a partial business unit of the seller, Section 4877.14 applies with respect to the part of the seller's business in this state that is sold as if the sale were a sale of the type defined in Section 4877.01.

(B) If the sale is of the whole business unit of the seller, Section 4859 applies with respect to the seller's business in this state as if the sale were a sale of the type defined in Section 4845.

(2) Promptly after the sale becomes effective, the seller shall:

(A) Surrender to the commissioner for cancellation the licenses issued to it by the commissioner for its business in this state.

(B) File with the commissioner any report regarding the sale that the commissioner may require.

(c) In case a California state-licensed foreign (other nation) bank merges into another California state-licensed or federally licensed foreign (other nation) bank:

(1) No provision of Chapter 4 (commencing with Section 4880) applies except that the merger has the same effect with respect to the disappearing bank's business in this state as provided in Section 1107 of the Corporations Code and Section 4889 in the case of a merger of the type defined in Section 4880.

(2) Promptly after the merger becomes effective, the surviving bank shall:

(A) Surrender to the commissioner for cancellation the licenses issued to the disappearing bank by the commissioner for its business in this state.

(B) File with the commissioner any report regarding the merger that the commissioner may require.

SEC. 477.1. Section 4828.7 of the Financial Code is amended to read:

4828.7. (a) The definitions in Section 4840 apply to this section.

(b) In case a California state-licensed foreign (other nation) bank sells all or substantially all of its business in this state to another California state-licensed or federally licensed foreign (other nation) bank as part of the sale of a larger partial business unit or the whole business unit of the seller:

(1) No provision of Chapter 3 (commencing with Section 4840) applies except as follows:

(A) If the sale is of a partial business unit of the seller, Section 4879.14 applies with respect to the part of the seller's business in this state that is sold as if the sale were a sale of the type defined in Section 4879.01.

(B) If the sale is of the whole business unit of the seller, Section 4859 applies with respect to the seller's business in this state as if the sale were a sale of the type defined in Section 4845.

(2) Promptly after the sale becomes effective, the seller shall:

(A) Surrender to the commissioner for cancellation the licenses issued to it by the commissioner for its business in this state.

(B) File with the commissioner any report regarding the sale that the commissioner may require.

(c) In case a California state-licensed foreign (other nation) bank merges into another California state-licensed or federally licensed foreign (other nation) bank:

(1) No provision of Chapter 4 (commencing with Section 4880) applies except that the merger has the same effect with respect to the disappearing bank's business in this state as provided in Section 1107 of the Corporations Code and Section 4889 in the case of a merger of the type defined in Section 4880.

(2) Promptly after the merger becomes effective, the surviving bank shall:

(A) Surrender to the commissioner for cancellation the licenses issued to the disappearing bank by the commissioner for its business in this state.

(B) File with the commissioner any report regarding the merger that the commissioner may require.

SEC. 478. Section 4830 of the Financial Code is amended to read:

4830. Every final order, decision, license, or other official act of the commissioner under this division is subject to judicial review in accordance with law.

SEC. 479. Section 4831 of the Financial Code is amended to read:

4831. (a) The commissioner may from time to time issue regulations and orders as may in his or her opinion be necessary to carry out the provisions and purposes of this division.

(b) Regulations and orders issued under this division may, among other things, define any term used in this division as well as any term not used in this division.

(c) For purposes of regulations and orders issued under this division, the commissioner may classify persons, transactions, and other matters within his or her jurisdiction and may prescribe different regulations or orders for different classes.

(d) The commissioner may waive any provision of any regulation or order which he or she has issued under this division in any case where in his or her opinion the provision is not necessary in the public interest.

SEC. 480. Section 4832 of the Financial Code is amended to read:

4832. Whenever the commissioner issues an order or license under this division, he or she may impose conditions as may in his or her opinion be necessary to carry out the provisions and purposes of this division.

SEC. 481. Section 4834 of the Financial Code is amended to read:

4834. The commissioner may honor applications from interested persons for interpretive opinions regarding any provision of this division or of any regulation or order issued under this division.

SEC. 482. Section 4835 of the Financial Code is amended to read:

4835. Each application and report filed with the commissioner under this division or under any regulation or order issued under this division shall be in the form, shall contain the information, shall be signed in the manner, and shall, if the commissioner requires, be verified in the manner that the commissioner may require.

SEC. 483. Section 4836 of the Financial Code is amended to read:

4836. No person shall make any untrue statement of any material fact in any application or report filed with the commissioner under this division or under any regulation or order issued under this division, or willfully omit to state in any application or report filed with the commissioner under this division or under any regulation or order issued under this division any material fact which is required to be stated therein.

SEC. 484. Section 4837 of the Financial Code is amended to read:

4837. In determining whether to approve any application filed under this division or under any regulation or order issued under this division, the commissioner may consider proposals made by the applicant; and, if in the opinion of the commissioner it is probable that the applicant will be able to implement any such proposal, the commissioner may make findings on the basis of the proposal. However, whenever the commissioner approves an application on the basis, in whole or in part, of a proposal made by the applicant, the commissioner shall impose upon the approval appropriate conditions

requiring that the applicant implement the proposal within the period of time that the commissioner may specify.

SEC. 485. Section 4838 of the Financial Code is amended to read:

4838. If the commissioner finds, with respect to any application filed under this division or under any regulation or order issued under this division, that not all the information which was required to be provided in or in connection with the application has been provided or that implementation of any proposal contained in the application would violate any applicable law, the commissioner may deny the application.

SEC. 486. Section 4839 of the Financial Code is amended to read:

4839. Fees shall be paid to, and collected by, the commissioner, as follows:

(a) The fee for filing an application for approval of a sale under Section 4854 or 4877.09 shall be two thousand five hundred dollars ($2,500).

(b) The fee for filing an application for approval of a merger under Section 4884 shall be two thousand five hundred dollars ($2,500).

(c) (1) The fee for filing an application for approval of a conversion under Section 4924 or 4944 shall be five thousand dollars ($5,000).

(2) The fee for issuing a certificate of authority or license under Section 4928(a) or 4948(a) shall be two thousand five hundred dollars ($2,500).

(d) The fee for issuing a certificate of authority or license for an office under subdivision (b) of Section 4858, subdivision (b) of Section 4877.13, subdivision (b) of Section 4888, or subdivision (b) of Section 4928 or Section 4949 shall be twenty-five dollars ($25).

(e) The fee for issuing a certificate under Section 4862, 4877.17, 4891, 4930, or 4952 shall be twenty-five dollars ($25).

(f) In case the commissioner makes an examination in connection with a pending application, as described in paragraph (1), (2), (3), or (4), the applicant shall pay a fee for the examination in the sum of two hundred dollars ($200) per day for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(1) Examination of the selling depository corporation in connection with a pending application for approval of a sale of a whole business unit (as defined in Section 4840) under Article 2 (commencing with Section 4845) of Chapter 3 of this division.

(2) Examination of the partial business unit (as defined in Section 4840) to be sold and any related affairs of the selling depository corporation in connection with a pending application for approval of a sale of a partial business unit (as defined in Section 4840) under Article 2 (commencing with Section 4845) of Chapter 3 of this division.

(3) Examination of the disappearing depository corporation in connection with a pending application for approval of a merger under Article 1 (commencing with Section 4880) or Article 2 (commencing with Section 4895.01) of Chapter 4 of this division.

(4) Examination of the converting depository corporation in connection with a pending application for approval of a conversion under Article 1 (commencing with Section 4920) or Article 2 (commencing with Section 4940) of Chapter 5 of this division.

SEC. 486.1. Section 4839 of the Financial Code is amended to read:

4839. Fees shall be paid to, and collected by, the commissioner, as follows:

(a) The fee for filing an application for approval of a sale under this division shall be two thousand five hundred dollars ($2,500).

(b) The fee for filing an application for approval of a merger under this division shall be two thousand five hundred dollars ($2,500).

(c) (1) The fee for filing an application for approval of a conversion under this division shall be five thousand dollars ($5,000).

(2) The fee for issuing a certificate of authority or license under Section 4928(a) or 4948(a) shall be two thousand five hundred dollars ($2,500).

(d) The fee for issuing a certificate of authority or license under any other provision of this division shall be twenty-five dollars ($25).

(e) The fee for issuing a certificate under Section 4862, 4879.17, 4891, 4930, or 4952 shall be twenty-five dollars ($25).

(f) In case the commissioner makes an examination in connection with a pending application, as described in paragraph (1), (2), (3), or (4), the applicant shall pay a fee for the examination in the sum of two hundred dollars ($200) per day for each examiner engaged in the examination plus, if in the opinion of the commissioner it is necessary for any examiner engaged in the examination to travel outside this state, the travel expenses of the examiner.

(1) Examination of the selling depository corporation in connection with a pending application for approval of a sale of a whole business unit (as defined in Section 4840) under Article 2 (commencing with Section 4845) of Chapter 3 of this division.

(2) Examination of the partial business unit (as defined in Section 4840) to be sold and any related affairs of the selling depository corporation in connection with a pending application for approval of a sale of a partial business unit (as defined in Section 4840) under Article 2 (commencing with Section 4845) of Chapter 3 of this division.

(3) Examination of the purchasing depository corporation in connection with a pending application for approval of a sale of a whole business unit (as defined in Section 4880) under Article 3.5 (commencing with Section 4876.01) of Chapter 3 or of a partial

business unit (as defined in Section 4880) under Article 4.5 (commencing with Section 4878.01) of Chapter 3.

(4) Examination of the surviving depository corporation in connection with a pending application for approval of a merger under Article 4 (commencing with Section 4908.01) of Chapter 4.

(5) Examination of the disappearing depository corporation in connection with a pending application for approval of a merger under Article 1 (commencing with Section 4880) or Article 2 (commencing with Section 4895.01) of Chapter 4 of this division.

(6) Examination of the converting depository corporation in connection with a pending application for approval of a conversion under Article 1 (commencing with Section 4920) or Article 2 (commencing with Section 4940) of Chapter 5 of this division.

SEC. 487. Section 4845 of the Financial Code is amended to read:

4845. In this article, unless the context otherwise requires, "sale" means any of the sales described in Section 4846.

SEC. 488. Section 4846 of the Financial Code is amended to read:

4846. With the approval of the commissioner:

(a) A bank may sell its whole business unit to a California state bank or a California state-licensed foreign (other nation) bank pursuant to (1) this article, (2) in case the seller is a national banking association or a California federally licensed foreign (other nation) bank, federal law, and (3) in case the seller or purchaser is a foreign bank, the law of the foreign bank's domicile.

(b) An industrial loan company may sell its whole business unit to a California industrial loan company pursuant to (1) this article and (2) in case the seller is a foreign (other state) industrial loan company, the law of the foreign industrial loan company's domicile.

(c) A depository corporation of any class may sell its whole business unit to a California state depository corporation of another class or a California state-licensed foreign (other nation) bank pursuant to (1) this article, (2) in case the seller is a federal depository corporation or a California federally licensed foreign (other nation) bank, federal law, (3) in case the seller is a foreign depository corporation, the law of the foreign depository corporation's domicile, and (4) in case the purchaser is a California state-licensed foreign (other nation) bank, the law of the foreign bank's domicile.

SEC. 489. Section 4851 of the Financial Code is amended to read:

4851. In obtaining any approval of outstanding shares required for an agreement of sale, in case the purchaser is a California state depository corporation, the purchaser, and, in case the seller is a California state depository corporation or in case the purchaser is a California state depository corporation that is to issue securities in consideration of the sale, the seller, shall each provide to its shareholders information as the commissioner may require. In determining the information to be required, the commissioner shall give due consideration to regulations relating to proxy statements

issued under Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78n) by (a) the Securities and Exchange Commission, (b) in the case of a depository corporation that is a bank, the federal bank regulatory agencies, and (c) in the case of a depository corporation that is a savings association, the Office of Thrift Supervision.

SEC. 490. Section 4854 of the Financial Code is amended to read:

4854. A purchaser shall file the following with the commissioner:

(a) A copy of the agreement of sale.

(b) An officers' certificate of the purchaser, certifying that the agreement of sale has been approved by the purchaser as required by Sections 4848 and 4849.

(c) An officers' certificate of the seller, certifying that the agreement of sale has been approved by the seller as required by Sections 4848 and 4849.

(d) An application for approval of the sale.

SEC. 491. Section 4855 of the Financial Code is amended to read:

4855. If the commissioner finds all of the following with respect to an application for approval of a sale, the commissioner shall approve the application:

(a) That the sale will not result in a monopoly and will not be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the banking, savings association, or industrial loan business in any part of this state.

(b) That the sale will not have the effect in any section of this state of substantially lessening competition, tending to create a monopoly, or otherwise being in restraint of trade, or that the anticompetitive effect is clearly outweighed in the public interest by the probable effect of the sale in meeting the convenience and needs of the community to be served.

(c) That the shareholders' equity of the purchaser will be adequate and that the financial condition of the purchaser will be satisfactory.

(d) That the directors and executive officers of the purchaser will be satisfactory.

(e) That the purchaser will afford reasonable promise of successful operation and that it is reasonable to believe that the purchaser will be operated in a safe and sound manner and in compliance with all applicable laws.

(f) That the sale will be fair, just, and equitable. For purposes of this subdivision, in the case of any term of the sale that has been determined by agreement between the seller and the purchaser in an arm's length transaction, the commissioner shall find that the term is fair, just, and equitable to the seller and the purchaser.

(g) In the case of a sale where the seller is a California savings association, that the sale will not have a seriously adverse effect on the total availability of financing for housing in the market area of the seller in this state or that any effect of that type is clearly outweighed in the public interest by the probable effect of the sale in meeting the

convenience and needs of the community to be served. Nothing in this subdivision authorizes the commissioner to require the purchaser to make financing for housing available.

If the commissioner finds otherwise, the commissioner shall deny the application for approval of the sale.

SEC. 492. Section 4856 of the Financial Code is amended to read:

4856. (a) Before a sale becomes effective, the seller or purchaser shall give to the depositors of the seller notice of the sale as the commissioner may require.

(b) A depositor of the seller may, subject to the provisions of any applicable federal statute or regulation and to any premature withdrawal penalty prescribed in the deposit contract, withdraw any uninsured deposit on demand at any time during the period commencing with the giving of the notice called for in subdivision (a) and ending on the 60th day after the date on which the sale becomes effective.

SEC. 493. Section 4857 of the Financial Code is amended to read:

4857. After an application for approval of a sale has been approved and all conditions precedent to the sale have been fulfilled, the commissioner shall approve the agreement of sale and endorse the approval on the agreement of sale, and at that time the sale shall become effective for all purposes.

SEC. 493.1. Section 4857 of the Financial Code is amended to read:

4857. After an application for approval of a sale has been approved and all conditions precedent to the sale have been fulfilled, the commissioner shall approve the agreement of sale and endorse the approval on the original or a copy of the agreement of sale, and at that time the sale shall become effective for all purposes.

SEC. 494. Section 4858 of the Financial Code is amended to read:

4858. When a sale becomes effective:

(a) Unless the purchaser provided otherwise in the application for approval of the sale or unless the commissioner provided otherwise in the approval of the application:

(1) The purchaser may establish and maintain a branch office at the head office of the seller and establish and maintain equivalent offices at the branch offices, places of business, extensions of offices, and other facilities, if any, of the seller.

(2) If the seller was authorized to transact and was transacting trust business, the purchaser, if it is a California state bank or savings association, may transact trust business.

(b) The commissioner shall issue to the purchaser certificates of authority, licenses, and other authorizations as may be necessary to carry out the provisions of subdivision (a).

SEC. 495. Section 4861 of the Financial Code is amended to read:

4861. Promptly after a sale becomes effective:

(a) The seller shall:

(1) Surrender to the commissioner for cancellation the certificates of authority or licenses issued to it by the commissioner.

(2) File with the commissioner any report regarding the sale that the commissioner may require.

(b) In case the seller is a California state depository corporation, the seller shall wind up and dissolve. However, if the seller is a California state bank, the seller may, in the alternative and with the approval of the commissioner, change into a nonbank corporation by amending its articles and changing its name.

SEC. 496. Section 4862 of the Financial Code is amended to read:

4862. (a) After a sale becomes effective, the commissioner shall issue, upon application, a certificate under his or her official seal, stating that the seller sold its whole business unit to the purchaser and specifying the time at which the sale became effective.

(b) Any certificate pursuant to subdivision (a) shall be prima facie evidence of the fact of the sale and of the regularity of the proceedings taken for the sale and shall be conclusive evidence of the matters in favor of any innocent purchaser or encumbrancer for value.

SEC. 497. Section 4874 of the Financial Code is amended to read:

4874. Promptly after a sale becomes effective:

(a) The seller shall:

(1) Surrender to the commissioner for cancellation the certificates of authority or licenses issued to it by the commissioner.

(2) File with the commissioner any report of the sale that the commissioner may require.

(b) The seller shall wind up and dissolve. However, if the seller is a California state bank, the seller may, in the alternative and with the approval of the commissioner, change into a nonbank corporation by amending its articles and changing its name.

SEC. 497.2. Section 4876.02 of the Financial Code, as added by Assembly Bill 2618, is amended to read:

4876.02. With the approval of the commissioner, a California state independent trust company may sell its whole business unit to an uninsured foreign (other state) state depository corporation pursuant to this article and the law of the purchaser's domicile.

SEC. 497.3. Section 4876.04 of the Financial Code, as added by Assembly Bill 2618, is amended to read:

4876.04. A seller shall file the following with the commissioner:

(a) A copy of the agreement of sale.

(b) An officers' certificate of the purchaser, certifying that the agreement of sale has been approved by the purchaser as required by Sections 4848 and 4849.

(c) An officers' certificate of the seller, certifying that the agreement of sale has been approved by the seller as required by Sections 4848 and 4849.

(d) An application for approval of the sale.

SEC. 497.4. Section 4876.05 of the Financial Code, as added by Assembly Bill 2618, is amended to read:

4876.05. If the commissioner finds all of the following with respect to an application for approval of a sale, the commissioner shall approve the application:

(a) That the shareholders' equity of the purchaser will be adequate and that the financial condition of the purchaser will be satisfactory.

(b) That the directors and executive officers of the purchaser will be satisfactory.

(c) That the purchaser will afford reasonable promise of successful operation and that it is reasonable to believe that the purchaser will operate in a safe and sound manner and in compliance with all applicable laws.

(d) That the sale will be fair, just, and equitable. For purposes of this subdivision, in the case of any term of the sale that has been determined by agreement between the seller and the purchaser in an arm's-length transaction, the commissioner shall find that the term is fair, just, and equitable to the seller and the purchaser.

If the commissioner finds otherwise, the commissioner shall deny the application for approval of the sale.

SEC. 497.5. Section 4876.06 of the Financial Code, as added by Assembly Bill 2618, is amended to read:

4876.06. After an application for approval of a sale has been approved and all conditions precedent to the sale have been fulfilled, the commissioner shall approve the agreement of sale and endorse the approval on the original or a copy of the agreement of sale. The sale shall become effective for all purposes at that time except that, if the law of the purchaser's domicile provides for the sale to become effective at a later time, it shall become effective at the later time.

SEC. 497.6. Section 4876.08 of the Financial Code, as added by Assembly Bill 2618, is amended to read:

4876.08. Promptly after a sale becomes effective:

(a) The seller shall:

(1) Surrender to the commissioner for cancellation the certificates of authority issued to it by the commissioner.

(2) File with the commissioner any report of the sale that the commissioner may require.

(b) The seller shall wind up and dissolve. However, the seller may, in the alternative and with the approval of the commissioner, change into a nonbank corporation by amending its articles and changing its name.

SEC. 498. Section 4877.01 of the Financial Code is amended to read:

4877.01. In this article, unless the context otherwise requires, "sale" means any of the sales described in Section 4877.02.

SEC. 499. Section 4877.06 of the Financial Code is amended to read:

4877.06. Promptly after a sale becomes effective, the seller shall:

(a) Surrender to the commissioner for cancellation the certificate of authority or license issued to it by the commissioner that relates to the California branch business unit sold.

(b) File with the commissioner any report of the sale that the commissioner may require.

SEC. 499.2. Section 4878.01 of the Financial Code, as added by Assembly Bill 2618, is amended to read:

4878.01. In this article, unless the context otherwise requires, "sale" means any sale described in Section 4878.02.

SEC. 499.3. Section 4878.02 of the Financial Code, as added by Assembly Bill 2618, is amended to read:

4878.02. With the approval of the commissioner, a California state bank or savings association may sell a partial trust business unit to an uninsured foreign (other state) state depository corporation pursuant to (a) this article and (b) the law of the purchaser's domicile.

SEC. 499.4. Section 4878.04 of the Financial Code, as added by Assembly Bill 2618, is amended to read:

4878.04. If the commissioner finds all of the following with respect to an application for approval of a sale, the commissioner shall approve the application:

(a) That the shareholders' equity of the purchaser will be adequate and that the financial condition of the purchaser will be satisfactory.

(b) That the directors and executive officers of the purchaser will be satisfactory.

(c) That the purchaser will afford reasonable promise of successful operation and that it is reasonable to believe that the purchaser will operate in a safe and sound manner and in compliance with all applicable laws.

(d) That the sale will be fair, just, and equitable. For purposes of this subdivision, in the case of any term of the sale that has been determined by agreement between the seller and the purchaser in an arm's-length transaction, the commissioner shall find that the term is fair, just, and equitable to the seller and the purchaser.

(e) That the sale will not have a seriously adverse effect on the safety or soundness of the seller.

If the commissioner finds otherwise, the commissioner shall deny the application for approval of the sale.

SEC. 499.5. Section 4878.05 of the Financial Code, as added by Assembly Bill 2618, is amended to read:

4878.05. After an application for approval of a sale has been approved by the commissioner and all conditions precedent to the sale have been fulfilled, the commissioner shall approve the agreement of sale and endorse the approval on the original or a copy of the agreement of sale. The sale shall become effective for all purposes at that time, except that, if the law of the purchaser's

domicile provides for the sale to become effective at a later time, it shall become effective at the later time.

SEC. 499.6. Section 4878.07 of the Financial Code, as added by Assembly Bill 2618, is amended to read:

4878.07. (a) In case a seller is a California state commercial bank and sells all of its trust business in a sale:

(1) As of the time when the sale becomes effective, the commissioner shall issue to the seller certificates of authority authorizing it to transact commercial banking business in replacement of the certificates of authority that the seller is required to surrender pursuant to paragraph (2).

(2) Promptly after the sale becomes effective, the seller shall surrender to the commissioner for cancellation its certificates of authority authorizing it to transact commercial banking business and trust business and shall file with the commissioner any report of the sale that the commissioner may require.

(b) In any other case, promptly after the sale becomes effective, the seller shall:

(1) Surrender to the commissioner for cancellation the certificate of authority or license for any office closed as a result of the sale.

(2) File with the commissioner any report of the sale that the commissioner may require.

SEC. 500. Section 4879.01 of the Financial Code is amended to read:

4879.01. In this article, unless the context otherwise requires, "sale" means any of the sales described in Section 4879.02.

SEC. 501. Section 4879.02 of the Financial Code is amended to read:

4879.02. With the approval of the commissioner:

(a) A bank may sell a partial business unit to a California state bank pursuant to (1) this article, (2) in case the seller is a national banking association or a California federally licensed foreign (other nation) bank, federal law, (3) in case the seller is a foreign bank, the law of the foreign bank's domicile, and (4) in case the partial business unit is located outside this state, the law of the place where the partial business unit is located.

(b) A California state bank may sell a partial business unit to another California state bank, a national banking association, or an insured foreign (other state) state bank, pursuant to (1) this article, (2) in case the purchaser is a national banking association, federal law, (3) in case the purchaser is an insured foreign (other state) state bank, the law of the foreign bank's domicile, and (4) in case the partial business unit is located outside this state, the law of the place where the partial business unit is located. However, this subdivision does not apply to any sale of the type defined in Section 4877.01.

(c) A California state bank may sell a partial business unit located outside this state to a foreign (other nation) bank pursuant to (1) this

article, (2) the law of the foreign bank's domicile, and (3) the law of the place where the partial business unit is located.

(d) An industrial loan company may sell a partial business unit to a California industrial loan company pursuant to (1) this article, (2) in case the seller is a foreign (other state) industrial loan company, the law of the foreign industrial loan company's domicile, and (3) in case the partial business unit is located outside this state, the law of the place where the partial business unit is located.

(e) A California industrial loan company may sell a partial business unit to an insured industrial loan company pursuant to (1) this article, (2) in case the purchaser is an insured foreign (other state) industrial loan company, the law of the foreign industrial loan company's domicile, and (3) in case the partial business unit is located outside this state, the law of the place where the partial business unit is located. However, this subdivision does not apply to any sale of the type defined in Section 4877.01.

(f) A depository corporation of any class may sell a partial business unit to a California state depository corporation of another class pursuant to (1) this article, (2) in case the seller is a federal depository corporation, federal law, (3) in case the seller is a foreign (other state) state depository corporation or foreign (other nation) depository corporation, the law of the foreign depository corporation's domicile, and (4) in case the partial business unit is located outside this state, the law of the place where the partial business unit is located.

(g) A California state depository corporation of any class may sell a partial business unit to a federal depository corporation of another class or an insured foreign (other state) state depository corporation of another class pursuant to (1) this article, (2) in case the purchaser is a federal depository corporation, federal law, (3) in case the purchaser is an insured foreign (other state) state depository corporation, the law of the foreign depository corporation's domicile, and (4) in case the partial business unit is located outside this state, the law of the place where the partial business unit is located. However, this subdivision does not apply to any sale of the type defined in Section 4877.01.

(h) A depository corporation may sell a partial business unit located in this state to a California state-licensed foreign (other nation) bank pursuant to (1) this article, (2) in case the seller is a federal depository corporation or a California federally licensed foreign (other nation) bank, federal law, (3) in case the seller is a foreign depository corporation, the law of the foreign depository corporation's domicile, and (4) the law of the purchaser's domicile.

(i) A California state-licensed foreign (other nation) bank may sell a partial business unit located in this state to a California state depository corporation, a federal depository corporation, an insured foreign (other state) state depository corporation, another California state-licensed foreign (other nation) bank, or a California federally

licensed foreign (other nation) bank pursuant to (1) this article, (2) in case the purchaser is a federal depository corporation or a California federally licensed foreign (other nation) bank, federal law, (3) in case the purchaser is a foreign depository corporation, the law of the foreign depository corporation's domicile, and (4) the law of the seller's domicile.

(j) A California state depository corporation may sell a partial business unit located in this state to a California federally licensed foreign (other nation) bank pursuant to (1) this article, (2) federal law, and (3) the law of the purchaser's domicile.

(k) A California federally licensed foreign (other nation) bank may sell a partial business unit located in this state to a California state depository corporation pursuant to (1) this article, (2) federal law, and (3) the law of the seller's domicile.

SEC. 502. Section 4879.07 of the Financial Code is amended to read:

4879.07. In obtaining any approval of outstanding shares required for an agreement of sale, a purchaser or seller that is a California state depository corporation and, in any case where the purchaser is a California state depository corporation that is to issue securities in consideration of the sale, the seller shall each provide to its shareholders information as the commissioner may require. In determining the information to be required, the commissioner shall give due consideration to regulations relating to proxy statements issued under Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78n) by (a) the Securities and Exchange Commission, (b) in the case of a depository corporation that is a bank, the federal bank regulatory agencies, and (c) in the case of a depository corporation that is a savings association, the Office of Thrift Supervision.

SEC. 503. Section 4879.09 of the Financial Code is amended to read:

4879.09. A purchaser or seller that is a California state depository corporation or California state-licensed foreign (other nation) bank, shall file the following with the commissioner:

(a) A copy of the agreement of sale.

(b) An officers' certificate of the purchaser, certifying that the agreement of sale has been approved by the purchaser as required by Sections 4879.04 and 4879.05.

(c) An officers' certificate of the seller, certifying that the agreement of sale has been approved by the seller as required by Sections 4879.04 and 4879.05.

(d) An application for approval of the sale.

SEC. 504. Section 4879.10 of the Financial Code is amended to read:

4879.10. (a) In case the purchaser is either, and the seller is not either, a California state depository corporation or California state-licensed foreign (other nation) bank, if the commissioner finds

all of the following with respect to an application for approval of a sale, he or she shall approve the application:

(1) That the sale will not result in a monopoly and will not be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the banking, savings association, or industrial loan business in any part of this state.

(2) That the sale will not have the effect in any section of this state of substantially lessening competition, tending to create a monopoly, or otherwise being in restraint of trade, or that the anticompetitive effect is clearly outweighed in the public interest by the probable effect of the sale in meeting the convenience and needs of the community to be served.

(3) That the shareholders' equity of the purchaser will be adequate and that the financial condition of the purchaser will be satisfactory.

(4) That the directors and executive officers of the purchaser will be satisfactory.

(5) That the purchaser will afford reasonable promise of successful operation and that it is reasonable to believe that the purchaser will be operated in a safe and sound manner and in compliance with all applicable laws.

(6) That the sale will be fair, just, and equitable. For purposes of this subdivision, in the case of any term of the sale that has been determined by agreement between the seller and the purchaser in an arm's length transaction, the commissioner shall find that the term is fair, just, and equitable to the seller and the purchaser.

(7) In the case of a sale where the seller is a California savings association, that the sale will not have a seriously adverse effect on the total availability of financing for housing in any market area of the seller in this state or that any effect of that type is clearly outweighed in the public interest by the probable effect of the sale in meeting the convenience and needs of the community to be served. Nothing in this subdivision authorizes the commissioner to require the purchaser to make financing for housing available.

If the commissioner finds otherwise, he or she shall deny the application for approval of the sale.

(b) In case the seller is either, and the purchaser is not either, a California state depository corporation or a California state-licensed foreign (other nation) bank, if the commissioner finds all of the following with respect to an application for approval of a sale, he or she shall approve the application:

(1) That the sale will not have a seriously adverse effect on the safety or soundness of the seller.

(2) That the sale will be fair, just, and equitable. For purposes of this subdivision, in the case of any term of the sale that has been determined by agreement between the seller and the purchaser in an arm's length transaction, the commissioner shall find that the term is fair, just, and equitable to the seller and the purchaser.

If the commissioner finds otherwise, he or she shall deny the application for approval of the sale.

(c) In case the seller and the purchaser are each either a California state depository corporation or a California state-licensed foreign (other nation) bank, if the commissioner finds all of the factors set forth in subdivisions (a) and (b) with respect to an application for approval of a sale, the commissioner shall approve the application. If the commissioner finds otherwise, the commissioner shall deny the application.

SEC. 504.1. Section 4879.10 of the Financial Code is amended to read:

4879.10. (a) In case the purchaser is either, and the seller is not either, a California state depository corporation or California state-licensed foreign (other nation) bank, if the commissioner finds all of the following with respect to an application for approval of a sale, he or she shall approve the application:

(1) That the sale will not result in a monopoly and will not be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the banking, savings association, or industrial loan business in any part of this state.

(2) That the sale will not have the effect in any section of this state of substantially lessening competition, tending to create a monopoly, or otherwise being in restraint of trade, or that the anticompetitive effect is clearly outweighed in the public interest by the probable effect of the sale in meeting the convenience and needs of the community to be served.

(3) That the shareholders' equity of the purchaser will be adequate and that the financial condition of the purchaser will be satisfactory.

(4) That the directors and executive officers of the purchaser will be satisfactory.

(5) That the purchaser will afford reasonable promise of successful operation and that it is reasonable to believe that the purchaser will be operated in a safe and sound manner and in compliance with all applicable laws.

(6) That the sale will be fair, just, and equitable. For purposes of this paragraph, in the case of any term of the sale that has been determined by agreement between the seller and the purchaser in an arm's length transaction, the commissioner shall find that the term is fair, just, and equitable to the seller and the purchaser.

(7) In the case of a sale where the seller is a California savings association, that the sale will not have a seriously adverse effect on the total availability of financing for housing in any market area of the seller in this state or that any effect of that type is clearly outweighed in the public interest by the probable effect of the sale in meeting the convenience and needs of the community to be served. Nothing in this subdivision authorizes the commissioner to require the purchaser to make financing for housing available.

If the commissioner finds otherwise, he or she shall deny the application for approval of the sale.

(b) In case the seller is either, and the purchaser is not either, a California state depository corporation or a California state-licensed foreign (other nation) bank, if the commissioner finds all of the following with respect to an application for approval of a sale, he or she shall approve the application:

(1) That the sale will not have a seriously adverse effect on the safety or soundness of the seller.

(2) That the sale will be fair, just, and equitable. For purposes of this subdivision, in the case of any term of the sale that has been determined by agreement between the seller and the purchaser in an arm's length transaction, the commissioner shall find that the term is fair, just, and equitable to the seller and the purchaser.

If the commissioner finds otherwise, he or she shall deny the application for approval of the sale.

(c) In case the seller and the purchaser are each either a California state depository corporation or a California state depository corporation or a California state-licensed foreign (other nation) bank, if the commissioner finds all of the factors set forth in subdivisions (a) and (b) with respect to an application for approval of a sale, the commissioner shall approve the application. If the commissioner finds otherwise, the commissioner shall deny the application.

SEC. 505. Section 4879.11 of the Financial Code is amended to read:

4879.11. (a) Before a sale becomes effective, the seller or purchaser shall give to the depositors of the seller whose deposits are to be sold notice of the sale as the commissioner may require.

(b) Subject to the provisions of any applicable federal statute or regulation, any depositor of the seller whose deposit is to be or has been sold may, if the deposit is uninsured, withdraw the uninsured deposit on demand at any time during the period commencing with the giving of the notice called for in subdivision (a) and ending on the 60th day after the date on which the sale becomes effective.

SEC. 506. Section 4879.12 of the Financial Code is amended to read:

4879.12. After an application for approval of a sale has been approved by the commissioner and all conditions precedent to the sale have been fulfilled, the commissioner shall approve the agreement of sale and endorse the approval on the agreement of sale, and at that time the sale shall become effective for all purposes.

SEC. 506.1. Section 4879.12 of the Financial Code is amended to read:

4879.12. After an application for approval of a sale has been approved by the commissioner and all conditions precedent to the sale have been fulfilled, the commissioner shall approve the agreement of sale and endorse the approval on the original or a copy

of the agreement of sale, and at that time the sale shall become effective for all purposes.

SEC. 507. Section 4879.13 of the Financial Code is amended to read:

4879.13. When a sale becomes effective, in case the purchaser is a California state depository corporation or California state-licensed foreign (other nation) bank:

(a) Unless the purchaser provided otherwise in the application for approval of the sale or unless the commissioner provided otherwise in the approval of the application:

(1) The purchaser may establish equivalent offices at any branch offices, places of business, extensions of offices, and other facilities of the seller transferred in the sale.

(2) If the seller was authorized to transact trust business and if the partial business unit sold includes any trust business, the purchaser, if it is a California state bank or savings association, may transact trust business.

(b) The commissioner shall issue to the purchaser certificates of authority, licenses, and other authorizations as may be necessary to carry out the provisions of subdivision (a).

SEC. 507.2. Section 4879.135 of the Financial Code, as added by Assembly Bill 2618, is amended to read:

4879.135. In case a seller is a California state commercial bank and sells all of its trust business in a sale:

(a) As of the time when the sale becomes effective, the commissioner shall issue to the seller certificates of authority authorizing it to transact commercial banking business in replacement of the certificates of authority that the seller is required to surrender pursuant to subdivision (b).

(b) Promptly after the sale becomes effective, the seller shall surrender to the commissioner for cancellation its certificates of authority authorizing it to transact commercial banking business and trust business.

SEC. 508. Section 4879.17 of the Financial Code is amended to read:

4879.17. (a) After a sale becomes effective, the commissioner shall issue, upon application, a certificate under his or her official seal, stating that the seller sold a partial business unit to the purchaser, describing the business unit, and specifying the time at which the sale became effective.

(b) Any certificate pursuant to subdivision (a) shall be prima facie evidence of the fact of the sale and of the regularity of the proceedings taken for the sale and shall be conclusive evidence of the matters in favor of any innocent purchaser or encumbrancer for value.

SEC. 509. Section 4880 of the Financial Code is amended to read:

4880. In this article, unless the context otherwise requires, "merger" means any of the mergers described in Section 4881.

SEC. 509.1. Section 4880 of the Financial Code is amended to read:

4880. In this article, unless the context otherwise requires:

(a) "Agreement of merger" includes a certificate of ownership executed pursuant to Section 1110 of the Corporations Code.

(b) "Merger" means any of the mergers described in Section 4881.

SEC. 510. Section 4881 of the Financial Code is amended to read:

4881. (a) With the approval of the commissioner, a bank may merge into a California state bank pursuant to (1) this article, (2) in case the disappearing bank is a national banking association or a California federally licensed foreign (other nation) bank, federal law, and (3) in case the disappearing bank is a foreign bank, the law of the foreign bank's domicile.

(b) With the approval of the commissioner, an industrial loan company may merge into a California industrial loan company pursuant to (1) this article and (2) in case the disappearing industrial loan company is a foreign (other state) industrial loan company, the law of the foreign industrial loan company's domicile.

(c) With the approval of the commissioner, a depository corporation of any class may merge into a California state depository corporation of another class pursuant to (1) this article, (2) in case the disappearing depository corporation is a federal depository corporation or a California federally licensed foreign (other nation) bank, federal law, and (3) in case the disappearing depository corporation is a foreign depository corporation, the law of the disappearing depository corporation's domicile.

SEC. 511. Section 4882 of the Financial Code is amended to read:

4882. In obtaining any approval of outstanding shares required for a merger, the surviving depository corporation and, in case the surviving depository corporation is to issue securities in consideration of the merger, the disappearing depository corporation shall each provide to its shareholders such information as the commissioner may require. In determining the information to be required, the commissioner shall give due consideration to regulations relating to proxy statements issued under Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78n) by (a) the Securities and Exchange Commission, (b) in the case of a depository corporation that is a bank, the federal bank regulatory agencies, and (c) in the case of a depository corporation that is a savings association, the Office of Thrift Supervision.

SEC. 512. Section 4884 of the Financial Code is amended to read:

4884. A surviving depository corporation shall file with the commissioner an application for approval of the merger.

SEC. 513. Section 4885 of the Financial Code is amended to read:

4885. If the commissioner finds all of the following with respect to an application for approval of a merger, the commissioner shall approve the application:

(a) That the merger will not result in a monopoly and will not be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the banking, savings association, or industrial loan business in any part of this state.

(b) That the merger will not have the effect in any section of this state of substantially lessening competition, tending to create a monopoly, or otherwise being in restraint of trade, or that the anticompetitive effect is clearly outweighed in the public interest by the probable effect of the merger in meeting the convenience and needs of the community to be served.

(c) That the shareholders' equity of the surviving depository corporation will be adequate and that the financial condition of the surviving depository corporation will be satisfactory.

(d) That the directors and executive officers of the surviving depository corporation will be satisfactory.

(e) That the surviving depository corporation will afford reasonable promise of successful operation and that it is reasonable to believe that the surviving depository corporation will be operated in a safe and sound manner and in compliance with all applicable laws.

(f) That the merger will be fair, just, and equitable. For purposes of this subdivision, in the case of any term of the merger that has been determined by agreement between the disappearing depository corporation and the surviving depository corporation in an arm's length transaction, the commissioner shall find that the term is fair, just, and equitable to the disappearing depository corporation and the surviving depository corporation.

(g) In the case of a merger where the disappearing depository corporation is a California savings association, that the merger will not have a seriously adverse effect on the total availability of financing for housing in any market area of the disappearing savings association in this state or that any effect of that type is clearly outweighed in the public interest by the probable effect of the merger in meeting the convenience and needs of the community to be served. Nothing in this subdivision authorizes the commissioner to require the surviving depository corporation to make financing for housing available.

If the commissioner finds otherwise, the commissioner shall deny the application for approval of the merger.

SEC. 514. Section 4886 of the Financial Code is amended to read:

4886. (a) Before a merger becomes effective, the disappearing or surviving depository corporation shall give to the depositors of the disappearing depository corporation notice of the merger as the commissioner may require.

(b) A depositor of the disappearing depository corporation may, subject to the provisions of any applicable federal statute or regulation and to any premature withdrawal penalty prescribed in the deposit contract, withdraw any uninsured deposit on demand at

any time during the period commencing with the giving of the notice called for in subdivision (a) and ending on the 60th day after the date on which the merger becomes effective.

SEC. 515. Section 4887 of the Financial Code is amended to read:

4887. (a) After an application for approval of a merger has been approved and all conditions precedent to the merger have been fulfilled, the commissioner shall approve the agreement of merger and endorse the approval on the agreement of merger.

(b) After the agreement of merger has been filed with the Secretary of State, the surviving depository corporation shall file with the commissioner a copy of the agreement of merger certified by the Secretary of State, and at that time the merger shall become effective for all purposes.

SEC. 516. Section 4888 of the Financial Code is amended to read:

4888. When a merger becomes effective:

(a) Unless the surviving depository corporation provided otherwise in the application for approval of the merger or unless the commissioner provided otherwise in the approval of the application:

(1) The surviving depository corporation may establish and maintain a branch office at the head office of the disappearing depository corporation and may establish and maintain equivalent offices at the branch offices, places of business, extensions of offices, and other facilities, if any, of the disappearing corporation.

(2) If the disappearing depository corporation was authorized to transact and was transacting trust business, the surviving depository corporation, if it is a California state bank or savings association, may transact trust business.

(b) The commissioner shall issue to the surviving depository corporation certificates of authority, licenses, and other authorizations as may be necessary to carry out the provisions of subdivision (a).

SEC. 517. Section 4890 of the Financial Code is amended to read:

4890. Promptly after a merger becomes effective:

(a) The surviving depository corporation shall:

(1) Surrender to the regulator of the disappearing depository corporation for cancellation the certificates of authority or licenses issued to the disappearing depository corporation by the regulator; and

(2) File with the regulator of the disappearing depository corporation such report regarding the merger as the regulator may require.

(b) The commissioner shall file a report regarding the merger with the Secretary of State.

SEC. 518. Section 4891 of the Financial Code is amended to read:

4891. (a) After a merger becomes effective, the commissioner shall, upon application, issue a certificate under his or her official seal, stating that the disappearing depository corporation merged into the

surviving depository corporation and specifying the time at which the merger became effective.

(b) Any certificate issued pursuant to subdivision (a) shall be prima facie evidence of the fact of the merger and of the regularity of the proceedings taken for the merger and shall be conclusive evidence of such matters in favor of any innocent purchaser or encumbrancer for value.

SEC. 519. Section 4895.02 of the Financial Code is amended to read:

4895.02. With the approval of the commissioner:

(a) A California depository corporation may merge into a California state-licensed foreign (other nation) bank pursuant to (1) this article, (2) in case the disappearing depository corporation is a federal depository corporation, federal law, and (3) the law of the foreign bank's domicile.

(b) A foreign (other state) depository corporation that has a branch office in this state may merge into a California state-licensed foreign (other nation) bank pursuant to (1) this article, (2) in case the disappearing depository corporation is a federal depository corporation, federal law, and (3) the laws of the domiciles of the disappearing depository corporation and of the foreign bank.

SEC. 520. Section 4895.05 of the Financial Code is amended to read:

4895.05. A merger shall not become effective unless it has been approved by the commissioner.

SEC. 520.1. Section 4895.05 of the Financial Code is amended to read:

4895.05. (a) A merger shall not become effective unless it has been approved by the commissioner.

(b) After an application for approval of a merger has been approved and all conditions precedent to the merger have been fulfilled, the commissioner shall approve the merger.

SEC. 521. Section 4904 of the Financial Code is amended to read:

4904. Promptly after a merger becomes effective, the surviving depository corporation shall:

(1) Surrender to the commissioner for cancellation the certificates of authority or licenses issued by the commissioner to the disappearing depository corporation; and

(2) File with the commissioner such report of the merger as the commissioner may require.

SEC. 521.2. Section 4908.02 of the Financial Code, as added by Assembly Bill 2618, is amended to read:

4908.02. With the approval of the commissioner, a California state independent trust company may merge into an uninsured foreign (other state) state depository corporation pursuant to this article and the law of the surviving depository corporation's domicile.

SEC. 521.3. Section 4908.04 of the Financial Code, as added by Assembly Bill 2618, is amended to read:

4908.04. A disappearing or surviving depository corporation shall file an application for approval of a merger with the commissioner.

SEC. 521.4. Section 4908.05 of the Financial Code, as added by Assembly Bill 2618, is amended to read:

4908.05. A merger shall not become effective unless it has been approved by the commissioner.

SEC. 521.5. Section 4908.06 of the Financial Code, as added by Assembly Bill 2618, is amended to read:

4908.06. If the commissioner finds all of the following with respect to an application for approval of a merger, the commissioner shall approve the application:

(a) That the shareholders' equity of the surviving depository corporation will be adequate and that the financial condition of the surviving depository corporation will be satisfactory.

(b) That the directors and executive officers of the surviving depository corporation will be satisfactory.

(c) That the surviving depository corporation will afford reasonable promise of successful operation and that it is reasonable to believe that the surviving depository corporation will be operated in a safe and sound manner and in compliance with all applicable laws.

(d) That the merger will be fair, just, and equitable. For purposes of this subdivision, in the case of any term of the merger that has been determined by agreement between the disappearing depository corporation and the surviving depository corporation in an arm's-length transaction, the commissioner shall find that the term is fair, just, and equitable to the disappearing depository corporation and the surviving depository corporation.

If the commissioner finds otherwise, the commissioner shall deny the application for approval of the merger.

SEC. 521.7. Section 4908.07 of the Financial Code, as added by Assembly Bill 2618, is amended to read:

4908.07. After an application for approval of a merger has been approved and all conditions precedent to the merger have been fulfilled, the commissioner shall approve the merger.

SEC. 521.8. Section 4908.09 of the Financial Code, as added by Assembly Bill 2618, is amended to read:

4908.09. Promptly after a merger becomes effective, the surviving depository corporation shall:

(a) Surrender to the commissioner for cancellation the certificates of authority or licenses issued by the commissioner to the disappearing depository corporation.

(b) File with the commissioner any report regarding the merger that the commissioner may require.

SEC. 522. Section 4920 of the Financial Code is amended to read:

4920. In this article, unless the context otherwise requires, "conversion" means any of the conversions described in Section 4921.

SEC. 523. Section 4921 of the Financial Code is amended to read:

4921. With the approval of the commissioner, a California state depository corporation of any class may convert into a California state depository corporation of another class pursuant to this article.

SEC. 524. Section 4922 of the Financial Code is amended to read:

4922. (a) A converting depository corporation shall adopt, and shall file with the commissioner an application for approval of, such amendments to its articles as may be necessary to carry out the conversion. Section 904 of the Corporations Code shall not apply to the amendments.

(b) A converting depository corporation shall adopt, and shall file with the commissioner an application for approval of, such amendments to its bylaws as may be necessary to carry out the conversion. The amendments shall not take effect until they are approved by the commissioner and the conversion becomes effective.

SEC. 525. Section 4923 of the Financial Code is amended to read:

4923. In obtaining the approval of outstanding shares or shareholders required for any amendment to articles or bylaws called for in Section 4922, a converting depository corporation shall provide to its shareholders information as the commissioner may require. In determining the information to be required, the commissioner shall give due consideration to regulations relating to proxy statements issued under Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78n) by (a) the Securities and Exchange Commission, (b) in the case of a depository corporation that is a bank, the federal bank regulatory agencies, and (c) in the case of a depository corporation that is a savings association, the Office of Thrift Supervision.

SEC. 526. Section 4924 of the Financial Code is amended to read:

4924. A converting depository corporation shall file with the commissioner an application for approval of the conversion.

SEC. 527. Section 4925 of the Financial Code is amended to read:

4925. If the commissioner finds all of the following with respect to an application for approval of a conversion, the commissioner shall approve the application:

(a) That the shareholders' equity of the resulting depository corporation will be adequate and that the financial condition of the resulting depository corporation will be satisfactory.

(b) That the directors, executive officers, and any controlling person of the resulting corporation will be satisfactory.

(c) That the name of the resulting depository corporation will not resemble so closely as to be likely to cause confusion the name of any other bank, savings association, or industrial loan company, as the case may be, that is transacting or has recently transacted business in this state.

(d) That the resulting depository corporation will afford reasonable promise of successful operation and that it is reasonable to believe that the resulting depository corporation will be operated

in a safe and sound manner and in compliance with all applicable laws.

(e) In the case of a conversion of a California state savings association, that the conversion will not have a seriously adverse effect on the total availability of financing for housing in any market area of the converting savings association in this state or that any effect of that type is clearly outweighed in the public interest by the probable effect of the conversion in meeting the convenience and needs of the community to be served. Nothing in this subdivision authorizes the commissioner to require the resulting depository corporation to make financing for housing available.

If the commissioner finds otherwise, the commissioner shall deny the application for approval of the conversion.

SEC. 528. Section 4926 of the Financial Code is amended to read:

4926. (a) Before a conversion becomes effective, the converting depository corporation shall give to its depositors such notice of the conversion as the commissioner may require.

(b) A depositor of the converting corporation may, subject to the provisions of any applicable federal statute or regulation and to any premature withdrawal penalty prescribed in the deposit contract, withdraw any uninsured deposit on demand at any time during the period commencing with the giving of the notice called for in subdivision (a) and ending on the 60th day after the conversion becomes effective.

SEC. 529. Section 4927 of the Financial Code is amended to read:

4927. After an application for approval of a conversion has been approved and all conditions precedent to the conversion have been fulfilled, the commissioner shall approve the amendments to the articles of the converting depository corporation called for in Section 4922, endorse the approval on the certificate of amendment or other instrument containing the amendments, and specify the time at which the certificate of amendment or other instrument is to be filed with the Secretary of State. The certificate of amendment or other instrument shall be filed with the Secretary of State at the time so specified by the commissioner, and at the time of the filing, the conversion shall become effective for all purposes.

SEC. 530. Section 4928 of the Financial Code is amended to read:

4928. When a conversion becomes effective, the commissioner shall:

(a) (1) In case the resulting depository corporation is a California state bank, issue to the resulting depository corporation a certificate of authority authorizing it to transact commercial banking business or commercial banking business and trust business, as the case may be.

(2) In case the resulting depository corporation is a California state savings association, issue to the resulting depository corporation a license authorizing it to transact business as a state savings association.

(3) In case the resulting depository corporation is a California industrial loan company, issue to the resulting depository corporation a certificate of authority authorizing it to transact business as an industrial loan company.

(b) In any case, issue to the resulting depository corporation certificates of authority, licenses, or other appropriate authorizations for the branch offices, places of business, extensions of offices, and other facilities, if any, that the converting depository corporation was operating and that the resulting depository corporation is to continue to operate.

SEC. 531. Section 4929 of the Financial Code is amended to read:

4929. Promptly after a conversion becomes effective, the resulting depository corporation shall:

(a) Surrender to the commissioner for cancellation the certificates of authority or licenses issued to the converting depository corporation by the commissioner; and

(b) File with the commissioner such report regarding the conversion as the commissioner may require.

SEC. 532. Section 4930 of the Financial Code is amended to read:

4930. (a) After a conversion becomes effective, the commissioner shall issue, upon application, a certificate under his or her official seal, stating that the converting depository corporation converted into the resulting depository corporation and specifying the time at which the conversion became effective.

(b) Any certificate issued pursuant to subdivision (a) shall be prima facie evidence of the fact of the conversion and of the regularity of the proceedings taken for the conversion and shall be conclusive evidence of such matters in favor of any innocent purchaser or encumbrancer for value.

SEC. 533. Section 4940 of the Financial Code is amended to read:

4940. In this article, unless the context otherwise requires, "conversion" means any of the conversions described in Section 4941.

SEC. 534. Section 4941 of the Financial Code is amended to read:

4941. With the approval of the commissioner:

(a) A national banking association may convert into a California state bank pursuant to this article and federal law.

(b) A federal depository corporation of any class may convert into a California state depository corporation of another class pursuant to federal law and this article.

SEC. 535. Section 4943 of the Financial Code is amended to read:

4943. In obtaining any approval of outstanding shares required for a plan of conversion, a converting depository corporation shall provide to its shareholders information as the commissioner may require. In determining the information to be required, the commissioner shall give due consideration to regulations relating to proxy statements issued under Section 14 of the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78n) by (a) the Securities and Exchange Commission, (b) in the case of a depository corporation that is a bank,

the federal bank regulatory agencies, and (c) in the case of a depository corporation that is a savings association, the Office of Thrift Supervision.

SEC. 536. Section 4944 of the Financial Code is amended to read:

4944. A converting depository corporation shall file the following with the commissioner:

(a) The plan of conversion.

(b) An officer's certificate certifying that the plan of conversion has been approved as required by federal law.

(c) An application for approval of the conversion.

SEC. 537. Section 4945 of the Financial Code is amended to read:

4945. If the commissioner finds all of the factors set forth in Section 4925 with respect to an application for approval of a conversion, the commissioner shall approve the application. If the commissioner finds otherwise, the commissioner shall deny the application for approval of the conversion.

SEC. 538. Section 4946 of the Financial Code is amended to read:

4946. After an application for approval of a conversion has been approved by the commissioner but before the conversion becomes effective:

(a) The converting depository corporation shall file with the commissioner an application for approval of the articles of the resulting depository corporation. When the commissioner approves the articles, the commissioner shall endorse the approval on the articles. After the articles are filed with the Secretary of State, the resulting depository corporation shall file with the commissioner a copy of the articles certified by the Secretary of State.

(b) The resulting depository corporation shall file with the commissioner an application for approval of its bylaws. The bylaws shall not take effect unless and until they are approved by the commissioner.

SEC. 539. Section 4947 of the Financial Code is amended to read:

4947. (a) Before a conversion becomes effective, the converting depository corporation shall give to its depositors such notice of the conversion as the commissioner may require.

(b) A depositor of the converting depository corporation may withdraw, subject to the provisions of any applicable federal statute or regulation and to any premature withdrawal penalty prescribed in the deposit contract, any uninsured deposit on demand at any time during the period commencing with the giving of the notice called for in subdivision (a) and ending on the 60th day after the conversion becomes effective.

SEC. 540. Section 4948 of the Financial Code is amended to read:

4948. (a) After an application for approval of a conversion has been approved and all conditions precedent to the conversion have been fulfilled, the commissioner shall:

(1) In case the resulting depository corporation is a California state bank, issue to the resulting depository corporation a certificate

of authority authorizing it to transact commercial banking business or commercial banking business and trust business, as the case may be.

(2) In case the resulting depository corporation is a California state savings association, issue to the resulting depository corporation a license authorizing it to transact business as a California state savings association.

(3) In case the resulting depository corporation is a California industrial loan company, issue to the resulting depository corporation a certificate of authority authorizing it to transact business as an industrial loan company.

(b) Upon the issuance of the certificate of authority or license pursuant to subdivision (a), the conversion shall become effective for all purposes.

SEC. 541. Section 4949 of the Financial Code is amended to read:

4949. When a conversion becomes effective, the commissioner shall issue to the resulting depository corporation certificates of authority, licenses, or other appropriate authorizations for the branch offices, places of business, extensions of offices, and other facilities, if any, that the converting depository corporation was operating and that the resulting depository corporation is to continue to operate.

SEC. 543. Section 4952 of the Financial Code is amended to read:

4952. (a) After a conversion becomes effective, the commissioner shall issue, upon application, a certificate under his or her official seal, stating that the converting depository corporation was converted into the resulting depository corporation and specifying the time at which the conversion became effective.

(b) Any certificate issued pursuant to subdivision (a) shall be prima facie evidence of the fact of the conversion and of the regularity of the proceedings taken for the conversion and shall be conclusive evidence of such matters in favor of any innocent purchaser or encumbrancer for value.

SEC. 544. Section 4964 of the Financial Code is amended to read:

4964. Promptly after a conversion becomes effective, the resulting depository corporation shall:

(a) Surrender to the commissioner for cancellation the certificates of authority or licenses issued by the commissioner to the converting depository corporation; and

(b) File with the commissioner such report of the conversion as the commissioner may require.

SEC. 545. Section 4966 of the Financial Code is amended to read:

4966. (a) Within 60 days after a conversion, the resulting depository corporation shall file with the Secretary of State an officers' certificate reciting the name of the converting depository corporation, the name of the resulting depository corporation, the effective date of the conversion, and that the conversion has been completed in compliance with the provisions of federal law. The

Secretary of State shall enter the fact of the conversion on the Secretary of State's corporation records for the converting depository corporation, and the converting depository corporation shall thereafter not be deemed to be a corporation organized under the laws of this state.

(b) As to any conversion, whenever effected, if an officers' certificate has not been filed pursuant to subdivision (a) within 60 days after the completion of the conversion, the commissioner may file a report with the Secretary of State setting forth, to the extent the commissioner has knowledge he or she considers reliable, the recitals specified in subdivision (a), and the Secretary of State shall record the fact of the conversion with the same effect as provided in subdivision (a).

SEC. 546. Section 4990 of the Financial Code is amended to read:

4990. (a) Any person convicted of a felony violation of any of the provisions specified in subdivision (b) shall not serve in any capacity as a director or officer or in any other position involving any management duties with a financial institution in this state with accounts insured by an agency or instrumentality of the United States or a private share insurance or guaranty arrangement. This subdivision does not, however, apply to any director or officer of a financial institution, or to persons serving in managerial positions for financial institutions, whose office or employment with a financial institution commenced, and whose felony conviction occurred, prior to January 1, 1991.

(b) Subdivision (a) applies to felony convictions of offenses specified in Chapter 18 (commencing with Section 3350) of Division 1, Article 4 (commencing with Section 5300) of Chapter 1 of Division 2, Article 8 (commencing with Section 14750) of Chapter 4 of Division 5, and Chapter 6 (commencing with Section 18435) of Division 7. Subdivision (a) also applies to felony convictions of offenses specified in provisions of the laws of the United States added or amended by the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (Public Law 101-73).

(c) On and after January 1, 1991, any person who seeks employment by, or a controlling interest in, a financial institution specified in subdivision (a) shall, as a condition to obtaining that employment or controlling interest, permit the financial institution, its regulatory agency, or both to have access to that person's state summary criminal history information, as defined in Section 11105 of the Penal Code, for purposes of determining whether the person has a prior conviction of a felony offense specified in subdivision (b) or any theft offense.

(d) Any state summary criminal history information obtained pursuant to this subdivision shall be kept confidential and no recipient under this subdivision shall disclose the contents other than for the purpose of determining eligibility for employment by, or

acquisition of a controlling interest in, a financial institution specified in subdivision (a).

(e) The authority granted by this section to the Commissioner of Financial Institutions and other regulatory agencies shall be in addition to any other authority granted by law to obtain information about the background of any person. Nothing in this section shall be construed to limit any authority of the Commissioner of Financial Institutions or any regulatory agency otherwise provided by law.

SEC. 547. Section 5104 of the Financial Code is amended to read:

5104. "Commissioner" means the Commissioner of Financial Institutions.

SEC. 548. Section 5106 of the Financial Code is amended to read:

5106. "Department" means the Department of Financial Institutions.

SEC. 549. Section 5320 of the Financial Code is amended to read:

5320. If a person is convicted of a violation of Section 5303, 5304, 5305, or 5306, or is convicted of a felony for a violation of Section 25540 or 25541 of the Corporations Code in connection with the operation of a lending institution subject to the jurisdiction of the department pursuant to this division, or is convicted of a felony violation of Section 487 or 504 of the Penal Code in connection with the operation of a lending institution subject to the jurisdiction of the department pursuant to this division any property which constitutes or is derived from proceeds traceable to that violation is subject to forfeiture pursuant to this article.

SEC. 550. Section 5330 of the Financial Code is amended to read:

5330. The commissioner may impose civil penalties on any savings association, and any institution-affiliated party as follows:

(a) Except as provided in subdivision (b) or in subdivisions (c) and (d), any savings association which, and any institution-affiliated party who, commits any of the following violations shall forfeit and pay a civil penalty of not more than five thousand dollars ($5,000) for each day during which the violation continues:

(1) Violation of any statute or regulation.

(2) Violation of any order issued by the commissioner.

(3) Violation of any condition imposed in writing by the commissioner in connection with the grant of any application or other request by the savings association.

(4) Violation of any written agreement between the savings association and the commissioner.

(b) Any savings association which, and any institution-affiliated party who, (1) commits any violation specified in subdivision (a), (2) recklessly engages in an unsafe or unsound practice in conducting the affairs of the savings association, or (3) breaches any fiduciary duty shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars ($25,000) for each day during which the violation, practice, or breach continues if the violation, practice, or breach (1) is part of a pattern of misconduct, (2) causes or is likely to cause more

than a minimal loss to the savings association, or (3), was committed by an institution-affiliated party and results in pecuniary gain or other benefit to that institution-affiliated party.

(c) Notwithstanding subdivisions (a) and (b), any savings association which, and any institution-affiliated party who, (1) knowingly commits any violation specified in subdivision (a), engages in any unsafe or unsound practice in conducting the affairs of the savings association, or breaches any fiduciary duty, and (2) knowingly or recklessly causes a substantial loss to the savings association or, in the case of an institution-related party, a substantial pecuniary gain or other benefit to the institution-related party results by reason of violation, practice or breach, shall forfeit and pay a civil penalty in an amount not to exceed the maximum amount determined under this subdivision for each day during which the violation, practice, or breach continues. The maximum daily amount of any civil penalty which may be assessed pursuant to this subdivision for any violation, practice, or breach described in the subdivision is as follows:

(1) In the case of any person other than a savings association, an amount not to exceed one million dollars ($1,000,000).

(2) In the case of any savings institution, an amount not to exceed the lesser of one million dollars ($1,000,000) or 1 percent of the total assets of the association.

(d) (1) Any penalty imposed under subdivisions (a), (b), or (c) may be assessed and collected by the commissioner by written notice.

(2) If, with respect to any assessment under paragraph (1) a hearing is not requested pursuant to subdivision (g) within the period of time allowed under subdivision (g), the assessment shall constitute a final and unappealable order.

(e) The commissioner may compromise, modify or remit any penalty which may be assessed or which has been assessed pursuant to subdivision (a), (b), or (c).

(f) In determining the amount of any penalty imposed under subdivision (a), (b), or (c), the commissioner shall take into account the appropriateness of the penalty with respect to all of the following:

(1) The size of financial resources and good faith of the savings association or other person charged.

(2) The gravity of the violation, practice, or breach.

(3) The history of previous violations, unsafe or unsound practices, or breaches of fiduciary duty.

(4) Such other matters as justice may require.

(g) The savings association or other person against whom any penalty is assessed under this section shall be afforded a departmental hearing if the association or person submits a request for a hearing within 20 days after the issuance of the notice of assessment.

(h) (1) If any savings association or institution-related party fails to pay an assessment after any civil monetary penalty assessed under

this section has become final, the department shall recover the amount assessed by action in superior court.

(2) Notwithstanding any other provision of law, review under Section 8055 of the validity or appropriateness of any civil penalty assessed under this section shall be conducted solely pursuant to Section 1085 of the Code of Civil Procedure.

(i) All penalties collected under authority of this section shall be deposited in the Savings and Loan Account in the Financial Institutions Fund.

SEC. 551. Section 5652 of the Financial Code is amended to read:

5652. Except as otherwise authorized under existing law, no person, unless lawfully authorized to do business in this state under the provisions of this division and who is actually engaged in carrying on a savings association business, shall:

(a) Do business under any name or title that contains the following terms:

(1) "Savings association."

(2) "Savings bank."

(3) "Savings and loan association."

(4) "Building and loan association."

(5) "Building association."

(6) Any combination employing either or both of the words "building," or "loan," with one or more of the words "saving," "savings," or words of similar import.

(7) Any combination employing one or more of the words "saving," "savings," or words of similar import with one or more of the words "association," "bank," "institution," "society," "company," "fund," "corporation," or words of similar import.

Notwithstanding the provisions of this subdivision, use of the term "savings bank" in a name or title is not prohibited to any person regulated by the provisions of Division 1 (commencing with Section 99), Division 7 (commencing with Section 18000), or under procedures and regulations promulgated by the Comptroller of the Currency, Federal Reserve Board, Office of Thrift Supervision, Federal Housing Finance Board, or Federal Deposit Insurance Corporation. Any reference to the term "savings bank" in this division is not intended to apply to any person other than persons authorized to do business in this state under this division.

(b) Use any name or sign or circulate or use any letterhead, billhead, circular or paper whatever, or advertise or represent in any manner that indicates or reasonably implies that the business is the character or kind of business carried on or transacted by an association or is likely to lead any person to believe that the business is that of an association.

SEC. 552. Section 6515 of the Financial Code is amended to read:

6515. (a) Notwithstanding any provisions of Division 1 (commencing with Section 99), Section 202 of the Corporations Code, or any other provisions of law relating to trusts and trust

authority, subject to regulations of the commissioner, an association may act as trustee, executor, administrator, guardian, or in any other fiduciary capacity in which banks, trust companies, or other corporations are permitted to act under the laws of this state, directly or through a state or nationally chartered subsidiary.

(b) All acts provided in this code to be performed by the commissioner, the State Treasurer, or other public officials for or in respect to the deposit of securities by trust companies for the protection of court and private trusts shall be performed as well for or in respect to the deposit of securities by any association or the trust companies of any association organized or doing business under the laws of this state, or by any federal association authorized to transact a trust business. An association may advertise its authority to engage in and conduct a trust business and to advertise for and solicit a trust business in this state, notwithstanding any other provision of law.

(c) Pursuant to the authority contained in Section 1 of Article XV of the California Constitution, the restrictions upon rates of interest contained in Section 1 of Article XV of the California Constitution shall not apply to any obligations of, loans made by, or forbearances of, an association or federal association, or a service corporation which is authorized to exercise trust powers, when the association, federal association, or service corporation is acting in its fiduciary capacity as trustee.

(d) Subdivision (c) creates and authorizes an exempt class of persons pursuant to Section 1 of Article XV of the Constitution. Notwithstanding any other provision of law, subdivision (c) does not exempt an association, federal association, or a service corporation of such associations, from complying with all other laws and regulations governing the business in which the association, federal association, or service corporation is engaged.

SEC. 553. Section 7262 of the Financial Code is amended to read:

7262. Bonds of any flood control and water conservation districts, or any zone thereof, having an assessed valuation on taxable real property of not less than one million dollars ($1,000,000), county, city and county, city, metropolitan water district, municipal utility district, any special district established by and within any municipal utility district, transit district, rapid transit district, including sales tax revenue bonds of that district of the State of California (herein referred to generally as public corporations) except the bonds of any particular such public corporation which may be declared ineligible for investment by commercial banks by regulations of the commissioner.

SEC. 554. Section 8000 of the Financial Code is repealed.

SEC. 555. Section 8001 of the Financial Code is repealed.

SEC. 556. Section 8002 of the Financial Code is repealed.

SEC. 557. Section 8003 of the Financial Code is repealed.

SEC. 558. Section 8004 of the Financial Code is repealed.

SEC. 558.5. Section 8005 of the Financial Code is repealed.

SEC. 559. Section 8006 of the Financial Code is repealed.

SEC. 560. Section 8007 of the Financial Code is repealed.

SEC. 561. Section 8008 of the Financial Code is repealed.

SEC. 562. Section 8009.5 of the Financial Code is repealed.

SEC. 562.3. The heading of Article 2 (commencing with Section 8030) of Chapter 7 of Division 2 of the Financial Code is amended to read:

Article 2. Savings and Loan Account

SEC. 562.5. Section 8030 of the Financial Code is amended to read:

8030. (a) To meet the operating costs and expenses of the department in administering this division and other laws relating to savings associations or the savings association business, for the payment of which no provision is otherwise made, the commissioner shall require each association doing business in this state to pay in advance an annual assessment for its pro rata share of all operating costs and expenses as estimated by the commissioner for the ensuing year.

(b) As used in this article, "association" includes a foreign savings association doing business in this state under an approval issued by the commissioner.

SEC. 563. Section 8035 of the Financial Code is amended to read:

8035. If any domestic association proposes to acquire the assets of any federal association or any state or national bank by transfer, conversion, or otherwise, the initial assessment provided for by this article shall be computed on the same basis as if the federal association or state or national bank had been an association and assessed on or before the 20th day of June in the fiscal year preceding the initial assessment, except that the initial assessment shall be based on the assets of the federal association or of the state or national bank, as shown by the institution's report to the Office of Thrift Supervision, the commissioner, or the Comptroller of the Currency, respectively, next preceding the 20th day of June in the fiscal year preceding the initial assessment and the assessment shall be reduced, if the certificate of authority is not issued in July, by one-twelfth for each full month of the fiscal year which has expired at the time of the issuance of the certificate of authority and shall be payable in full on the date of issuance.

SEC. 563.5. Section 8035.5 is added to the Financial Code, to read:

8035.5. As of the operative date of this section:

(a) The Savings Association Special Regulatory Fund is converted into a separate account in the Financial Institutions Fund and designated as the Savings and Loan Account.

(b) All moneys and other assets and all liabilities of the Savings Association Special Regulatory Fund shall be transferred to the Savings and Loan Account.

SEC. 564. Section 8036 of the Financial Code is amended to read:

8036. All money collected or received by the commissioner under this division or any other law relating to savings associations or the savings association business, except money belonging to associations whose business property and assets are in the possession of the commissioner, shall be deposited with the State Treasurer to the credit of the Savings and Loan Account in the Financial Institutions Fund.

SEC. 565. Section 8037 of the Financial Code is repealed.

SEC. 565.5. Section 8037 is added to the Financial Code, to read:

8037. All expenses of the department in administering the division and other laws relating to savings associations or to the savings association business shall be paid by the Savings and Loan Account; and, except as otherwise provided in Section 276 or 277, and the Savings and Loan Account shall be used only for such purposes.

SEC. 565.7. Section 8038 of the Financial Code is repealed.

SEC. 566. Section 9000 of the Financial Code is amended to read:

9000. Associations shall pay all fees required by this division to the department.

SEC. 567. Section 12100 of the Financial Code is amended to read:

12100. This division does not apply to any of the following:

(a) Persons or their authorized agents doing business under license and authority of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99), or under any law of this state or of the United States relating to banks, trust companies, building or savings associations, industrial loan companies, personal property brokers, credit unions, title insurance companies or underwritten title companies (as defined in Section 12402 of the Insurance Code), escrow agents subject to Division 6 (commencing with Section 17000), consumer finance lenders subject to Division 10 (commencing with Section 24000), or commercial finance lenders subject to Division 11 (commencing with Section 26000).

(b) (1) Any person which is licensed under Chapter 14A (commencing with Section 1851) of Division 1 or any agent of such person when selling any travelers check (as defined in Section 1852) which is issued by such person.

(2) Any person which is licensed under Division 16 (commencing with Section 33000) or any agent of the person, when selling any payment instrument (as defined in Section 33059) which is issued by the person.

(c) The services of a person licensed to practice law in this state, when the person renders services in the course of his or her practice as an attorney at law, and the fees and disbursements of such person whether paid by the debtor or other person, are not charges or costs and expenses regulated by or subject to the limitations of this chapter; provided, these fees and disbursements shall not be shared, directly or indirectly with the prorater or check seller.

(d) Any transaction in which money or other property is paid to a "joint control agent" for disbursal or use in payment of the cost of labor, materials, services, permits, fees, or other items of expense incurred in construction of improvements upon real property.

(e) A merchant-owned credit or creditors association, or a member-owned or member-controlled or member-directed association whose principal function is that of servicing the community as a reporting agency.

(f) Any person licensed under Chapter 1 of Part 6 of Division 2 of the Labor Code, when acting in any capacity for which he or she is licensed under such part.

(g) Any person licensed under Part 1, Division 4, of the Business and Professions Code, when acting in any capacity for which he or she is licensed under that part.

(h) A common law or statutory assignment for the benefit of creditors or the operation or liquidation of property or a business enterprise under supervision of a creditor's committee.

(i) The services of a person licensed as a certified public accountant or a public accountant in this state, when the person renders services in a course of his or her practice as a certified public accountant or a public accountant, and the fees and disbursements of the person whether paid by the debtor or other person, are not charges or costs and expenses regulated by or subject to the limitations of this chapter; provided, these fees and disbursements shall not be shared, directly or indirectly, with the prorater or check seller.

(j) Nonprofit community service organizations that are subject to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code) or are subject to the Nonprofit Mutual Benefit Corporation Law (Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code) and whose membership consists exclusively of retailers, lenders in the consumer credit field, educators, attorneys, social service organizations, employers' or employees' organizations, and related groups, if the principal functions of these organizations are: (1) consumer credit education; (2) counseling on consumer credit problems and family budgets; and (3) arranging, and in certain cases administering, debt settlement plans, for which a charge for administrative services only may be made of 6.5 percent of the money disbursed monthly, or twenty dollars ($20) per month, whichever is the lesser, to offset expenses; provided essential records are kept in accordance with sound accounting practices, consumer funds are banked in a trust account and appropriate fidelity bond and insurance are maintained, that reports are made to debtors, and independent audits made; and further provided, however, that this subdivision shall exempt these organizations from this division only with respect to those activities described in Section 12002.1 and not with respect to those activities described in Section 12002.

(k) Any person licensed under Chapter 14 (commencing with Section 1800) of Division 1 or any agent of such person, when selling any check or draft which is drawn by the person and which is of the type described in paragraph (3) of subdivision (a) of Section 1800.5.

(*l*) Any group of banks each of which is organized under the laws of a nation other than the United States and one or more of which are licensed by the Commissioner of Financial Institutions of the State of California under Article 3 (commencing with Section 1750) of Chapter 13.5 of Division 1, or any agent of such group, when selling any foreign currency traveler's check (as defined in Section 1852) issued by such group, provided that each bank which is a member of the group is jointly and severally liable to pay such foreign currency traveler's check.

(m) Any transaction of the type described in Section 1854.1.

SEC. 568. Section 14003 of the Financial Code is amended to read:

14003. "Commissioner" means the Commissioner of Financial Institutions of the State of California.

SEC. 569. Section 14200.1 is added to the Financial Code, to read:

14200.1. There is in the Department of Financial Institutions, the Division of Credit Unions. The Division of Credit Unions has charge of the execution of the laws of this state relating to credit unions or to the credit union business.

SEC. 570. Section 14200.2 is added to the Financial Code, to read:

14200.2. The Chief Officer of the Division of Credit Unions is the Deputy Commissioner of Financial Institutions for the Division of Credit Unions. The Deputy Commissioner of Financial Institutions for the Division of Credit Unions shall administer the laws of this state relating to credit unions or the credit union business under the direction of and on behalf of the commissioner. The Deputy Commissioner of Financial Institutions for the Division of Credit Unions shall be appointed by the Governor and shall hold office at the pleasure of the Governor. The Deputy Commissioner of Financial Institutions shall receive an annual salary as fixed by the Governor.

SEC. 571. Section 14204 of the Financial Code is amended to read:

14204. If the commissioner upon any examination, or from any report made to the commissioner, finds any credit union is violating the provisions of this division or the rules made pursuant to this division, or has impaired capital, or is insolvent, or is conducting its business in an unsafe or unauthorized manner, the commissioner may notify the credit union to, and the credit union shall, cease these practices. The commissioner may notify the credit union to, and the credit union shall, temporarily suspend or entirely cease the transaction of any new business or the portion thereof as is ordered by the commissioner. Within 10 days from the date of a notification or order pursuant to this section, the credit union may request a hearing. Neither the request for a hearing nor the hearing itself shall stay the notification or order issued by the commissioner under this section.

SEC. 572. Section 14206 of the Financial Code is repealed.

SEC. 573. Section 14258 of the Financial Code is repealed.

SEC. 574. Section 14350 of the Financial Code is amended to read:

14350. To defray the costs of administration of this division and other laws relating to credit unions or the credit union business, including investigations and supervision, but not including the costs of examination referred to in Section 14353, except as otherwise provided therein, the commissioner shall require every credit union licensed by him or her or coming under his or her supervision to pay in advance to the commissioner for the ensuing year charges and assessments in accordance with the following schedule:

Total assets of credit union	Amount of assessment
Assets of $1,000 or less	$20.00
Over $1,000, but not more than $50,000	$20.00 plus $2.00 per $1,000 of assets in excess of $1,000
Over $50,000, but not more than $150,000	$118.00 plus $1.75 per $1,000 of assets in excess of $50,000
Over $150,000, but not more than $300,000	$293.00 plus $1.50 per $1,000 of assets in excess of $150,000
Over $300,000, but not more than $500,000	$518.00 plus $1.00 per $1,000 of assets in excess of $300,000
Over $500,000, but not more than $750,000	$718.00 plus $0.50 per $1,000 of assets in excess of $500,000
Over $750,000	$843.00 plus $0.25 per $1,000 of assets in excess of $750,000

SEC. 574.5. Section 14352 of the Financial Code is amended to read:

14352. If the commissioner determines that the charges and assessments set forth in this division for any year are in excess of the amount necessary, or are insufficient, to meet the expenses of administration of this division and other laws relating to credit unions or the credit union business, including examinations and supervision, for that year, the assessments and charges for the following year shall be adjusted on a pro rata basis in accordance with the percentage of such excess or insufficiency as related to the actual charges and assessments for the year for which such excess or insufficiency occurred, in order to recover the actual costs of administration.

SEC. 575. Section 14354 of the Financial Code is amended and renumbered to read:

14355. All money received or collected by the commissioner under this division or any other law relating to credit unions or the credit union business shall be paid at least once each week,

accompanied by a detailed statement thereof, into the State Treasury to the credit of the Credit Union Fund.

SEC. 575.5. Section 14354 is added to the Financial Code, to read:

14354. As of the operative date of this section:

(a) There is established the Credit Union Fund in the State Treasury.

(b) All money on deposit with the Treasurer in the State Corporations Fund that has been received or collected by the Commissioner of Corporations under this division or any other law relating to credit unions or the credit union business, all other assets of the State Corporations Fund that have been acquired by the Commissioner of Corporations under this division or any other law relating to credit unions or the credit union business, and all liabilities of the State Corporations Fund that have been incurred under this division or any other law relating to credit unions or the credit union business shall be transferred to the Credit Union Fund.

SEC. 576. Section 14356 is added to the Financial Code, to read:

14356. All expenses of the department in administering this division and other laws relating to credit unions or the credit union business shall be paid out of the Credit Union Fund; and, except as otherwise provided in Section 276 or 277, the Credit Union Fund shall be used only for such purposes.

SEC. 577. Article 5 (commencing with Section 14380) is added to Chapter 3 of Division 5 of the Financial Code, to read:

Article 5. Credit Union Advisory Committee

14380. There is established in the department a Credit Union Advisory Committee.

14381. The Credit Union Advisory Committee shall advise the commissioner and the Deputy Commissioner of Financial Institutions for the Division of Credit Unions on matters relating to credit unions or the credit union business.

14382. (a) The Credit Union Advisory Committee consists of seven members.

(b) The members of the Credit Union Advisory Committee shall be appointed by the Secretary of the Business, Transportation and Housing Agency.

(c) The term of a member of the Credit Union Advisory Committee is two years. However, a member may be reappointed.

(d) Membership in the Credit Union Advisory Committee is voluntary. No person is required to accept an appointment to the Credit Union Advisory Committee, and any member may resign by filing a resignation with the commissioner.

(e) No member of the Credit Union Advisory Committee shall receive any compensation, reimbursement for expenses, or other payment from the state in connection with service on the Credit Union Advisory Committee.

14383. The Credit Union Advisory Committee shall meet at least once each calendar quarter.

14384. The commissioner may by order or regulation prescribe rules governing the Credit Union Advisory Committee and its members, including such matters as meetings, quorum, and actions.

SEC. 582. Section 18002 of the Financial Code is amended to read:

18002. "Commissioner" means the Commissioner of Financial Institutions of the State of California.

SEC. 582.5. Section 18002.5 is added to the Financial Code, to read:

18002.5. "Department" means the Department of Financial Institutions.

SEC. 583. Section 18021 of the Financial Code is amended to read:

18021. (a) An industrial loan company shall not deposit its funds except with a bank, trust company, or savings association authorized to do business in this state, except as provided in subdivision (b).

(b) An industrial loan company which is insured, as that term is defined in Section 18003.5, may also deposit its funds in an out-of-state financial institution, the accounts of which are insured by the Federal Deposit Insurance Corporation.

(c) Funds deposited in an out-of-state financial institution shall not in any case exceed the applicable amount of federal deposit insurance.

(d) The depository shall be approved by a majority vote of the board of directors or the executive committee, exclusive of the vote of any director who is an officer, director, trustee, or shareholder of the depository so designated. An out-of-state savings association subject to the Management Consignment Program of the Office of Thrift Supervision shall not be used as a depository.

(e) An industrial loan company shall furnish an authorization for disclosure to the commissioner of the financial records of deposits pursuant to Section 7473 of the Government Code. No deposit shall be made in an out-of-state financial institution unless that institution agrees in writing to disclose financial records of the industrial loan company to the commissioner.

SEC. 584. Section 18026 of the Financial Code is repealed.

SEC. 585. Section 18057 of the Financial Code is amended to read:

18057. An industrial loan company shall not use any advertising nor make any representations which indicate, imply or might lead a person to believe that the company is a savings association.

SEC. 586. Section 18101.6 of the Financial Code is amended to read:

18101.6. Companies authorized to engage in the industrial loan business after the effective date of the act which added this section shall have the words "industrial loan company," "investment and loan," "thrift company," "thrift and loan company," or "bank" as part of the company name included in the articles of incorporation.

SEC. 587. Section 18210.5 of the Financial Code is repealed.

SEC. 588. Section 18212.1 of the Financial Code is amended to read:

18212.1. As an alternative to the charges authorized by Section 18212 a licensee may contract for and receive charges at a rate not exceeding five-sixths of 1 percent per month plus a percentage per month equal to one-twelfth of the annual rate prevailing on the 25th day of the second month of the quarter preceding the quarter in which the loan is made as established by the Federal Reserve Bank of San Francisco on advances to member banks under Section 13 and 13a of the Federal Reserve Act as now in effect or hereafter from time to time amended, or if there is no such single determinable rate for advances, the closest counterpart of such rate as shall be designated by the commissioner. Charges shall be calculated on the unpaid principal balance.

SEC. 588.5. Section 18339 is added to Article 1 of Chapter 5 of Division 7 of the Financial Code, to read:

18339. As of the operative date of this section:

(a) There is established an Industrial Loan Account in the Financial Institutions Fund in the State Treasury.

(b) All money on deposit with the Treasurer in the State Corporations Fund that has been received or collected by the Commissioner of Corporations under this division or any other law relating to industrial loan companies or the industrial loan business, all other assets of the State Corporations Fund that have been acquired by the Commissioner of Corporations under this division or any other law relating to industrial loan companies or the industrial loan business, and all liabilities of the State Corporations Fund that have been incurred under this division or any other law relating to industrial loan companies or the industrial loan business shall be transferred to the Industrial Loan Account.

SEC. 589. Section 18340 of the Financial Code is amended to read:

18340. All money received or collected by the commissioner under this division or any other law relating to industrial loan companies or the industrial loan business shall be deposited in the State Treasury to the credit of the Industrial Loan Account of the Financial Institutions Fund.

SEC. 590. Section 18340.5 is added to the Financial Code, to read:

18340.5. All expenses of the department in administering this division and other laws relating to industrial loan companies or the industrial loan business shall be paid out of the Industrial Loan Account; and, except as otherwise provided in Section 276 or 277, the Industrial Loan Account shall be used only for such purposes.

SEC. 591. Section 18348 of the Financial Code is repealed.

SEC. 592. Section 18349.5 of the Financial Code is amended to read:

18349.5. (a) For the purposes of this section, the following definitions are applicable:

(1) "Account holder" includes, in the case of an investment certificate account, an investment certificate holder; in the case of a trust account, each trustor and beneficiary of the trust account; and, in the case of any other fiduciary account, each person who occupies, with respect to the account, a position which is similar to the position that a trustor or beneficiary occupies with respect to a trust account.

(2) "Industrial loan company" means any corporation which falls within the definitions of Sections 18003 and 18003.5.

(3) "Order" means any approval, consent, authorization, permit, exemption, denial, prohibition, or requirement applicable to a specific case issued by the commissioner, including without limitation, any condition thereof. "Order" does not include any certificate of authority or license issued by the commissioner, but does include any condition of a license and any written agreement made by any person with the commissioner under this division.

(4) "Subject person of an industrial loan company" means any director, officer, or employee of the industrial loan company, or any person who participates in the conduct of the business of the industrial loan company. However, "subject person of an industrial loan company" does not include an individual who is a director, officer, or employee of a controlling person of an industrial loan company unless the individual is a director, officer, or employee of the industrial loan company or participates in the conduct of the industrial loan company.

(5) "Controlling person" means a person who, directly or indirectly, controls an industrial loan company.

(6) "Violation" includes, without limitation, any act done, alone or with one or more persons, for or toward causing, bringing about, participation in, counseling, aiding or abetting a violation.

(b) If, after notice and opportunity for hearing, the commissioner finds the following, the commissioner may issue an order suspending or removing a subject person of an industrial loan company from his or her office with the industrial loan company and prohibiting the subject person from further participating in any manner in the conduct of the business of the industrial loan company, except with the prior consent of the commissioner:

(1) (A) That the subject person has violated any provision of this division or of any regulation or order issued under this division, or any provision of any other applicable law relating to the business of the industrial loan company; or

(B) That the subject person has engaged or participated in any unsafe or unsound act with respect to the business of the industrial loan company; or

(C) That the subject person has committed or engaged in any act which constitutes a breach of his or her fiduciary duty as a subject person; and

(2) (A) That the industrial loan company has suffered or will probably suffer substantial financial loss or other damage by reason of that violation, act, or breach of fiduciary duty; or

(B) That the interests of the industrial loan company's accountholders have been or are likely to be seriously prejudiced by reason of the violation, act, or breach of fiduciary duty; or

(C) That the subject person has received financial gain by reason of that violation, act, or breach of fiduciary duty; and

(3) That the violation, act, or breach of fiduciary duty is one involving personal dishonesty on the part of the subject person, or one which demonstrates a willful or continuing disregard for the safety or soundness of the industrial loan company.

(c) If, after notice and opportunity for hearing, the commissioner finds the following, the commissioner may issue an order suspending or removing a subject person of an industrial loan company from his or her office with the industrial loan company and prohibiting the subject person from further participating in any manner in the conduct of the business of the industrial loan company, except with the prior consent of the commissioner:

(1) That the subject person's conduct or practice with respect to another industrial loan company or business institution has resulted in substantial financial loss or other damage; and

(2) That the conduct or practice has evidenced personal dishonesty or willful or continuing disregard for the safety and soundness of the other industrial loan company or business institution; and

(3) That the conduct or practice is relevant in that it demonstrates unfitness to continue as a subject person of the industrial loan company.

(d) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of an industrial loan company from his or her office with the industrial loan company and prohibiting the subject person from further participating in any manner in the conduct of the business of the industrial loan company, except with the prior consent of the commissioner:

(1) That it is necessary for the protection of the industrial loan company or the interests of the industrial loan company's account holders that the commissioner issue the order immediately, and

(2) (A) That any of the factors set forth in paragraphs (1) and (2) of subdivision (b) and any of the factors set forth in paragraph (3) of subdivision (c) are true with respect to the subject person; or

(B) That any of the factors set forth in paragraphs (1), (2), and (3) of subdivision (c), and the factor set forth in paragraph (3) of subdivision (c) are true with respect to the subject person.

(e) (1) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of an industrial loan company from his or her office with the

industrial loan company and prohibiting the subject person from further participating in any manner in the conduct of the business of the industrial loan company, except with the prior consent of the commissioner.

(A) That the subject person has been charged in an indictment issued by a grand jury or in an information, complaint, or similar pleading issued by a United States attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with a crime which is punishable by imprisonment for a term exceeding one year and which involves dishonesty or breach of trust; and

(B) That the person's continuing to serve as a subject person of the industrial loan company may pose a material threat to the interest of the industrial loan company's account holders or may threaten to materially impair public confidence in the industrial loan company. In case the criminal proceedings are terminated other than by a judgment of conviction the order shall be deemed rescinded.

(2) If the commissioner finds the following, the commissioner may immediately issue an order suspending or removing a subject person of an industrial loan company or a former subject of an industrial loan company, from his or her office, if any, with the industrial loan company and prohibiting the person from further participating in any manner in the conduct of the business of the industrial loan company, except with the prior consent of the industrial loan company:

(A) That the person has been finally convicted of a crime which is punishable by imprisonment for a term exceeding one year and which involves dishonesty or breach of trust; and

(B) That the person's continuing to serve or resumption of service as a subject person of the industrial loan company may pose a material threat to the interests of the industrial loan company's account holders or may threaten to materially impair public confidence in the industrial loan company.

(3) The fact that any subject person of an industrial loan company charged with a crime involving dishonesty or breach of trust is not finally convicted of that crime shall not preclude the commissioner from issuing an order regarding the subject person pursuant to other provisions of this division.

(f) Within 30 days after an order is issued pursuant to subdivision (d) or (e), the person to whom the order is issued may file an application for a hearing.

(g) Any person to whom an order is issued under subdivision (b), (c), (d), or (e) may apply to the commissioner to modify or rescind that order. The commissioner shall not grant that application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that the person will, if and when he or she becomes a subject person of an industrial loan company, comply with all applicable provisions of this division and of any regulation or order issued thereunder.

(h) A hearing held pursuant to this section shall be private unless the commissioner, in his or her discretion, after fully considering the views of the parties, determines that a public hearing is necessary to protect the public interest.

(i) (1) It is unlawful for any subject person of an industrial loan company or former subject person of an industrial loan company to whom an order is issued under subdivision (b), (c), (d), or (e) to do any of the following, except with the prior consent of the commissioner, so long as the order is effective:

(A) To serve or act as a director, officer, employee, or agent of any industrial loan company.

(B) To vote any shares or other securities of an industrial loan company having voting rights, for the election of any person as a director of an industrial loan company.

(C) Directly or indirectly, to solicit, procure, or transfer or attempt to transfer, or vote any proxy, consent, or authorization with respect to any shares or other securities of any industrial loan company having voting rights.

(D) Otherwise to participate in any manner in the conduct of the business of any industrial loan company.

(2) Any person who violates paragraph (1) shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000) or imprisoned in the state prison, or in a county jail not to exceed one year, or by both such fine and imprisonment.

(3) If the commissioner believes that any person has violated paragraph (1), the commissioner may bring an action in a court of competent jurisdiction petitioning the court to assess that person a civil penalty in an amount as the commissioner may specify; provided, however, that the amount of the civil penalty shall not exceed two thousand five hundred dollars ($2,500) for each violation or, in the case of a continuing violation, two thousand five hundred dollars ($2,500) for each day for which the violation continues.

In determining the amount of a civil penalty to be assessed under this paragraph, the court shall consider the financial resources and good faith of the person charged, the gravity of the violation, the history of previous violations by the person, and such other factors as in the opinion of the court may be relevant.

SEC. 592.5. Section 18350 of the Financial Code is amended to read:

18350. Each industrial loan company shall pay to the commissioner its pro rata share of all costs and expenses of the department in administering this division and other laws relating to industrial loan companies or the industrial loan business, as estimated by the commissioner for the ensuing year and of any deficit actually incurred or anticipated in the year in which the assessment is made. The pro rata share shall be the proportion which a company's assets bear to the aggregate assets of all companies as shown by the latest annual reports of the companies to the commissioner. The pro rata

share shall not include the costs of any examinations provided for in Section 18392, unless they cannot be collected from the company examined.

SEC. 593. Section 18356 of the Financial Code is amended to read:

18356. The commissioner may order any industrial loan company to desist from any conduct which the commissioner finds in violation of this division or any rule or order of the commissioner made pursuant to this division.

SEC. 594. Section 18360 of the Financial Code is amended to read:

18360. The company named in any order issued pursuant to this division for which no express hearing right is provided, including Sections 18356, 18357, 18358, 18359, 18363, and 18415.3 may, within 15 days after receipt thereof, file with the commissioner its written request for hearing. The filing of that request shall not operate to postpone or suspend the effectiveness of any order issued by the commissioner unless otherwise directed by the commissioner. The order may be amended or set aside by the commissioner at any time. The commissioner shall, within 30 business days after the receipt of that written request or at a later time as may be mutually agreed with the company, cause that matter to be heard.

SEC. 595. Section 18395 of the Financial Code is repealed.

SEC. 596. Section 18409 of the Financial Code is amended to read:

18409. The commissioner shall make and file annually with the department as a public record a composite of reports filed by industrial loan companies, and any comments thereon that he or she deems in the public interest.

SEC. 597. Section 18427 of the Financial Code is repealed.

SEC. 598. Section 18427 is added to the Financial Code, to read:

18427. Unless the context otherwise requires, in this article:

(a) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security for value.

(b) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security for value. "Sale" or "sell" includes any exchange of securities and any change in the rights, preferences, privileges, or restrictions of or on outstanding securities.

(c) "Security" means any stock or debenture, or any warrant, right, or option to subscribe to or purchase any of the foregoing.

(d) The terms defined in subdivisions (a) and (b) of this section do not include any stock dividend payable with respect to common stock of an industrial loan company solely (except for any cash or script paid for fractional shares) in shares of such common stock, if such industrial loan company has no other class of voting stock outstanding; provided, that shares issued in any such dividend shall be subject to any conditions previously imposed by the commissioner applicable to the shares with respect to which they are issued.

SEC. 599. Section 18427.1 of the Financial Code is repealed.

SEC. 600. Section 18427.1 is added to the Financial Code, to read:

18427.1. No industrial loan company organized under the laws of this state shall offer or sell any security issued by it unless the commissioner has issued a permit authorizing such sale.

SEC. 601. Section 18427.2 of the Financial Code is repealed.

SEC. 602. Section 18427.2 is added to the Financial Code, to read:

18427.2. An application for a permit shall be in such form and contain such information as the commissioner may prescribe.

SEC. 603. Section 18427.3 of the Financial Code is repealed.

SEC. 604. Section 18427.3 is added to the Financial Code, to read:

18427.3. The commissioner shall charge and collect fees for applications filed under this article as fixed in this section.

(a) The fee for a negotiating permit shall be fifty dollars ($50).

(b) The fee for a permit to exchange a security or to make any change in the rights, preferences, privileges, or restrictions of or on outstanding securities shall be fifty dollars ($50).

(c) The fee for any permit to sell securities other than as specified in subdivision (b) shall be one hundred dollars ($100) plus one-tenth of one percent of the aggregate value of the securities sought to be sold, up to a maximum aggregate fee of one thousand seven hundred fifty dollars ($1,750).

SEC. 605. Section 18427.4 of the Financial Code is repealed.

SEC. 606. Section 18427.4 is added to the Financial Code, to read:

18427.4. If the commissioner finds that the proposed sale of securities is fair, just, and equitable, he or she shall issue to the applicant a permit authorizing it to offer and sell the securities in such amount and upon such terms and conditions as he or she may provide in the permit. If the commissioner finds otherwise, he or she shall deny the application.

SEC. 607. Section 18427.5 is added to the Financial Code, to read:

18427.5. The commissioner may impose conditions in any permit issued under Section 18427.4, requiring the deposit in escrow of securities, imposing a legend condition restricting the transferability thereof, impounding the proceeds from the sale thereof, limiting the expense in connection with the sale thereof, or such other conditions as he or she deems reasonable and necessary or advisable in the public interest.

SEC. 608. Section 18427.6 is added to the Financial Code, to read:

18427.6. Every permit issued pursuant to Section 18427.4 shall recite that it is permissive only and does not constitute a recommendation or endorsement of the securities permitted to be sold.

SEC. 609. Section 18427.7 is added to the Financial Code, to read:

18427.7. The commissioner may amend, alter, suspend, or revoke any permit issued pursuant to Section 18427.4.

SEC. 610. Section 18427.8 is added to the Financial Code, to read:

18427.8. Whenever an industrial loan company applies for a permit to issue any security or to deliver any other consideration (whether or not such security or such transaction is exempt from, or

not subject to, the provisions of Section 18427.1) in exchange for one or more bona fide outstanding securities (as defined in Section 25019 of the Corporations Code), claims, or property interests, or partly in such exchange and partly for cash, the commissioner is authorized to approve the terms and conditions of such issuance and exchange or such delivery and exchange and the fairness of such terms and conditions and is authorized to hold a hearing on the fairness of such terms and conditions, at which all persons to whom it is proposed to issue any security or to deliver any other consideration in such exchange shall have the right to appear.

SEC. 611. Section 18427.9 is added to the Financial Code, to read:

18427.9. There shall be exempted from the provisions of Section 18427.1 all of the following:

(a) (1) Any offer, not involving a public offering, to an affiliate or to a person of the type described in subdivision (i) of Section 25102 of the Corporations Code or in the regulations of the Commissioner of Corporations adopted thereunder.

(2) The execution and delivery of an agreement for the sale of securities to any person of the type described in paragraph (1), subject to all of the following:

(A) The agreement shall contain substantially the following provision:

"The sale of the securities which are the subject of this agreement has not been authorized by a permit issued by the Commissioner of Financial Institutions of the State of California. The issuance of the securities or the payment or receipt of any part of the consideration therefor prior to the issuance of a permit is unlawful, unless the sale of securities is exempt from Section 18427.1 of the California Financial Code. The rights of all parties to this agreement are expressly conditioned upon the issuance of a permit, unless the sale is so exempt."

(B) No part of the purchase price may be paid or received, and none of the securities may be issued, until a permit authorizing the sale of the securities is issued, unless the sale is exempt from Section 18427.1.

(b) Any transaction or security which the commissioner by regulation or order exempts as not being comprehended within the purposes of this article and the regulation of which he or she finds is not necessary or appropriate in the public interest or for the protection of investors.

SEC. 612. Section 18427.10 is added to the Financial Code, to read:

18427.10. Nothing contained in this article shall affect the Corporate Securities Law of 1968, Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code.

SEC. 613. Section 18427.11 is added to the Financial Code, to read:

18427.11. The commissioner may by regulation or order restrict, limit, prohibit or otherwise condition the uses of the proceeds from the sale of securities, the extent to which a security may be included within the definition of capital, or the extent to which the proceeds from the sale of securities may be included in the investment certificate ratio as defined by Section 18016, or used to increase outstanding investment certificates.

SEC. 614. Section 18510 of the Financial Code is amended to read:

18510. The Board of Directors of Guaranty Corporation shall be composed of five members, at least two of which shall be public members. The five members shall be appointed by the commissioner. The commissioner shall consult with the President of Thrift Guaranty Corporation before making an appointment. Public members shall not be affiliated with any company or affiliate of any company or employed by any state agency. A public member shall not be a relative of any officer or director of any company or its affiliates.

SEC. 615. Section 18654 of the Financial Code is amended to read:

18654. The commissioner is authorized to adopt rules to implement this chapter similar to regulations adopted under similar provisions of law contained in Chapter 21.5 (commencing with Section 3750) of Division 1, and for the same or similar reasons. The authority granted to the commissioner by this section is in addition to the authority granted to the commissioner under Section 18347.

SEC. 616. Section 18686 of the Financial Code is amended to read:

18686. The minimum age requirement set forth in Section 18685 does not apply in any case in which the factors set forth in subdivision (a) and any of the factors set forth in subdivision (b) apply:

(a) The foreign (other state) industrial loan company, by itself or in concurrent transactions with other depository corporations, as defined in Section 4805.06, acquires the whole business unit of the California industrial loan company or California bank or, if the California industrial loan company or California bank has been closed or placed in conservatorship, all or substantially all of the insured investment certificates or deposits of the California industrial loan company or California bank.

(b) (1) In the case of a California industrial loan company, one of the following:

(A) The commissioner has taken possession of the property and business of the industrial loan company pursuant to Section 18415.

(B) The purchase or merger is one with respect to which the Federal Deposit Insurance Corporation provides assistance under Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1823(c)).

(C) The commissioner finds that one or more of the factors listed in Section 18415 exists and that imposing the minimum age requirement of Section 18685 is not in the public interest.

(2) In the case of a California state bank one of the following:

(A) The commissioner has taken possession of the property and business of the bank pursuant to Section 3100.

(B) The purchase or merger is one with respect to which the Federal Deposit Insurance Corporation provides assistance under Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1823(c)).

(C) The commissioner finds that one or more of the factors listed in Section 3100 exists and that imposing the minimum age requirement of Section 3825 is not in the public interest.

(3) In the case of a California national bank, one of the following:

(A) The California bank is in default or in danger of default as defined in Section 3(x) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(x)).

(B) The purchase or merger is one with respect to which the Federal Deposit Insurance Corporation provides assistance under Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1823(c)).

(c) This section shall remain in effect only until September 29, 1997, and as of that date is repealed.

SEC. 616.1. Section 18686 of the Financial Code is amended to read:

18686. The minimum age requirement set forth in Section 18685 does not apply in any case in which the factors set forth in subdivision (a) and any of the factors set forth in subdivision (b) apply:

(a) The foreign (other state) industrial loan company, by itself or in concurrent transactions with other depository corporations, as defined in Section 4805.06, acquires the whole business unit of the California industrial loan company or California bank or, if the California industrial loan company or California bank has been closed or placed in conservatorship, all or substantially all of the insured investment certificates or deposits of the California industrial loan company or California bank.

(b) (1) In the case of a California industrial loan company, one of the following:

(A) The commissioner has taken possession of the property and business of the industrial loan company pursuant to Section 18415.

(B) The purchase or merger is one with respect to which the Federal Deposit Insurance Corporation provides assistance under Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1823(c)).

(C) The commissioner finds that one or more of the factors listed in Section 18415 exists and that imposing the minimum age requirement of Section 18685 is not in the public interest.

(2) In the case of a California state bank, one of the following:

(A) The commissioner has taken possession of the property and business of the bank pursuant to Section 3100.

(B) The purchase or merger is one with respect to which the Federal Deposit Insurance Corporation provides assistance under

Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1823(c)).

(C) The commissioner finds that one or more of the factors listed in Section 3100 exists and that imposing the minimum age requirement of Section 3825 is not in the public interest.

(3) In the case of a California national bank, one of the following:

(A) The bank is in default or in danger of default as defined in Section 3(x) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1813(x)).

(B) The purchase or merger is one with respect to which the Federal Deposit Insurance Corporation provides assistance under Section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. Sec. 1823(c)).

(c) This section shall remain in effect only until September 29, 1997, and as of that date is repealed.

SEC. 617. Section 22304 of the Financial Code is amended to read:

22304. As an alternative to the charges authorized by Section 22303, a licensee may contract for and receive charges at the greater of the following:

(a) A rate not exceeding 1.6 percent per month on the unpaid principal balance.

(b) A rate not exceeding five-sixths of 1 percent per month plus a percentage per month equal to one-twelfth of the annual rate prevailing on the 25th day of the second month of the quarter preceding the quarter in which the loan is made, as established by the Federal Reserve Bank of San Francisco, on advances to member banks under Sections 13 and 13a of the Federal Reserve Act, as now in effect or hereafter from time to time amended, or if there is no such single determinable rate for advances, the closest counterpart of this rate as shall be determined by the Commissioner of Financial Insititutions of the State of California. Charges shall be calculated on the unpaid principal balance.

This section does not apply to any loan of a bona fide principal amount of two thousand five hundred dollars ($2,500) or more as determined in accordance with Section 22251.

SEC. 618. Section 28000 of the Financial Code is amended to read:

28000. (a) Pursuant to the authority contained in Section 1 of Article XV of the State Constitution, and subject to subdivision (b), educational institutions of collegiate grade are authorized to make loans or forbearances to finance student educational expenses including tuition, room, and board, and other costs of attendance or living at the institution, at rates not to exceed the higher of:

(1) Ten percent per annum.

(2) Five percent per annum plus the rate established by the Federal Reserve Bank of San Francisco on advances to member banks under Sections 13 and 13(a) of the Federal Reserve Act as now in effect or hereafter from time to time amended or, if there is no such single determinable rate of advances, the closest counterpart of this

rate as shall be designated by the Commissioner of Financial Institutions of the State of California unless some other person or agency is delegated such authority by the Legislature. The date of determining the applicable rate established by the Federal Reserve bank shall be the 25th day of the month preceding the earlier of the date of execution of the contract to make the loan or forbearance, or the date of making the loan or forbearance.

(b) Where the institution has obtained a loan specifically in order to make loans to finance student educational expenses, the rate of interest shall not exceed the lower of:

(1) The rate determined pursuant to subdivision (a).

(2) One percentage point in excess of the interest rate imposed upon the loan made to the institution, as of the date of execution of the contract to make the student loan to such extent the foregoing creates and authorizes a class of exempt persons pursuant to Section 1 of Article XV of the Constitution.

(c) Solely with respect to loans or forbearances made by educational institutions of collegiate grade to their faculty or staff, secured by real property consisting of a residential dwelling, these institutions are hereby declared to be an exempt class of persons as this term is used in Section 1 of Article XV of the Constitution.

SEC. 622. Section 30005 of the Financial Code is amended to read:

30005. This division does not apply to:

(a) A securities depository which is operated by a corporation, all of the capital stock (other than directors' qualifying shares, if any) of which is held by or for a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934, or by a corporation all of the capital stock (other than directors' qualifying shares, if any) of which is held by or for such a wholly owned subsidiary of a registered national securities exchange.

(b) A securities depository which is registered with the Securities and Exchange Commission pursuant to any provision of federal law or which is regulated by the Comptroller of the Currency, the Federal Reserve Board, or the Federal Deposit Insurance Corporation pursuant to any provision of federal law, or which is regulated by the Commissioner of Financial Institutions under Division 1 (commencing with Section 99) of the Financial Code.

SEC. 623. Section 31002 of the Financial Code is amended to read:

31002. No provision of this division imposing any liability applies to any act committed in good faith in conformity with any regulation, order, or written interpretive opinion of the commissioner or any such opinion of the Attorney General, notwithstanding that such regulation, order, or written interpretive opinion may later be amended, rescinded, or repealed or be determined by judicial or other authority to be invalid for any reason.

SEC. 624. Section 31021 of the Financial Code is amended to read:

31021. (a) The purposes of this division are:

(1) To provide for the licensing and regulation of business and industrial development corporations which will provide financing assistance and management assistance primarily to business firms in this state.

(2) To provide for the licensing and regulation of business and industrial development corporations so that such corporations will constitute state development companies for purposes of Sections 501 and 502 of the Small Business Investment Act of 1958 and eligible lending institutions for purposes of Section 7(a) of the Small Business Act.

(3) To provide for the safe and sound conduct of the business of licensees.

(4) To maintain the confidence of the Small Business Administration and other governmental agencies in licensees.

(b) The purposes of this division, as set forth in subdivision (a), constitute standards which the commissioner shall observe in administering the provisions of this division.

SEC. 625. Section 31047 of the Financial Code is amended to read:

31047. "Order" means any approval, consent, authorization, exemption, denial, prohibition, or requirement applicable to a specific case issued by the commissioner. "Order" includes any condition of a license and any agreement made by any person with the commissioner under this division.

SEC. 626. Section 31052 of the Financial Code is amended to read:

31052. "Regulation" means any published regulation, rule, or standard of general application issued by the commissioner.

SEC. 627. Section 31055 of the Financial Code is amended to read:

31055. "Commissioner" means the Commissioner of Financial Institutions or any person to whom the Commissioner of Financial Institutions delegates the authority to act for him or her in the particular matter.

SEC. 628. Section 31100 of the Financial Code is amended to read:

31100. The commissioner shall administer the provisions of this division.

SEC. 629. Section 31101 of the Financial Code is amended to read:

31101. (a) The commissioner may from time to time issue such regulations and orders as are in his or her opinion necessary to carry out the provisions and purposes of this division.

(b) Regulations and orders issued under this division may, among other things, define any term used in this division, including (but not limited to) the term "unsafe or unsound act", as well as any term not used in this division.

(c) For purposes of regulations and orders issued under this division, the commissioner may classify persons, transactions, and other matters within his or her jurisdiction, and may prescribe different regulations or orders for different classes.

(d) The commissioner may waive any provision of any regulation or order issued under this division in any case where in his or her opinion such provision is not necessary in the public interest.

SEC. 630. Section 31102 of the Financial Code is amended to read:

31102. Whenever the commissioner issues an order or license under this division, he or she may impose such conditions as are in his or her opinion necessary to carry out the provisions and purposes of this division.

SEC. 631. Section 31103 of the Financial Code is amended to read:

31103. Every final order, decision, license, or other official act of the commissioner under this division is subject to judicial review in accordance with law.

SEC. 632. Section 31105 of the Financial Code is amended to read:

31105. No provision of this division shall be construed to require by implication that the commissioner hold a hearing on any matter.

SEC. 633. Section 31106 of the Financial Code is amended to read:

31106. No provision of this division shall be construed to require by implication that the commissioner make written findings on any matter.

SEC. 634. Section 31107 of the Financial Code is amended to read:

31107. Any application filed with the commissioner under this division or under any regulation or order issued under this division shall be in such form, shall contain such information, shall be signed in such manner, and shall (if the commissioner so requires by regulation or order) be verified in such manner, as the commissioner may by regulation or order require.

SEC. 635. Section 31108 of the Financial Code is amended to read:

31108. In determining whether to approve any application filed under this division or under any regulation or order issued under this division, the commissioner may consider proposals made by the applicant, including (but not limited to) proposals to appoint officers, sell securities, or obtain financing; and, if in the opinion of the commissioner it is probable that such applicant will be able to implement any such proposal, the commissioner may make findings on the basis of such proposal; provided, however, that, whenever the commissioner approves an application on the basis, in whole or in part, of a proposal made by the applicant, the commissioner shall impose upon such approval appropriate conditions requiring that such applicant implement such proposal within such period of time as the commissioner may specify.

SEC. 636. Section 31109 of the Financial Code is amended to read:

31109. The commissioner may honor applications from interested persons for interpretive opinions regarding any provision of this division or of any regulation or order issued under this division.

SEC. 637. Section 31110 of the Financial Code is amended to read:

31110. (a) The commissioner may (1) make such public or private investigations within or outside this state as he or she deems necessary to determine whether to approve any application filed

with him or her under this division or under any regulation or order issued under this division, to determine whether any person has violated or is about to violate any provision of this division or of any regulation or order issued under this division, to aid in the enforcement of any provision of this division or of any regulation or order issued under this division, or to aid in the issuing of regulations or orders under this division, and (2) publish information concerning any violation of any provision of this division or of any regulation or order issued under this division.

(b) For purposes of any investigation, examination, or other proceeding under this division, the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the superior court, upon application by the commissioner, may issue to such person an order requiring him to appear before the commissioner, there to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey such order of the court may be punished by the court as a contempt.

SEC. 638. Section 31110.5 of the Financial Code is amended to read:

31110.5. The commissioner may provide information relating to a licensee to the Small Business Administration or to any governmental agency which licenses or regulates the licensee or any parent or subsidiary of the licensee.

SEC. 639. Section 31111 of the Financial Code is amended to read:

31111. Notwithstanding the fact that the commissioner permits any licensee, any affiliate of such licensee, or any governmental agency to inspect or make copies of any record relating to such licensee or to any director, officer, employee, or affiliate of such licensee or that the commissioner provides any such record, or a copy thereof, to any such person, any provision of Section 6254 or 6255 of the Government Code which would, but for such fact, apply to such record, shall continue to apply to such record.

SEC. 640. Section 31112 of the Financial Code is amended to read:

31112. The commissioner may refer such evidence as is available concerning any violation of this division or of any regulation or order issued under this division which constitutes a crime to the district attorney of the county in which such violation occurred, who may, with or without such a reference, institute appropriate criminal proceedings.

SEC. 641. Section 31113 of the Financial Code is amended to read:

31113. Before any applicant for a license is issued a license, such applicant and each parent and subsidiary of such applicant shall file,

and each person who becomes a parent or subsidiary of a licensee shall, not less than 30 days after becoming a parent or subsidiary of such licensee, file, with the commissioner, in such form as the commissioner may by regulation or order require, an irrevocable consent appointing the commissioner and his or her successor from time to time in office to be such person's attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against such person, or his or her successor, executor, or administrator, which arises under this division or under any regulation or order issued under this division after such consent has been filed, with the same force and validity as if served personally on such person. Service may be made by leaving a copy of the process at any office of the commissioner, but such service is not effective unless (a) the party making such service, who may be the commissioner, forthwith sends notice of such service and a copy of the process by registered or certified mail to the party served at his or her last address on file with the commissioner, and (b) an affidavit of compliance with this section by the party making service is filed in the case on or before the return date, if any, or within such further time as the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

SEC. 642. Section 31114 of the Financial Code is amended to read:

31114. Whenever any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this division or by any regulation or order issued under this division, whether or not the person has filed a consent to service of process under Section 31113, and if personal jurisdiction over the person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to the person's appointment of the commissioner and the commissioner's successor from time to time in office to be the person's attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against him or her, or his or her successor, executor, or administrator, which grows out of that conduct and which is brought under this division or under any regulation or order issued under this division, with the same force and validity as if served on him or her personally. Service may be made by leaving a copy of the process in any office of the commissioner, but the service is not effective unless (a) the party making the service, who may be the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the party served at his or her last known address or takes other steps which are reasonably calculated to give actual notice, and (b) an affidavit of compliance with this section by the party making service is filed in the case on or before the return date, if any, or within such further time as the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

SEC. 643. Section 31115 of the Financial Code is amended to read:

31115. (a) Fees shall be paid to, and collected by, the commissioner, as follows:

(1) The fee for filing with the commissioner an application for a license shall be two thousand dollars ($2,000).

(2) The fee for filing with the commissioner an application for approval to acquire control of a licensee shall be one thousand dollars ($1,000).

(3) The fee for filing with the commissioner an application for approval for a licensee to merge with another corporation; an application for approval for a licensee to purchase all or substantially all of the business of another person, or an application for approval for a licensee to sell all or substantially all of its business or of the business of any of its offices to another licensee, shall be one thousand dollars ($1,000); provided, however, that whenever two or more such applications relating to the same merger, purchase, or sale are filed with the commissioner, the fee for filing each application shall be the quotient determined by dividing one thousand dollars ($1,000) by the number of the applications.

(4) The fee for filing with the commissioner an application for approval to relocate the head office of a licensee shall be one hundred dollars ($100).

(5) The fee for issuing a license shall be twenty-five dollars ($25).

(6) Each person which is licensed under this division on June 1 of any year shall pay, on or before the following July 1, a fee of two thousand dollars ($2,000).

(7) Whenever the commissioner examines any licensee or any affiliate of a licensee, such licensee shall pay, within 10 days after receipt of a statement from the commissioner, a fee of two hundred dollars ($200) per day for each examiner engaged in such examination plus, in case it is necessary for any examiner engaged in such examination to travel outside this state, the travel expenses of such examiner.

(b) (1) Each fee for filing an application with the commissioner shall be paid at the time when such application is filed with the commissioner.

(2) No fee for filing an application with the commissioner shall be refundable, regardless of whether such application is approved, denied, withdrawn, or abandoned.

SEC. 644. Section 31150 of the Financial Code is amended to read:

31150. (a) Except as otherwise provided in subdivision (b), no person transacting business in this state, other than a licensee, shall use any name or title which indicates that it is a business and industrial development corporation or otherwise represent that it is a business and industrial development corporation or that it is a licensee.

(b) Any California corporation which proposes to apply for a license or which has applied for a license, may, before being issued

a license, use a name or title which indicates that it is a business and industrial development corporation if it meets all of the following requirements:

(1) The corporation shall append to the name the designation "proposed," "in organization," or "in formation," or any similar designation which the commissioner may approve. The designation shall be set forth at least as conspicuously as the name or title.

(2) The corporation may perform only such acts as may be necessary (A) to apply for and obtain such license and (B) otherwise to prepare to commence transacting business as a licensee.

(3) The corporation shall not represent that it is a licensee.

SEC. 645. Section 31152 of the Financial Code is amended to read:

31152. If the commissioner finds all of the following with respect to an application for a license, the commissioner shall approve the application:

(a) That the applicant has net worth in an amount which is not less than one million five hundred thousand dollars ($1,500,000) and which is adequate for the applicant to transact business as a business and industrial development corporation.

(b) That the applicant has lendable funds in an amount which is not less than one million five hundred thousand dollars ($1,500,000) and which is adequate for the applicant to transact business as a business and industrial development corporation.

(c) That the applicant has, in addition to the requirements of subdivision (b), financial resources in an amount which is adequate for the applicant to pay its expenses in transacting business as a business and industrial development corporation for a period of not less than three years.

(d) That the directors, officers, and controlling persons of the applicant are each of good character and sound financial standing, that the directors and officers of the applicant are each competent to perform their functions with respect to the applicant, and that the directors and officers of the applicant are collectively adequate to manage the business of the applicant as a business and industrial development corporation. For purposes of this subdivision, the commissioner shall accord weight to the prior or current successful operation of a commercial enterprise.

(e) That it is reasonable to believe that the applicant, if licensed, will comply with all applicable provisions of this division and of any regulation or order issued under this division.

(f) That the applicant has reasonable promise of successful operation as a business and industrial development corporation.

(g) That the licensing of the applicant will promote the public convenience and advantage.

If, after notice and a hearing, the commissioner finds otherwise, he or she shall deny the application.

SEC. 646. Section 31152.5 of the Financial Code is amended to read:

31152.5. (a) For purposes of Section 31152, the commissioner may find:

(1) That a director, officer, or controlling person of an applicant is not of good character if the director, officer, or controlling person or any director or officer of the controlling person has been convicted of, or has pleaded nolo contendere to, a crime involving fraud or dishonesty.

(2) That it is not reasonable to believe that an applicant, if licensed, will comply with all applicable provisions of this division and of any regulation or order issued under this division if the applicant has been convicted of, or has pleaded nolo contendere to, a crime involving fraud or dishonesty.

(b) Subdivision (a) shall not be deemed to be the only grounds upon which the commissioner may find, for purposes of Section 31152, that a director, officer, or controlling person of an applicant is not of good character or that it is not reasonable to believe that an applicant, if licensed, will comply with all applicable provisions of this division and of any regulation or order issued under this division.

SEC. 647. Section 31153 of the Financial Code is amended to read:

31153. Before any applicant for a license is issued a license, each person which is a parent or subsidiary of such applicant shall file, and each person who becomes a parent or subsidiary of a licensee shall, not less than 30 days after becoming a parent or subsidiary of such licensee, file, with the commissioner, in such form as the commissioner may by regulation or order require, an agreement that such person shall comply with all applicable provisions of this division and of any regulation or order issued under this division.

SEC. 648. Section 31154 of the Financial Code is amended to read:

31154. Whenever any application for a license has been approved and all conditions precedent to the issuance of such license have been fulfilled, the commissioner shall issue a license to the applicant.

SEC. 649. Section 31157 of the Financial Code is amended to read:

31157. No licensee shall represent that it is sponsored, recommended, or approved by, or that its abilities or qualifications have in any respect been passed upon by, the commissioner. Nothing in this section shall be deemed to prohibit a licensee from stating that it is licensed if the effect of such license is not misrepresented.

SEC. 650. Section 31201 of the Financial Code is amended to read:

31201. No licensee shall, except with the prior approval of the commissioner, transact business under any name other than its corporate name.

SEC. 651. Section 31220 of the Financial Code is amended to read:

31220. Notwithstanding any other law of this state, but subject to the provisions of Section 31550:

(a) Any commercial bank or trust company organized under the laws of this state may, with the prior approval of the commissioner, acquire and hold securities issued by a licensee; provided, however, that the aggregate amount of securities issued by licensees which are

held by such commercial bank or trust company shall not at any time exceed $2^1/_2$ percent of the shareholders' equity of such commercial bank or trust company. This subdivision shall not apply to any loan or other extension of credit made by a commercial bank organized under the laws of this state to a licensee in accordance with the Banking Law (Division 1 (commencing with Section 99)).

(b) Any savings association organized under the laws of this state may, with the prior approval of the commissioner, acquire and hold securities issued by a licensee; provided, however, that the aggregate amount of securities issued by licensees which are held by such savings association shall not at any time exceed $^1/_2$ percent of the total outstanding loans of such savings association.

(c) Any insurance company admitted to transact insurance business in this state may, with the approval of the Insurance Commissioner, acquire and hold securities issued by a licensee; provided, however, that the aggregate amount of securities issued by licensees which are held by such insurance company shall not at any time exceed $2^1/_2$ percent of the unassigned surplus of such insurance company.

(d) Any public utility licensed or regulated by the Public Utilities Commission may, with the approval of the Public Utilities Commission, acquire and hold securities issued by a licensee; provided, however, that the aggregate amount of securities issued by licensees which are held by such public utility company shall not at any time exceed $^1/_2$ percent of the total assets of such public utility company.

(e) Any industrial loan company organized under the laws of this state may, with the prior approval of the commissioner, acquire and hold securities issued by a licensee; provided, however, that the aggregate amount of securities issued by licensees which are held by such industrial loan companies shall not at any time exceed 5 percent of the net outstanding loans and obligations of such companies.

SEC. 652. Section 31231 of the Financial Code is amended to read:

31231. No licensee shall, except with the prior approval of the commissioner, make, or obligate itself to make, any distribution to its shareholders.

SEC. 653. Section 31232 of the Financial Code is amended to read:

31232. If the commissioner finds, with respect to an application for approval for a licensee to make, or to obligate itself to make, a distribution to its shareholders:

(a) That for the applicant to make, or to obligate itself to make, the distribution will not endanger the applicant's ability to provide financing assistance and management assistance to business firms in this state; and

(b) That for the applicant to make, or to obligate itself to make, the distribution will not be unsafe or unsound; the commissioner shall approve the application. If, after notice and a hearing, the commissioner finds otherwise, he or she shall deny the application.

SEC. 654. Section 31233 of the Financial Code is amended to read:

31233. Notwithstanding the provisions of Section 31232, unless an application for approval for a licensee to make, or to obligate itself to make, a distribution to its shareholders is approved, denied, withdrawn, or abandoned within a period of 45 days after such application is filed with the commissioner or, if the applicant consents to an extension of the period, within such extended period, such application shall be deemed to be approved by the commissioner as of the first day after such period of 45 days or such extended period, as the case may be.

For purposes of this section, an application for approval for a licensee to make, or to obligate itself to make, a distribution to its shareholders shall be deemed to be filed with the commissioner when such application, containing all the information required by the commissioner and otherwise complying with Section 31107, is received by the commissioner.

SEC. 655. Section 31302 of the Financial Code is amended to read:

31302. Each office of a licensee shall be located in a place which is reasonably accessible to the public and shall, unless the commissioner approves otherwise, be open for the transaction of business during normal business hours on each business day.

SEC. 656. Section 31320 of the Financial Code is amended to read:

31320. (a) No licensee shall relocate its head office without the prior approval of the commissioner.

(b) No licensee shall establish, relocate, or close any office (other than its head office) unless it files a report on the action with the commissioner not less than 30 days (or such shorter period as the commissioner may approve) before taking the action.

SEC. 657. Section 31322 of the Financial Code is amended to read:

31322. If the commissioner finds, with respect to an application by a licensee for approval to relocate its head office:

(a) That the office at its proposed location will be reasonably accessible to the public;

(b) That it is reasonable to believe that the applicant will operate the office at its proposed location in compliance with all applicable provisions of this division and of any regulation or order issued under this division;

(c) That it will not be unsafe or unsound for the applicant to relocate the office; and

(d) That the relocation of the office will not be detrimental to the public convenience and advantage, or, if the relocation of the office would be detrimental to the public convenience and advantage, that the relocation of the office is necessary in the interests of the safety and soundness of the applicant; the commissioner shall approve the application. If, after notice and a hearing, the commissioner finds otherwise, the commissioner shall deny the application.

SEC. 658. Section 31406 of the Financial Code is amended to read:

31406. No licensee shall, either by itself or in concert with any of its directors, officers, principal shareholders, or affiliates, any other licensee, or any of the directors, officers, principal shareholders, or affiliates of any other licensee, acquire or hold control of any business firm, except as follows:

(a) Any licensee which has provided financing assistance to a business firm may, if and to the extent necessary to protect its interests as a creditor of, or investor in, such business firm, acquire and hold control of such business firm; provided, however, that such licensee shall divest itself of such control as soon as practicable and in any event within three years after acquiring such control or such longer period as the commissioner may approve.

(b) Any licensee may, with the prior approval of the commissioner, acquire and hold control of a corporation which is licensed as a small business investment company under the Small Business Investment Act of 1958.

(c) Any licensee may, with the prior approval of the commissioner, acquire and hold control of a corporation which is licensed as a personal property broker under Division 9 (commencing with Section 22000).

(d) Any licensee may, with the prior approval of the commissioner, acquire and hold control of a corporation which transacts business as a local development company in accordance with all applicable provisions of the Small Business Investment Act of 1958 and of the regulations of the Small Business Administration.

SEC. 659. Section 31408 of the Financial Code is amended to read:

31408. No licensee shall, except with the prior approval of the commissioner, guarantee the debt of any other person or otherwise lend its credit to any other person; provided, however, that, whenever a licensee sells to another person an obligation to pay money, which obligation is owned by such licensee, such licensee may guarantee the payment of such obligation.

SEC. 660. Section 31409 of the Financial Code is amended to read:

31409. No licensee shall, except with the prior approval of the commissioner, provide a lien or security interest in any of its property for the purpose of securing an obligation of, or an obligation incurred for the benefit of, any other person.

SEC. 661. Section 31501 of the Financial Code is amended to read:

31501. Each licensee shall make and keep such books, accounts, and other records in such form and in such manner as the commissioner may by regulation or order require. All records so required shall be kept at such place and shall be preserved for such time as the commissioner may by regulation or order specify.

SEC. 662. Section 31502 of the Financial Code is amended to read:

31502. No licensee shall, except with the prior approval of the commissioner, enter or carry on its books or records any asset at a valuation exceeding the actual cost of such asset to such licensee.

SEC. 663. Section 31503 of the Financial Code is amended to read:

31503. The commissioner may by order require a licensee to write down any asset on its books and records to a valuation which represents its then value.

SEC. 664. Section 31504 of the Financial Code is amended to read:

31504. Each licensee shall, not more than 90 days after the close of each of its fiscal years or within such longer period as the commissioner may by regulation or order specify, file with the commissioner an audit report containing:

(a) Financial statements (including balance sheet, statement of income or loss, statement of changes in capital accounts, and statement of changes in financial position or, in the case of a licensee which is a California nonprofit corporation, comparable financial statements) for or as of the end of such fiscal year, prepared with audit by an independent certified public accountant or an independent public accountant in accordance with generally accepted accounting principles;

(b) Report, certificate, or opinion of such independent certified public accountant or independent public account, stating that such financial statements were prepared in accordance with generally accepted accounting principles; and

(c) Such other information as the commissioner may by regulation or order require.

SEC. 665. Section 31506 of the Financial Code is amended to read:

31506. Each licensee, each director, officer, and employee of a licensee, and each parent and subsidiary of a licensee shall file with the commissioner such reports as and when the commissioner may by regulation or order require. In addition, each affiliate of a licensee (other than a parent or subsidiary of the licensee) shall file with the commissioner such reports regarding transactions between the affiliate and the licensee as and when the commissioner may require. Each report shall be in such form, shall contain such information, shall be signed in such manner, and shall (if the commissioner so requires by regulation or order) be verified in such manner, as the commissioner may by regulation or order require.

SEC. 666. Section 31507 of the Financial Code is amended to read:

31507. (a) The commissioner shall examine each licensee not less frequently than once each calendar year.

(b) (1) The commissioner may at any time examine any licensee or any parent or subsidiary of a licensee.

(2) The commissioner may at any time examine any affiliate of a licensee (other than a parent or subsidiary of the licensee) but only with respect to matters relating to transactions between the affiliate and the licensee.

(c) The directors, officers, and employees of any licensee or of any affiliate of a licensee being examined by the commissioner and any other person having custody of any of the books, accounts, or records of such licensee or of such affiliate shall exhibit to the commissioner, on request, any or all of the books, accounts, and other records of such

licensee or of such affiliate and shall otherwise facilitate such examination so far as it may be in their power to do so. However, in the case of an examination of an affiliate of a licensee other than a parent or subsidiary of the licensee, only books, accounts, and records of the affiliate which relate to transactions between the affiliate and the licensee shall be subject to this subdivision.

(d) The commissioner may, if in his or her opinion it is necessary in the examination of any licensee or of any affiliate of a licensee, retain any certified public accountant, attorney, appraiser, or other person to assist him or her, and such licensee shall pay, within 10 days after receipt of a statement from the commissioner, the fees of such person.

SEC. 667. Section 31508 of the Financial Code is amended to read:

31508. (a) No licensee shall, except with the prior approval of the commissioner, cause or permit any other person to make or keep any of its books, accounts, or other records.

(b) In case any person other than a licensee makes or keeps any of the books, accounts, or other records of such licensee, the provisions of this division and of any regulation or order issued under this division shall apply to such person with respect to the performance of such services and with respect to such books, accounts, and other records to the same extent as if such person were such licensee.

(c) In case any person other than an affiliate of a licensee makes or keeps any of the books, accounts, or other records of such affiliate or, in the case of an affiliate other than a parent or subsidiary of the licensee, the books, accounts, and other records of the affiliate that relate to transactions between the affiliate and the licensee, the provisions of this division and of any regulation or order issued under this division shall apply to such person with respect to such books, accounts, and other records to the same extent as if such person were such affiliate.

SEC. 668. Section 31509 of the Financial Code is amended to read:

31509. The commissioner may publish any report filed with him or her under this division or under any regulation or order issued under this division.

SEC. 669. Section 31550 of the Financial Code is amended to read:

31550. No person shall, except with the prior approval of the commissioner, acquire control of a licensee.

SEC. 670. Section 31551 of the Financial Code is amended to read:

31551. If the commissioner finds, with respect to an application for approval to acquire control of a licensee:

(a) That the applicant and the directors and officers of the applicant are of good character and sound financial standing;

(b) That it is reasonable to believe that, if the applicant acquires control of the licensee, the applicant will comply with all applicable provisions of this division and of any regulation or order issued under this division; and

(c) That the applicant's plans, if any, to make any major change in the business, corporate structure, or management of the licensee are not detrimental to the safety and soundness of the licensee or to the public convenience and advantage;

The commissioner shall approve the application. If, after notice and a hearing, the commissioner finds otherwise, he or she shall deny the application.

SEC. 671. Section 31551.5 of the Financial Code is amended to read:

31551.5. (a) For purposes of Section 31551, the commissioner may find:

(1) That an applicant or a director or officer of an applicant is not of good character if such person has been convicted of, or has pleaded nolo contendere to, a crime involving fraud or dishonesty.

(2) That an applicant's plan to make a major change in the management of a licensee is detrimental to the safety and soundness of the licensee and to the public convenience and advantage if the plan provides for a person who has been convicted of, or has pleaded nolo contendere to, a crime involving fraud or dishonesty to become a director or officer of the licensee.

(b) Subdivision (a) shall not be deemed to be the only grounds upon which the commissioner may find, for purposes of Section 31551, that an applicant or a director or officer of an applicant is not of good character or that an applicant's plan to make a major change in the management of a licensee is detrimental to the safety and soundness of a licensee or to the public convenience and advantage.

SEC. 672. Section 31552 of the Financial Code is amended to read:

31552. The commissioner may, by such regulations or orders as he or she deems necessary and appropriate, either unconditionally or upon specified terms and conditions or for specified periods, exempt from the provisions of this chapter any person or transaction or class of persons or transactions, if he or she finds such action to be in the public interest and that the regulation of such persons or transactions is not necessary for the purposes of this division.

SEC. 673. Section 31601 of the Financial Code is amended to read:

31601. No licensee shall merge with any other corporation unless:

(a) In case such licensee is the surviving corporation, such merger shall have first been approved by the commissioner;

(b) In case such licensee is a disappearing corporation, the surviving corporation is a licensee and such merger shall have first been approved by the commissioner.

SEC. 674. Section 31602 of the Financial Code is amended to read:

31602. No licensee shall purchase all or substantially all of the business of any other person unless such purchase shall have first been approved by the commissioner.

SEC. 675. Section 31603 of the Financial Code is amended to read:

31603. No licensee shall sell all or substantially all of its business to any other person unless such other person is a licensee and such sale shall have first been approved by the commissioner.

SEC. 676. Section 31604 of the Financial Code is amended to read:

31604. If the commissioner finds, with respect to an application for approval of a merger, purchase, or sale:

(a) That the merger, purchase, or sale will be safe and sound with respect to the acquiring licensee;

(b) That it is reasonable to believe that, upon consummation of the merger, purchase, or sale, the acquiring licensee will comply with all applicable provisions of this division and of any regulation or order issued under this division; and

(c) That the merger, purchase, or sale will not be detrimental to the public convenience and advantage, or, if the merger, purchase, or sale would be detrimental to the public convenience and advantage, that it is necessary in the interests of the safety and soundness of any of the parties to it;

The commissioner shall approve the application. If, after notice and a hearing, the commissioner finds otherwise, he or she shall deny the application.

SEC. 677. Section 31605 of the Financial Code is amended to read:

31605. The commissioner may, by such regulations or orders as he or she deems necessary and appropriate, either unconditionally or upon specified terms and conditions or for specified periods, exempt from the provisions of this chapter any person or transaction or class of persons or transactions, if he or she finds such action to be in the public interest and that the regulation of such persons or transactions is not necessary for the purposes of this division.

SEC. 678. Section 31650 of the Financial Code is amended to read:

31650. Any licensee may surrender its license by filing with the commissioner such license and a report which shall be in such form, shall contain such information, shall be signed in such manner, and shall (if the commissioner so requires by regulation or order) be verified in such manner, as the commissioner may by regulation or order require.

SEC. 679. Section 31651 of the Financial Code is amended to read:

31651. (a) Except as otherwise provided in subdivision (b), a voluntary surrender of a license shall be effective on the 30th day after such license and the report called for in Section 31650 are filed with the commissioner or on such earlier date as the commissioner may by order specify.

(b) If a proceeding to revoke or suspend a license is pending at the time when such license and the report called for in Section 31650 are filed with the commissioner or if a proceeding to revoke or suspend a license or to impose conditions upon the surrender of a license is instituted before the 30th day after such license and the report called for in Section 31650 are filed with the commissioner, the voluntary

surrender of such license shall become effective at such time and upon such conditions as the commissioner may by order specify.

SEC. 680. Section 31701 of the Financial Code is amended to read:

31701. Whenever it appears to the commissioner that any person has violated, or that there is reasonable cause to believe that any person is about to violate, any provision of this division or of any regulation or order issued under this division, the commissioner may bring an action in the name of the people of this state in the superior court to enjoin such violation or to enforce compliance with this division or with any regulation or order issued under this division. Upon a proper showing, a restraining order, preliminary or permanent injunction, or writ of mandate shall be granted, and a receiver or a conservator may be appointed for the defendant or the defendant's assets. The court may not require the commissioner to post a bond.

SEC. 681. Section 31702 of the Financial Code is amended to read:

31702. (a) If the commissioner finds that any person has violated, or that there is reasonable cause to believe that any person is about to violate, Section 31150, the commissioner may order the person to cease and desist from such violation unless and until the person is issued a license.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), the person to whom the order is directed may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence a hearing within 15 business days after such application is filed with him (or within such longer period to which the person consents), the order shall be deemed rescinded. Upon such hearing, the commissioner shall affirm, modify, or rescind the order.

(2) The right of any person to whom an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

SEC. 682. Section 31703 of the Financial Code is amended to read:

31703. If, after notice and a hearing, the commissioner finds:

(a) That any licensee or any subject person of a licensee has violated, is violating, or that there is reasonable cause to believe that any licensee or any subject person of a licensee is about to violate, any provision of this division or of any regulation or order issued under this division or any provision of any other applicable law; or

(b) That any licensee or any subject person of a licensee has engaged or participated, is engaging or participating, or that there is reasonable cause to believe that any licensee or any subject person of a licensee is about to engage or participate, in any unsafe or unsound act with respect to the business of such licensee;

the commissioner may order such licensee or such subject person to cease and desist from such action or violation. Such order may

require such licensee or such subject person to take affirmative action to correct any condition resulting from such action or violation.

SEC. 683. Section 31704 of the Financial Code is amended to read:

31704. (a) If the commissioner finds:

(1) That any of the factors set forth in Section 31703 is true with respect to any licensee or any subject person of a licensee; and

(2) That such action or violation is likely to cause the insolvency of, or substantial dissipation of the assets or earnings of, the licensee, or is likely to seriously weaken the condition of the licensee or otherwise to seriously prejudice the interests of the licensee, prior to the completion of proceedings conducted pursuant to Section 31703;

the commissioner may order the licensee or the subject person to cease and desist from such action or violation. The order may require the licensee or the subject person to take affirmative action to correct any condition resulting from such action or violation.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), any licensee or subject person of a licensee to whom the order is directed may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence a hearing within 15 business days after the application is filed with him (or within such longer period to which the licensee or subject person consents), the order shall be deemed rescinded. Upon such hearing, the commissioner shall affirm, modify, or rescind the order.

(2) The right of any licensee or subject person of a licensee to whom an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the licensee or subject person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

SEC. 684. Section 31705 of the Financial Code is amended to read:

31705. If, after notice and a hearing, the commissioner finds:

(a) (1) That any subject person of a licensee has violated a provision of this division or of any regulation or order issued under this division or any provision of any other applicable law;

(2) That any subject person of a licensee has engaged or participated in any unsafe or unsound act with respect to the business of such licensee; or

(3) That any subject person of a licensee has engaged or participated in any act which constitutes a breach of his fiduciary duty as a subject person; and

(b) (1) That such act, violation, or breach of fiduciary duty has caused or is likely to cause substantial financial loss or other damage to such licensee; or

(2) That the act, violation, or breach of fiduciary duty has seriously prejudiced or is likely to seriously prejudice the interests of the licensee; or

(3) That the subject person has received financial gain by reason of the act, violation, or breach of fiduciary duty; and

(c) That such act, violation, or breach of fiduciary duty either involves dishonesty on the part of the subject person or demonstrates the subject person's gross negligence with respect to the business of the licensee or a willful disregard for the safety and soundness of the licensee;

the commissioner may issue an order removing the subject person from his or her office, if any, with the licensee and prohibiting him or her from further participating in any manner in the conduct of the business of the licensee.

SEC. 685. Section 31706 of the Financial Code is amended to read:

31706. If, after notice and a hearing, the commissioner finds that any subject person of a licensee has, by engaging or participating in any act with respect to any financial or other business institution which resulted in substantial financial loss or other damage, demonstrated:

(a) (1) Dishonesty; or

(2) Willful or continuing disregard for the safety and soundness of such financial institution; and

(b) Unfitness to continue as a subject person of the licensee or participate in the conduct of the business of the licensee;

the commissioner may issue an order removing the subject person from his or her office, if any, with the licensee and prohibiting him or her from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner.

SEC. 686. Section 31706.5 of the Financial Code is amended to read:

31706.5. (a) If the commissioner finds:

(1) That the factors set forth in subdivisions (a), (b), and (c) of Section 31705 or the factors set forth in subdivisions (a) and (b) of Section 31706 are true with respect to any subject person of a licensee; and

(2) That it is necessary for the protection of the interests of the licensee or for the protection of the public interest that the commissioner immediately suspend the subject person from his or her office, if any, with the licensee and prohibit him or her from further participating in any manner in the conduct of the business of the licensee;

the commissioner may issue an order suspending the subject person from his or her office, if any, with the licensee and prohibiting him or her from further participating in any manner in the conduct of the business of the licensee, except with the consent of the commissioner.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), any subject person of a licensee to whom the order is directed may file with the commissioner an application for a hearing on the order. If the commissioner fails to begin a hearing

within 15 business days after the application is filed (or within such longer period to which the subject person consents), the order shall be deemed rescinded. Upon the hearing, the commissioner shall affirm, modify, or rescind the order.

(2) The right of any subject person of a licensee to whom an order is issued under subdivision (a) to petition for judicial review of the order shall not be affected by the failure of the subject person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

SEC. 687. Section 31707 of the Financial Code is amended to read:

31707. (a) If the commissioner finds:

(1) That any subject person of a licensee has been indicted by a grand jury for, or held to answer by a magistrate for, a crime involving dishonesty or breach of trust; and

(2) That the fact that the person continues to be a subject person of the licensee may threaten the interests of the licensee or may threaten to impair public confidence in the licensee;

the commissioner may issue an order suspending the subject person from his or her office, if any, with the licensee and prohibiting him or her from further participating in any manner in the conduct of the business of the licensee, except with the consent of the commissioner.

(b) If the commissioner finds:

(1) That any subject person or former subject person of a licensee to whom an order was issued pursuant to subdivision (a) or any other subject person of a licensee has been finally convicted of a crime which is punishable by imprisonment for a term exceeding one year and which involves dishonesty or breach of trust; and

(2) That the fact that the person continues to be or will resume to be a subject person of the licensee may threaten the interests of the licensee or may threaten to impair public confidence in the licensee;

the commissioner may issue an order suspending or removing the subject person or former subject person from his or her office, if any, with the licensee and prohibiting him or her from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner.

(c) (1) Within 30 days after an order is issued pursuant to subdivision (a) or (b), any subject person of a licensee to whom the order is directed may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence a hearing within 15 business days after the application is filed with him (or within such longer period to which the subject person consents), the order shall be deemed rescinded. Upon such hearing, the commissioner shall affirm, modify, or rescind the order.

(2) The right of any subject person or former subject person of a licensee to whom an order is issued under subdivision (a) or (b) to petition for judicial review of the order shall not be affected by the

failure of the person to apply to the commissioner for a hearing on the order pursuant to paragraph (1).

(d) The fact that any subject person of a licensee charged with a crime involving dishonesty or breach of trust is not finally convicted of the crime shall not preclude the commissioner from issuing an order to the subject person pursuant to any other section of this division.

SEC. 688. Section 31708 of the Financial Code is amended to read:

31708. Any person to whom an order is issued under Section 31705, 31706, 31706.5, or 31707 may apply to the commissioner to modify or rescind the order. The commissioner shall not grant the application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that the person will, if and when he or she becomes a subject person of a licensee, comply with all applicable provisions of this division and of any regulation or order issued under this division.

SEC. 689. Section 31709 of the Financial Code is amended to read:

31709. If, after notice and a hearing, the commissioner finds:

(a) That any licensee or any controlling person or affiliate of a licensee has violated any provision of this division or of any regulation or order issued under this division or any provision of any other applicable law;

(b) That any licensee is conducting its business in an unsafe and unsound manner;

(c) That any licensee is in such condition that it is unsafe or unsound for it to transact business;

(d) That any licensee has ceased to transact business as a business and industrial development corporation;

(e) That any licensee is insolvent;

(f) That any licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;

(g) That any licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for any such relief under any such law against any licensee and such licensee has by any affirmative act approved of or consented to such action or such relief has been granted; or

(h) That any fact or condition exists which, if it had existed at the time when any licensee applied for its license, would have been grounds for denying such application;

the commissioner may issue an order suspending or revoking the license of such licensee.

SEC. 690. Section 31710 of the Financial Code is amended to read:

31710. (a) If the commissioner finds that any of the factors set forth in Section 31709 is true with respect to any licensee and that it is necessary for the protection of the public interest that he or she

immediately suspend or revoke the license of such licensee, the commissioner may issue an order suspending or revoking the license of such licensee.

(b) Within 30 days after an order is issued pursuant to subdivision (a), any licensee to whom such order is directed may file with the commissioner a request for a hearing on such order. If the commissioner fails to commence a hearing within 15 business days after such request is filed with him or her (or within such longer period to which such licensee consents), such order shall be deemed rescinded. Upon such hearing, the commissioner shall affirm, modify, or rescind such order.

SEC. 691. Section 31711 of the Financial Code is amended to read:

31711. Any person whose license is suspended or revoked shall immediately deliver such license to the commissioner.

SEC. 692. Section 31712 of the Financial Code is amended to read:

31712. Any person to whom an order is issued under Section 31709 or 31710 may apply to the commissioner to modify or rescind such order. The commissioner shall not grant such application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that such person will, if and when it becomes a licensee, comply with all applicable provisions of this division and of any regulation or order issued under this division.

SEC. 693. Section 31713 of the Financial Code is amended to read:

31713. (a) If the commissioner finds that any of the factors set forth in Section 31709 is true with respect to any licensee and that it is necessary for the protection of the interests of the licensee or for the protection of the public interest that the commissioner take immediate possession of the property and business of the licensee, the commissioner may forthwith take possession of the property and business of the licensee and retain possession until the licensee resumes business or is finally liquidated. The licensee may, with the consent of the commissioner, resume business upon such conditions as he or she may prescribe.

(b) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the licensee may apply within 10 days to the superior court in the county in which the head office of the licensee is located to enjoin further proceedings. The court, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, may dismiss the application or enjoin the commissioner from further proceedings and order the commissioner to surrender the property and business of the licensee to the licensee or make such further order as may be just.

(c) An appeal may be taken from the judgment of the superior court by the commissioner or by the licensee in the manner provided by law for appeals from the judgment of a superior court. An appeal from the judgment of the superior court shall operate as a stay of the judgment. No bond need be given if the appeal is taken by the

commissioner, but if the appeal is taken by the licensee, a bond shall be given as required by the Code of Civil Procedure.

(d) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the commissioner shall conserve or liquidate the property and business of the licensee pursuant to Article 1 (commencing with Section 3100), Chapter 17, Division 1, and the provisions of that article (except Sections 3100, 3101, and 3102) shall apply as if the licensee were a bank.

SEC. 694. Section 31800 of the Financial Code is amended to read:

31800. It shall be unlawful for any person willfully to make any untrue statement of a material fact in any application or report filed with the commissioner under this division or under any regulation or order issued under this division, or willfully to omit to state in any such application or report any material fact which is required to be stated therein.

SEC. 695. Section 31801 of the Financial Code is amended to read:

31801. It shall be unlawful for any person having custody of any of the books, accounts, or other records of a licensee willfully to refuse to allow the commissioner, upon request, to inspect or make copies of any of such books, accounts, or other records.

SEC. 696. Section 31802 of the Financial Code is amended to read:

31802. It shall be unlawful for any person, with intent to deceive any director, officer, employee, auditor, or attorney of a licensee, the commissioner, or any governmental agency, to make any false entry in any of the books, accounts, or other records of such licensee, to omit to make any entry in such books, accounts, or other records which such person is required to make, or to alter, conceal, or destroy any of such books, accounts, or other records.

SEC. 697. Section 31821 of the Financial Code is amended to read:

31821. (a) The commissioner may, by such regulations or orders as he or she deems necessary and appropriate, either unconditionally or upon specified terms and conditions and for specified periods, exempt from the provisions of this article any person or transaction or class of persons or transactions, if the commissioner finds such action to be in the public interest and that the regulation of such persons or transactions is not necessary for the purposes of this division.

(b) In exempting from the provisions of this article any person or transaction or class of persons or transactions, the commissioner shall give due consideration to any conflict of interest provision of federal law or regulation applicable to such person or transaction governing participants in federal financing programs.

SEC. 698. Section 31900 of the Financial Code is amended to read:

31900. If, after notice and a hearing, the commissioner finds that any person has violated any provision of this division or of any regulation or order issued under this division, the commissioner may order such person to pay to the commissioner a civil penalty in such

amount as the commissioner may specify; provided, however, that the amount of such civil penalty shall not exceed one thousand dollars ($1,000) for each violation, or in the case of a continuing violation, one thousand dollars ($1,000) for each day for which such violation continues.

SEC. 699. Section 31901 of the Financial Code is amended to read:

31901. The provisions of Section 31900 are additional to, and not alternative to, other provisions of this division which authorize the commissioner to issue orders or to take other action on account of a violation of any provision of this division or of any regulation or order issued under this division; provided, however, that no person who has been finally convicted under Chapter 12 (commencing with Section 31800) of this division on account of a violation of any provision of Chapter 12 shall be liable to pay a civil penalty under Section 31900 on account of such violation, nor shall any person who has paid a civil penalty under Section 31900 on account of a violation of any provision of Chapter 12 be liable to criminal prosecution under Chapter 12 on account of such violation.

SEC. 700. Section 33006 of the Financial Code is amended to read:

33006. No provision of this division imposing any liability or sanction applies to any act committed in good faith in conformity with any regulation, order, or written interpretive opinion of the commissioner or any such opinion of the Attorney General, notwithstanding that such regulation, order, or written interpretive opinion may later be amended, rescinded, or repealed or be determined by judicial or other authority to be invalid for any reason.

SEC. 701. Section 33021 of the Financial Code is amended to read:

33021. (a) The purposes of this division are:

(1) To protect the interests of purchasers and holders of payment instruments sold in this state.

(2) To provide for the safe and sound conduct of the business of licensees.

(3) To maintain public confidence in licensees.

(b) The purposes of this division, as set forth in subdivision (a), constitute standards which the commissioner shall observe in administering the provisions of this division.

SEC. 701.5. Section 33045.5 is added to the Financial Code, to read:

33045.5. "Commissioner" means the Commissioner of Financial Institutions or any person to whom the Commissioner of Financial Institutions delegates the authority to act for the Commissioner of Financial Institutions in this matter.

SEC. 702. Section 33053 of the Financial Code is amended to read:

33053. "Insured savings and loan association" or "insured savings association" means any savings association the accounts of which are insured by the Federal Deposit Insurance Corporation.

SEC. 703. Section 33058 of the Financial Code is amended to read:

33058. "Order" means any approval, consent, authorization, exemption, denial, prohibition, or requirement applicable to a specific case issued by the commissioner, including any condition thereof. "Order" does not include any license issued by the commissioner but does include any condition of such license and any written agreement made by any person with the commissioner under this division.

SEC. 704. Section 33062 of the Financial Code is amended to read:

33062. "Regulation" means any published regulation, rule, or standard of general application issued by the commissioner.

SEC. 705. Section 33063 of the Financial Code is repealed.

SEC. 706. Section 33102 of the Financial Code is amended to read:

33102. The commissioner may, by regulation or order, either unconditionally or upon specified terms and conditions or for specified periods, exempt from this division any person or transaction or class of persons or transactions, if the commissioner finds such action to be in the public interest and that the regulation of such persons or transactions is not necessary for the purposes of this division.

SEC. 707. Section 33200 of the Financial Code is amended to read:

33200. The commissioner shall administer the provisions of this division.

SEC. 708. Section 33201 of the Financial Code is amended to read:

33201. Every final order, decision, license, or other official act of the commissioner under this division is subject to judicial review in accordance with law.

SEC. 709. Section 33202 of the Financial Code is amended to read:

33202. (a) The commissioner may from time to time issue such regulations and orders as are in his or her opinion necessary to carry out the provisions and purposes of this division.

(b) Regulations and orders issued under this division may, among other things, define any term used in this division, including the term "unsafe or unsound act", as well as any term not used in this division.

(c) For purposes of regulations and orders issued under this division, the commissioner may classify persons, transactions, and other matters within his or her jurisdiction, and may prescribe different regulations or orders for different classes.

(d) The commissioner may waive any provision of any regulation or order issued under this division in any case where in his or her opinion such provision is not necessary in the public interest.

SEC. 710. Section 33203 of the Financial Code is amended to read:

33203. Whenever the commissioner issues an order or license under this division, the commissioner may impose such conditions as are in his or her opinion necessary to carry out the provisions and purposes of this division.

SEC. 711. Section 33205 of the Financial Code is amended to read:

33205. The commissioner may honor applications from interested persons for interpretive opinions regarding any provision of this division or of any regulation or order issued under this division.

SEC. 712. Section 33206 of the Financial Code is amended to read:

33206. Notwithstanding that the commissioner permits any licensee, any affiliate of such licensee, or any governmental agency to inspect or make copies of any record relating to such licensee or to any director, officer, employee, affiliate, or agent of such licensee or that the commissioner provides any such record, or a copy thereof, to any such person, any provision of Sections 6254 and 6255 of the Government Code which would, but for such fact, apply to such record, shall continue to apply to such record.

SEC. 713. Section 33207 of the Financial Code is amended to read:

33207. (a) The commissioner may (1) make such public or private investigations within or outside this state as the commissioner deems necessary to determine whether to approve any application filed with the commissioner under this division or under any regulation or order issued under this division, to determine whether any person has violated or is about to violate any provision of this division or of any regulation or order issued under this division, to aid in the enforcement of any provision of this division or of any regulation or order issued under this division, or to aid in the issuing of regulations or orders under this division, and (2) publish information concerning any violation of any provision of this division or of any regulation or order issued under this division.

(b) For purposes of any investigation, examination, or other proceeding under this division, the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any documents which the commissioner deems relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, any person, the superior court, upon application by the commissioner, may issue to such person an order requiring such person to appear before the commissioner, there to produce documentary evidence, if so ordered, or to give evidence touching the matter under investigation or in question. Failure to obey such order of the court may be punished by the court as a contempt.

SEC. 714. Section 33208 of the Financial Code is amended to read:

33208. The commissioner may refer such evidence as is available concerning any violation of this division or of any regulation or order issued under this division which constitutes a crime to the district attorney of the county in which such violation occurred, who may, with or without such a reference, institute appropriate criminal proceedings.

SEC. 715. Section 33209 of the Financial Code is amended to read:

33209. (a) The several powers granted to the commissioner under this division are in addition to, and not in limitation of, each other. The fact that the commissioner possesses, or has exercised, a

power under any provision of this division shall not preclude him or her from exercising a power under any other provision of this division.

(b) The several powers granted to the commissioner under this division are in addition to, and not in limitation of, his powers under other provisions of law. The fact that the commissioner possesses, or has exercised, a power under any other provision of law shall not preclude him or her from exercising any power under this division; nor shall the fact that the commissioner possesses, or has exercised, a power under any provision of this division preclude him or her from exercising a power under any other provision of law.

SEC. 716. Section 33220 of the Financial Code is amended to read:

33220. Each application filed with the commissioner under this division or under any regulation or order issued under this division shall be in such form, shall contain such information, shall be signed in such manner, and shall (if the commissioner so requires by regulation or order) be verified in such manner, as the commissioner may by regulation or order require.

SEC. 717. Section 33221 of the Financial Code is amended to read:

33221. Each report filed with the commissioner under this division or under any regulation or order issued under this division shall be in such form, shall (subject to any limitations set forth in this division) contain such information, shall be signed in such manner, and shall (if the commissioner so requires by regulation or order) be verified in such manner, as the commissioner may by regulation or order require.

SEC. 718. Section 33222 of the Financial Code is amended to read:

33222. No person shall make any untrue statement of any material fact in any application or report filed with the commissioner under this division or under any regulation or order issued under this division, or willfully omit to state in any such application or report any material fact which is required to be stated therein.

SEC. 719. Section 33223 of the Financial Code is amended to read:

33223. In determining whether to approve any application filed under this division or under any regulation or order issued under this division, the commissioner may consider proposals made by the applicant, including proposals to appoint officers or to sell securities; and, if in the opinion of the commissioner it is probable that the applicant will be able to implement any such proposal, the commissioner may make findings on the basis of such proposal. However, whenever the commissioner approves an application on the basis, in whole or in part, of a proposal made by the applicant, the commissioner shall impose upon such approval appropriate conditions requiring that the applicant implement such proposal within such period of time as the commissioner may specify.

SEC. 720. Section 33224 of the Financial Code is amended to read:

33224. If the commissioner finds, with respect to any application filed under this division or under any regulation or order issued under

this division, that not all the information which the commissioner required by regulation or order to be provided in or in connection with such application has been provided, the commissioner may deny the application.

SEC. 721. Section 33240 of the Financial Code is amended to read:

33240. In determining for purposes of this division whether the shareholders' equity of any corporation which is an applicant for a license or which is a licensee is adequate, the commissioner shall consider:

(a) The nature and volume of the business and proposed business of the corporation;

(b) The amount, nature, quality, and liquidity of the assets of the corporation;

(c) The amount and nature of the liabilities (including contingent liabilities) of the corporation;

(d) The history of, and prospects for, the corporation to earn and retain income;

(e) The quality of the operations of the corporation;

(f) The quality of the management of the corporation;

(g) The nature and quality of the controlling person of the corporation; and

(h) Such other factors as are in the opinion of the commissioner relevant.

SEC. 722. Section 33261 of the Financial Code is amended to read:

33261. Before any corporation is issued a license, such corporation shall file with the commissioner, in such form as the commissioner may by regulation or order require, an appointment irrevocably appointing the commissioner and his or her successor from time to time in office to be such corporation's attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against such corporation, or any of its successors, which arises under this division or under any regulation or order issued under this division after such appointment has been filed, with the same force and validity as if served personally on such corporation or its successor, as the case may be. Service may be made by leaving a copy of the process at any office of the commissioner, but such service is not effective unless (a) the party making such service, who may be the commissioner, forthwith sends notice of such service and a copy of the process by registered or certified mail to the party served at its last address on file with the commissioner, and (b) an affidavit of compliance with this section by the party making service is filed in the case on or before the return date, if any, or within such further time as the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

SEC. 723. Section 33262 of the Financial Code is amended to read:

33262. Whenever any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this

division or by any regulation or order issued under this division, whether or not such person has filed an appointment under Section 33261, and if personal jurisdiction over such person cannot otherwise be obtained in this state, such conduct shall be considered equivalent to the appointment of the commissioner and the commissioner's successor from time to time in office to be such person's attorney to receive service of any lawful process in any noncriminal judicial or administrative proceeding against such person, or any of such person's successors, executors, or administrators, which grows out of such conduct and which is brought under this division, with the same force and validity as if served personally on such person or on such successor, executor, or administrator, as the case may be. Service may be made by leaving a copy of the process in any office of the commissioner but such service is not effective unless (a) the party making such service, who may be the commissioner, forthwith sends notice of such service and a copy of the process by registered or certified mail to the party served at his or her last known address or takes other steps which are reasonably calculated to give actual notice, and (b) an affidavit of compliance with this section by the party making service is filed in the case on or before the return date, if any, or within such further time as the court, in the case of a judicial proceeding, or the administrative agency, in the case of an administrative proceeding, allows.

SEC. 724. Section 33280 of the Financial Code is amended to read:

33280. Before any corporation is issued a license, such corporation shall file with the commissioner, in such form as the commissioner may by regulation or order require, an agreement that such corporation will comply with all applicable provisions of this division and of any regulation or order issued under this division.

SEC. 725. Section 33300 of the Financial Code is amended to read:

33300. (a) Each fee for filing an application with the commissioner shall be paid at the time when such application is filed with the commissioner.

(b) No fee for filing an application with the commissioner shall be refundable, regardless of whether such application is approved, denied, withdrawn, or abandoned.

SEC. 726. Section 33301 of the Financial Code is amended to read:

33301. Fees shall be paid to, and collected by, the commissioner, as follows:

(a) The fee for filing with the commissioner an application for a license shall be two thousand dollars ($2,000).

(b) The fee for issuing a license shall be twenty-five dollars ($25).

(c) Whenever the commissioner examines any licensee or any California agent of a licensee, such licensee shall pay, within 10 days after receipt of a statement from the commissioner, a fee of two hundred dollars ($200) per day for each examiner engaged in such examination plus, in case it is necessary for any examiner engaged in

such examination to travel outside this state, the travel expenses of such examiner.

SEC. 727. Section 33302 of the Financial Code is amended to read:

33302. In this section, "licensee" means any licensee, as defined in Section 33055, or any person licensed under Chapter 14A (commencing with Section 1851) of Division 1.

The commissioner shall annually assess and collect from licensees on a pro rata basis an amount which is, in his or her judgment, sufficient to meet his or her expenses in administering the provisions of this division and of Chapter 14A (commencing with Section 1851) of Division 1 and to provide a reasonable reserve for contingencies.

The amount of the annual assessment on any licensee shall not exceed the sum of the products determined by multiplying (a) increments of the aggregate face amount of payment instruments and travelers checks issued by the licensee and sold in this state by the licensee, directly or indirectly through agents, in the calendar year next preceding the date of such assessment, by (b) percentages of the base assessment rate, according to the following table:

Aggregate face amount of payment instruments and traveler's checks sold (in millions)	Percentage of base assessment rate
First $1	100.0
Next $9	25.0
Next $40	12.5
Next $50	6.0
Next $400	3
Next $500	2
Excess over $1,000	1

The base assessment rate shall be fixed from time to time by the commissioner but shall not exceed one dollar ($1) per one thousand dollars ($1,000) face amount of payment instruments and traveler's checks sold.

SEC. 728. Section 33320 of the Financial Code is repealed.

SEC. 729. Section 33403 of the Financial Code is amended to read:

33403. If the commissioner finds, with respect to an application for a license:

(a) That the applicant has adequate shareholders' equity to engage in the business of selling payment instruments issued by it and that the financial condition of the applicant is otherwise such that it will be safe and sound for the applicant to engage in the business of selling payment instruments issued by it;

(b) That the applicant, the directors, officers, and controlling persons of the applicant, and the directors and officers of the controlling persons of the applicant are each of good character and sound financial standing;

(c) That the applicant is competent to engage in the business of selling payment instruments issued by it;

(d) That the applicant's plan for engaging in the business of selling payment instruments issued by it affords reasonable promise of successful operation; and

(e) That it is reasonable to believe that the applicant, if licensed, will engage in the business of selling payment instruments issued by it and will comply with all applicable provisions of this division and of any regulation or order issued under this division:

The commissioner shall approve the application. If, after notice and a hearing, the commissioner finds otherwise, the commissioner shall deny the application.

SEC. 730. Section 33404 of the Financial Code is amended to read:

33404. For purposes of Section 33403, the commissioner may, in the absence of credible evidence to the contrary, presume that an applicant, the directors, officers, and controlling persons of an applicant, and the directors and officers of the controlling persons of an applicant are each of good character and sound financial standing.

SEC. 731. Section 33405 of the Financial Code is amended to read:

33405. (a) For the purposes of Section 33403, the commissioner may find that an applicant, a director, officer, or controlling person of an applicant, or a director or officer of a controlling person of an applicant is not of good character if such person:

(1) Has been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty;

(2) Has consented to or suffered a judgment in any civil action based upon conduct involving an act of fraud or dishonesty;

(3) Has consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty;

(4) Has willfully made or caused to be made in any application or report filed with the commissioner or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has willfully omitted to state in any such application or report any material fact which was required to be stated therein; or

(5) Has willfully committed any violation of, or has willfully aided, abetted, counseled, commanded, induced or procured the violation by any other person of, any provision of this division or of any regulation or order issued under this division.

(b) Subdivision (a) shall not be deemed to be an exclusive list of the grounds upon which the commissioner may find, for purposes of Section 33403, that an applicant, a director, officer, or controlling

person of an applicant, or a director or officer of a controlling person of an applicant is not of good character.

SEC. 732. Section 33406 of the Financial Code is amended to read:

33406. Whenever any application for a license has been approved by the commissioner and all conditions precedent to the issuance of such license have been fulfilled, the commissioner shall issue the license to the applicant.

SEC. 733. Section 33408 of the Financial Code is amended to read:

33408. No licensee shall represent that it is sponsored, recommended, or approved, or that its abilities or qualifications have in any respect been passed upon, by the commissioner. However, this section shall not be deemed to prohibit a licensee from stating that it is licensed if the effect of such license is not misrepresented.

SEC. 734. Section 33521 of the Financial Code is amended to read:

33521. (a) No licensee shall, nor shall any licensee cause or permit any of its California agents to, sell in this state any payment instrument issued by such licensee unless such payment instrument shall have first been approved as to form by the commissioner.

(b) If the commissioner finds, with respect to an application by a licensee for approval as to form of a payment instrument to be issued by such licensee, all of the following:

(1) That the payment instrument clearly identifies the licensee as the issuer of the payment instrument.

(2) That the payment instrument is not misleading in any material respect.

(3) That the payment instrument complies with all applicable laws.

The commissioner shall approve the application and shall, after all conditions precedent to the approval of the payment instrument as to form have been fulfilled, approve the payment instrument as to form. If, after notice and a hearing, the commissioner finds otherwise, the commissioner shall deny the application.

SEC. 735. Section 33522 of the Financial Code is amended to read:

33522. (a) No licensee shall, nor shall any licensee cause or permit any of its California agents to, sell in this state any payment instrument issued by such licensee which is drawn on or is payable through or at a bank, unless such bank shall have first been approved for such purpose by the commissioner.

(b) If the commissioner finds, with respect to an application by a licensee for approval of a bank as a drawee, payable through, or payable at bank for payment instruments to be issued by such licensee, that it will be safe and sound for payment instruments issued by the licensee to be drawn on, payable through, or payable at, such bank, the commissioner shall approve the application and shall, when all conditions precedent to the approval of the bank as a drawee, payable through, or payable at bank have been fulfilled, approve the bank as a drawee, payable through, or payable at bank for payment instruments to be issued by the licensee. If after notice and a hearing,

the commissioner finds otherwise, the commissioner shall deny the application.

SEC. 736. Section 33560 of the Financial Code is amended to read:

33560. In this article:

(a) "Eligible security" means any United States currency eligible security or foreign currency eligible security.

(b) "Eligible securities rating service" means any securities rating service which the commissioner has by regulation or order declared to be an eligible securities rating service pursuant to Section 33564.

(c) "Eligible rating," when used with respect to any security or class of securities and any eligible securities rating service, means any rating assigned to such security or class of securities by such eligible securities rating service which the commissioner has by regulation or order declared to be an eligible rating pursuant to Section 33565.

(d) "Foreign currency eligible security" means any of the following which is, or is denominated in, a foreign currency and which the commissioner has not by regulation or order declared to be ineligible pursuant to Section 33562:

(1) Any of the following which is of comparable quality to the United States currency eligible securities specified in paragraphs (1) to (7), inclusive, of subdivision (f):

(A) Cash.

(B) Any deposit in an office of a bank located in a foreign country.

(C) Any bond, note, or other obligation.

(2) Any other security or class of securities which the commissioner has by regulation or order declared to be eligible securities pursuant to Section 33563.

(e) "Reported outstanding payment instrument," when used with respect to a licensee, means:

(1) Any payment instrument issued by the licensee which has been sold directly by the licensee and which has not yet been paid by the licensee; or

(2) Any payment instrument issued by the licensee which has been sold by an agent of the licensee, which has been reported by such agent to the licensee as having been sold (such report having been received by the licensee), and which has not yet been paid by the licensee.

(f) "United States currency eligible security" means any of the following which is, or is denominated in, United States currency and which the commissioner has not by regulation or order declared to be ineligible pursuant to Section 33562:

(1) Cash.

(2) Any deposit in an insured bank or an insured savings association.

(3) Any bond, note, or other obligation which is issued or guaranteed by the United States or by any agency of the United States.

(4) Any bond, note, or other obligation which is issued or guaranteed by any state of the United States or by any governmental agency of or within any state of the United States and which is assigned an eligible rating by an eligible securities rating service.

(5) Any bankers acceptance which is eligible for discount by a federal reserve bank.

(6) Any commercial paper which is assigned an eligible rating by an eligible securities rating service.

(7) Any bond, note, or other obligation or preferred stock which is assigned an eligible rating by an eligible securities rating service.

(8) Any other security or class of securities which the commissioner has by regulation or order declared to be eligible securities pursuant to Section 33563.

(9) Any account due to any licensee from any agent of such licensee on account of the sale by such agent of payment instruments issued by the licensee, which the commissioner has by order declared to be an eligible security for the licensee pursuant to Section 33566.

(g) "Value" means:

(1) When used with respect to an eligible security owned by a licensee which consists of an account due to such licensee from an agent of the licensee on account of the sale by such agent of payment instruments issued by the licensee which the commissioner has declared to be an eligible security for the licensee pursuant to Section 33566, net carrying value as determined in conformity with generally accepted accounting principles;

(2) When used with respect to any other eligible security owned by a licensee:

(A) In case the practice and policy of such licensee is to hold eligible securities to maturity, net carrying value as determined in conformity with generally accepted accounting principles;

(B) In any other case, market value.

SEC. 736.1. Section 33560 of the Financial Code is amended to read:

33560. In this article:

(a) "Eligible security" means any United States currency eligible security or foreign currency eligible security.

(b) "Eligible securities rating service" means any securities rating service which the commissioner has by regulation or order declared to be an eligible securities rating service pursuant to Section 33564.

(c) "Eligible rating," when used with respect to any security or class of securities and any eligible securities rating service, means any rating assigned to such security or class of securities by such eligible securities rating service which the commissioner has by regulation or order declared to be an eligible rating pursuant to Section 33565.

(d) "Foreign currency eligible security" means any of the following which is, or is denominated in, a foreign currency and which the commissioner has not by regulation or order declared to be ineligible pursuant to Section 33562:

(1) Any of the following which is of comparable quality to the United States currency eligible securities specified in paragraphs (1) to (7), inclusive, of subdivision (f):

(A) Cash.

(B) Any deposit in an office of a bank located in a foreign country.

(C) Any bond, note, or other obligation.

(2) Any other security or class of securities which the commissioner has by regulation or order declared to be eligible securities pursuant to Section 33563.

(e) "Reported outstanding payment instrument," when used with respect to a licensee, means any of the following:

(1) Any payment instrument issued by the licensee which has been sold directly by the licensee and which has not yet been paid by the licensee.

(2) Any payment instrument issued by the licensee which has been sold by an agent of the licensee, which has been reported by such agent to the licensee as having been sold (such report having been received by the licensee), and which has not yet been paid by the licensee.

(f) "United States currency eligible security" means any of the following which is, or is denominated in, United States currency and which the commissioner has not by regulation or order declared to be ineligible pursuant to Section 33562:

(1) Cash.

(2) Any deposit in an insured bank or an insured savings and loan association.

(3) Any bond, note, or other obligation which is issued or guaranteed by the United States or by any agency of the United States.

(4) Any bond, note, or other obligation which is issued or guaranteed by any state of the United States or by any governmental agency of or within any state of the United States and which is assigned an eligible rating by an eligible securities rating service.

(5) Any bankers acceptance which is eligible for discount by a federal reserve bank.

(6) Any commercial paper which is assigned an eligible rating by an eligible securities rating service.

(7) Any bond, note, or other obligation or preferred stock which is assigned an eligible rating by an eligible securities rating service.

(8) Any share of an investment company that is an open-end management company, that is registered under the Investment Company Act of 1940 (12 U.S.C. Sec. 80a-1 et seq.), that holds itself out to investors as a money market fund, and that operates in accordance with all provisions of the Investment Company Act of 1940 and of the regulations of the Securities and Exchange Commission applicable to money market funds, including Section 270.2a-7 of the regulations of the Securities and Exchange Commission (17 C.F.R. Sec. 270.2a-7).

For purposes of this paragraph and paragraph (9), "investment company," "management company," and "open-end" have the meanings set forth in Sections 3, 4, and 5, respectively, of the Investment Company Act of 1940 (12 U.S.C. Secs. 80a-3, 80a-4, and 80a-5, respectively).

(9) Any share of an investment company that is an open-end management company, that is registered under the Investment Company Act of 1940 (12 U.S.C. Sec. 80a-1 et seq.), and that invests exclusively in securities that constitute United States currency eligible securities under the other provisions of this subdivision.

(10) Any account due to any licensee from any agent of such licensee on account of the sale by such agent of reported outstanding payment instruments issued by the licensee, if the account is current and not past due or otherwise doubtful of collection.

(11) Any other security or class of securities that the commissioner has by regulation or order declared to be eligible securities pursuant to Section 33563.

(g) "Value" means:

(1) When used with respect to an eligible security owned by a licensee which consists of an account due to such licensee from an agent of the licensee on account of the sale by such agent of reported outstanding payment instruments issued by the licensee, net carrying value as determined in conformity with generally accepted accounting principles. However, in computing the value of the account due to the licensee, any amount due on account of the sale of a payment instrument shall be excluded if the time elapsed between the sale and the date of computation exceeds the average time that elapses between the time of sale and the time of payment of payment instruments issued by the licensee.

(2) When used with respect to any other eligible security owned by a licensee:

(A) In case the practice and policy of such licensee is to hold eligible securities to maturity, net carrying value as determined in conformity with generally accepted accounting principles.

(B) In any other case, market value.

SEC. 737. Section 33562 of the Financial Code is amended to read:

33562. If the commissioner finds that any eligible security or class of eligible securities is not of sufficient liquidity or quality to be eligible securities, the commissioner may by regulation or order declare such security or class of securities to be ineligible.

SEC. 737.5. Section 33563 of the Financial Code is amended to read:

33563. If the commissioner finds that any security or class of securities which is not an eligible security is of sufficient liquidity and quality to be an eligible security, the commissioner may by regulation or order declare such security or class of securities to be eligible securities.

SEC. 738. Section 33564 of the Financial Code is amended to read:

33564. If the commissioner finds that a securities rating service:

(a) Has been continuously engaged in the business of rating securities for a period of not less than three years;

(b) Is competent to rate securities and is nationally recognized for rating securities in a competent manner; and

(c) Publishes its ratings of securities on a nationwide basis:

The commissioner may by regulation or order declare such securities rating service to be an eligible securities rating service.

SEC. 739. Section 33565 of the Financial Code is amended to read:

33565. If the commissioner finds that a rating assigned to a class of securities by an eligible securities rating service indicates that such class of securities is of sufficient quality to be eligible securities, the commissioner may by regulation or order declare such rating to be an eligible rating.

SEC. 740. Section 33566 of the Financial Code is amended to read:

33566. If the commissioner finds that an account due to any licensee from any agent of such licensee on account of the sale by such agent of payment instruments issued by the licensee is, in view of the financial condition of the agent and of the licensee, the history of such account, and such other factors as may in the opinion of the commissioner be relevant, of sufficient quality to be an eligible security for the licensee, the commissioner may by order declare such account to be an eligible security for the licensee. However, in computing the value of any such account for purposes of Section 33567, there shall be excluded any amount due on account of the sale of a payment instrument if the time elapsed between such sale and the date of computation exceeds the average time that elapses between the time of sale and the time of payment of payment instruments issued by the licensee.

SEC. 741. Section 33568 of the Financial Code is amended to read:

33568. (a) In computing for purposes of Section 33567 the aggregate value of eligible securities owned by a licensee, there shall be excluded the value of any eligible security if and to the extent that the value of such eligible security, when combined with the aggregate value of all other eligible securities owned by such licensee which are issued or guaranteed by the same person or by any affiliate of the same person by whom such eligible security is issued or guaranteed, exceeds 10 percent of the aggregate value of all eligible securities owned by the licensee.

(b) Subdivision (a) shall not be deemed to require the exclusion of the value of any of the following eligible securities, and each of the following eligible securities shall be exempted from the limitations of subdivision (a):

(1) The following United States currency eligible securities:

(A) Cash.

(B) Any deposit in an insured bank or an insured savings association.

(C) Any bond, note, or other obligation for the payment of which the full faith and credit of the United States are pledged.

(2) Any eligible security which the commissioner, in view of the financial condition of the obligor or issuer and such other factors as may in the opinion of the commissioner be relevant, finds to be of such quality that exclusion of the value of such eligible security pursuant to subdivision (a) is not necessary for the purposes of this division and which the commissioner by regulation or order exempts from the limitations of subdivision (a).

SEC. 741.1. Section 33568 of the Financial Code is amended to read:

33568. (a) In computing for purposes of Section 33567 the aggregate value of eligible securities owned by a licensee, all of the following shall be excluded:

(1) The value of any eligible security if and to the extent that the value of such eligible security, when combined with the aggregate value of all other eligible securities owned by such licensee which are issued or guaranteed by the same person or by any affiliate of the same person by whom such eligible security is issued or guaranteed, exceeds 10 percent of the aggregate value of all eligible securities owned by the licensee.

(2) The portion of the aggregate value of all eligible securities of the type described in paragraph (10) of subdivision (f) of Section 33560 that exceeds 10 percent of the aggregate value of all eligible securities owned by the licensee or any higher percentage, up to a maximum of 20 percent, that the commissioner may approve for the licensee.

(b) Subdivision (a) shall not be deemed to require the exclusion of the value of any of the following eligible securities, and each of the following eligible securities shall be exempted from the limitations of subdivision (a):

(1) The following United States currency eligible securities:

(A) Cash.

(B) Any deposit in an insured bank or an insured savings and loan association.

(C) Any bond, note, or other obligation for the payment of which the full faith and credit of the United States are pledged.

(2) Any eligible security which the commissioner, in view of the financial condition of the obligor or issuer and such other factors as may in the opinion of the commissioner be relevant, finds to be of such quality that exclusion of the value of such eligible security pursuant to subdivision (a) is not necessary for the purposes of this division and which the commissioner by regulation or order exempts from the limitations of subdivision (a).

SEC. 742. Section 33600 of the Financial Code is amended to read:

33600. Each fidelity bond required by the commissioner pursuant to this article shall be issued by one or more corporations admitted to engage in the surety business in this state.

SEC. 742.1. Section 33600 of the Financial Code is amended to read:

33600. Each fidelity bond required by the commissioner pursuant to this article shall be issued by one or more corporations admitted to engage in the surety business in this state and is satisfactory to the commissioner.

SEC. 743. Section 33601 of the Financial Code is amended to read:

33601. Whenever the commissioner approves an application for a license, the commissioner may require, as a condition of such approval, if the commissioner finds that such condition is necessary for the protection of the interests of purchasers and holders of payment instruments issued by the applicant, that the applicant obtain and thereafter maintain a fidelity bond covering such persons, having such provisions, and providing coverage in such amounts, as the commissioner may specify.

SEC. 744. Section 33602 of the Financial Code is amended to read:

33602. Whenever the commissioner finds that such order is necessary for the protection of the interests of purchasers and holders of payment instruments issued by a licensee which is not then required to maintain a fidelity bond, the commissioner may order such licensee to obtain and thereafter maintain a fidelity bond covering such persons, having such provisions, and providing coverage in such amounts, as the commissioner may specify.

SEC. 745. Section 33603 of the Financial Code is amended to read:

33603. Whenever the commissioner finds that it is appropriate or necessary for the protection of the interests of purchasers and holders of payment instruments issued by a licensee which is then required to maintain a fidelity bond that such licensee obtain and thereafter maintain a fidelity bond which differs from the former fidelity bond with respect to persons covered, amounts of coverage, or other provisions, the commissioner may by order relieve the licensee of the requirement that it maintain the former fidelity bond and require that the licensee obtain and thereafter maintain the latter fidelity bond.

SEC. 746. Section 33604 of the Financial Code is amended to read:

33604. Whenever the commissioner finds that it is no longer necessary for the protection of the interests of purchasers and holders of payment instruments issued by a licensee which is then required to maintain a fidelity bond that such licensee continue to maintain any fidelity bond, the commissioner may by order relieve the licensee of the requirement that it maintain any fidelity bond.

SEC. 747. Section 33700 of the Financial Code is amended to read:

33700. No licensee shall appoint or continue any person as its agent, nor shall any person become or continue to be a California agent of a licensee, unless such licensee and such person shall have first made a written contract which shall contain the following provisions:

(a) That the licensee appoints the person as its agent with authority to sell on behalf of the licensee payment instruments issued by the licensee.

(b) (1) In case the person is a national banking association, a federal savings association, or a federal credit union, provisions substantially corresponding with the provisions of Article 3 (commencing with Section 33730).

(2) In case the person is any California agent other than an agent of the type described in paragraph (1) of this subdivision, that the person shall comply with all applicable provisions of this division and of any regulation or order issued under this division.

(3) In case the person is any agent other than (i) an agent of the type referred to in paragraph (1) of this subdivision or (ii) a California agent:

(A) If the person is an insured bank, an insured savings association, or an insured credit union, provisions substantially corresponding with the provisions of Article 3 (commencing with Section 33730); or

(B) If the person is neither an insured bank nor an insured savings association nor an insured credit union, provisions substantially corresponding with the provisions of Article 2 (commencing with Section 33720) which are applicable to California agents of a licensee and with the provisions of Article 3 (commencing with Section 33730).

(c) Such other provisions as the commissioner may find to be necessary to carry out the provisions and purposes of this division.

SEC. 748. Section 33731 of the Financial Code is amended to read:

33731. Whenever any provision of this article requires a report by any agent of a licensee of the sale by such agent of a payment instrument issued by such licensee, such report shall contain the following information:

(a) The face amount and serial number of such payment instrument, and the face amount and serial number of any payment instrument issued by the licensee which the agent sold before selling such payment instrument and the sale of which the agent has not yet reported;

(b) In case the agent, at or before the time of any sale reported in the report, voided any payment instrument issued by the licensee and has not yet reported such voiding, the serial number of such payment instrument;

(c) In case the agent (i) is authorized to redeem on behalf of the licensee payment instruments issued by the licensee, (ii) did, at or before the time of any sale reported in the report, redeem any payment instrument issued by the licensee, and (iii) has not yet reported such redemption, the face amount and serial number of such payment instrument; and

(d) Such other information as the licensee (or, in the case of a report made under Section 33733, the commissioner) may provide.

SEC. 749. Section 33733 of the Financial Code is amended to read:

33733. Notwithstanding the provisions of Section 33732, whenever a California agent of a licensee knows or has reason to know that the commissioner has suspended or revoked the license of such licensee or that the commissioner has issued an order taking possession of the property and business of the licensee, such agent shall immediately report to the licensee (or to the commissioner, if the commissioner so orders) each sale by the agent of a payment instrument issued by the licensee which the agent has not yet reported under this article.

SEC. 750. Section 33743 of the Financial Code is amended to read:

33743. Notwithstanding the provisions of Section 33742, whenever a California agent of a licensee knows or has reason to know that the commissioner has suspended or revoked the license of such licensee or that the commissioner has issued an order taking possession of the property and business of the licensee, such agent shall immediately remit to the licensee (or to the commissioner, if the commissioner so orders) the face amount of each payment instrument issued by the licensee and sold by the agent which the agent has not yet remitted under this article.

SEC. 751. Section 33760 of the Financial Code is amended to read:

33760. Each licensee shall, at the time when it becomes a licensee, register each of its California agents with the commissioner by filing with the commissioner a report regarding such agents.

SEC. 752. Section 33761 of the Financial Code is amended to read:

33761. Whenever any licensee appoints any person as a California agent, such licensee shall, not more than 90 days after taking such action, register such agent with the commissioner by filing with the commissioner a report regarding the agent.

SEC. 753. Section 33762 of the Financial Code is amended to read:

33762. Whenever any person who is a California agent of a licensee ceases for any reason to be a California agent of such licensee, the licensee shall, not more than 90 days thereafter, terminate the registration of the agent with the commissioner by filing with the commissioner a report regarding the agent.

SEC. 754. Section 33780 of the Financial Code is amended to read:

33780. If, after notice and a hearing, the commissioner finds that any California agent of a licensee or any director, officer, employee, or controlling person of such agent:

(a) Has violated any provision of this chapter or of any regulation or order issued under this chapter;

(b) Has engaged or participated in any unsafe or unsound act with respect to the business of selling payment instruments issued by the licensee; or

(c) Has made or caused to be made in any application or report filed with the commissioner or in any proceeding before the commissioner, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, or has omitted to state in any such

application or report any material fact which is required to be stated therein:

The commissioner may issue an order suspending or barring such agent from continuing to be or becoming an agent of any licensee or of any person referred to in Section 33100(a), during the period for which such order is in effect.

SEC. 755. Section 33781 of the Financial Code is amended to read:

33781. (a) In case a California agent of a licensee is a bank (other than a bank organized under the laws of this state), savings association (other than a savings association organized under the laws of this state), or credit union, the commissioner shall not commence any administrative proceeding under Section 33780 against such agent unless the commissioner shall have first given notice of his or her intent to do so to the governmental agency having primary regulatory authority over the agent and unless, within such time as is in the opinion of the commissioner appropriate in the circumstances of the case (which time shall be specified in such notice), such governmental agency shall have refused or failed to effectuate corrective action by the agent which is satisfactory to the commissioner.

(b) No California agent of a licensee which is a bank, savings association, or credit union shall have standing to raise the provisions of subdivision (a) as a defense in any administrative proceeding under Section 33780 or as a basis for challenging or for refusing to comply with any order issued under Section 33780.

SEC. 756. Section 33784 of the Financial Code is amended to read:

33784. (a) Any person to whom an order is issued under Section 33780 may apply to the commissioner to modify or rescind such order. The commissioner shall not grant such application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that such person will, if and when such person becomes a California agent of a licensee, comply with all applicable provisions of this division and of any regulation and order issued under this division.

(b) The right of any person to whom an order is issued under Section 33780 to petition for judicial review of such order shall not be affected by the failure of such person to apply to the commissioner pursuant to subdivision (a) to modify or rescind the order.

SEC. 757. Section 33900 of the Financial Code is amended to read:

33900. (a) Each licensee shall make, keep, and preserve within the United States such books, accounts, and other records in such form, in such manner, and for such time as the commissioner may by regulation or order specify.

(b) Each California agent of a licensee shall, and each licensee shall use its best efforts to require each of its California agents to, make and keep such records regarding sales by such agent of payment instruments issued by such licensee and related matters as may be necessary to show at any time the following:

(1) Face amount, serial number, and date of sale of each payment instrument sold, the sale of which the agent has not yet reported to the licensee under Article 3 (commencing with Section 33730) of Chapter 6;

(2) Serial number and date of voiding of each payment instrument voided, the voiding of which the agent has not yet reported to the licensee under Article 3 (commencing with Section 33730) of Chapter 6;

(3) In case the agent is authorized to redeem payment instruments on behalf of the licensee, face amount, serial number, and date of redemption of each payment instrument redeemed, the redemption of which the agent has not yet reported to the licensee under Article 3 (commencing with Section 33730) of Chapter 6;

(4) Total face amount and serial numbers of payment instruments sold, the sale of which the agent reported in its last report to the licensee under Article 3 (commencing with Section 33730) of Chapter 6;

(5) Total face amount and serial numbers of payment instruments sold, on account of which the agent has not yet remitted funds to the licensee under Article 4 (commencing with Section 33740) of Chapter 6; and

(6) Date on which the agent last remitted funds to the licensee under Article 4 (commencing with Section 33740) of Chapter 6 on account of payment instruments sold, total amount of such funds, and serial numbers of such payment instruments.

SEC. 758. Section 33901 of the Financial Code is amended to read:

33901. Each licensee shall, not more than 90 days after the close of each of its fiscal years or within such longer period as the commissioner may by regulation or order specify, file with the commissioner a report containing:

(a) Financial statements (including balance sheet, statement of income or loss, statement of changes in shareholder's equity, and statement of changes in financial position) for or as of the end of such fiscal year, prepared with audit by an independent certified public accountant or an independent public accountant in accordance with generally accepted accounting principles;

(b) Report, certificate, or opinion of such independent certified public accountant or independent public accountant, stating that such financial statements were prepared in accordance with generally accepted accounting principles; and

(c) Such other information as the commissioner may by regulation or order require.

SEC. 758.1. Section 33901 of the Financial Code is amended to read:

33901. Each licensee shall, not more than 90 days after the close of each of its fiscal years or within such longer period as the commissioner may by regulation or order specify, file with the commissioner a report containing:

(a) Financial statements, including balance sheet, statement of income or loss, statement of changes in shareholder's equity, and statement of cash flows, for or as of the end of such fiscal year, prepared with audit by an independent certified public accountant or an independent public accountant in accordance with generally accepted accounting principles.

(b) Report, certificate, or opinion of such independent certified public accountant or independent public accountant, stating that such financial statements were prepared in accordance with generally accepted accounting principles.

(c) Such other information as the commissioner may by regulation or order require.

SEC. 759. Section 33902 of the Financial Code is amended to read:

33902. (a) Each licensee shall file with the commissioner such reports as and when the commissioner may by regulation or order require.

(b) In case the commissioner has initiated proceedings to issue, or has issued, an order imposing conditions upon the surrender of the license of a licensee under Section 34001, an order suspending or revoking the license of a licensee under Section 34109 or 34110, or an order taking possession of the property and business of a licensee under Section 34113, each California agent of such licensee shall, and the licensee shall use its best efforts to require each of its California agents to, file with the commissioner such reports regarding sales by such agent of payment instruments issued by the licensee and related matters, as and when the commissioner may by regulation or order require.

(c) (1) Whenever the commissioner suspects that a licensee has violated, or is about to violate, any provision of this division or of any regulation or order issued under this division, the commissioner may by order require any director, officer, or employee of such licensee to file with the commissioner at the time specified in such order a report regarding such suspected violation and any related matters.

(2) Each director, officer, and employee of a licensee to whom an order is issued under paragraph (1) of this subdivision shall, and such licensee shall use its best efforts to require each such director, officer, and employee to, comply with such order.

SEC. 760. Section 33903 of the Financial Code is amended to read:

33903. (a) The commissioner may at any time examine any licensee.

(b) In case the commissioner has initiated proceedings to issue, or has issued, an order imposing conditions upon the surrender of the license of a licensee under Section 34001, an order suspending or revoking the license of a licensee under Section 34109 or 34110, or an order taking possession of the property and business of a licensee under Section 34113, the commissioner may examine any California agent of such licensee with respect to sales by such agent of payment instruments issued by the licensee and related matters.

(c) Any licensee or California agent of a licensee being examined by the commissioner shall, and each licensee shall use its best efforts to require each of its California agents being examined by the commissioner to, exhibit to the commissioner and permit the commissioner to copy, on request, any or all of the books, accounts, and other records of such licensee or such California agent, as the case may be, which may relate to such examination, and otherwise facilitate such examination so far as it may be in its power to do so.

(d) The commissioner may, if in the commissioner's opinion it is necessary in the examination of any licensee or of any California agent of a licensee, retain any certified public accountant, attorney, appraiser, or other person to assist the commissioner, and such licensee shall pay, within 10 days after receipt of a statement from the commissioner, the fees of such person.

SEC. 761. Section 34000 of the Financial Code is amended to read:

34000. Any licensee may surrender its license by filing with the commissioner such license and a report.

SEC. 762. Section 34001 of the Financial Code is amended to read:

34001. (a) Except as otherwise provided in subdivision (b), a voluntary surrender of a license shall be effective on the 30th day after such license and the report called for in Section 34000 are filed with the commissioner or on such earlier date as the commissioner may by order specify.

(b) If a proceeding to revoke or suspend a license is pending at the time when such license and the report called for in Section 34000 are filed with the commissioner or if a proceeding to revoke or suspend a license or to impose conditions upon the surrender of a license is instituted before the 30th day after such license and the report called for in Section 34000 are filed with the commissioner, the voluntary surrender of such license shall become effective at such time and upon such conditions as the commissioner may by order specify.

SEC. 763. Section 34100.5 of the Financial Code is amended to read:

34100.5. (a) No order issued by the commissioner under Section 34103, 34105, or 34106 shall become effective earlier than the 10th business day after the issuance of such order.

(b) No order issued by the commissioner under subdivision (a) of Section 34104 or subdivision (a) or (b) of Section 34107 shall become effective earlier than the fifth business day after the issuance of such order.

SEC. 764. Section 34101 of the Financial Code is amended to read:

34101. (a) Whenever it appears to the commissioner that any person has violated, or that there is reasonable cause to believe that any person is about to violate, any provision of this division or of any regulation or order issued under this division, the commissioner may bring an action in the name of the people of this state in the superior court to enjoin the violation or to enforce compliance with this division or with any regulation or order issued under this division.

Upon a proper showing, a restraining order, preliminary or permanent injunction, or writ of mandate shall be granted, and a receiver or conservator may be appointed for the defendant or the defendant's assets.

(b) Any receiver or conservator appointed by the court pursuant to subdivision (a) may, with the approval of the court, exercise all of the powers of the defendant's directors, officers, partners, trustees, or persons who exercise similar powers and perform similar duties, including the filing of a petition for bankruptcy. No action at law or in equity may be maintained by any party against the commissioner or the receiver or conservator by reason of the exercise of powers or the performance of duties pursuant to the order, or with the approval of, the court.

(c) The commissioner may include in any action authorized under subdivision (a) a claim for ancillary relief, including a claim for restitution or damages on behalf of the persons injured by the act constituting the subject matter of the action, and the court shall have jurisdiction to award such additional relief.

SEC. 765. Section 34102 of the Financial Code is amended to read:

34102. (a) If the commissioner finds that any person has violated, or that there is reasonable cause to believe that any person is about to violate, Section 33400, the commissioner may order such person to cease and desist from such violation unless and until such person is issued a license.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), the person to whom such order is issued may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence such hearing within 15 business days after such application is filed with the commissioner (or within such longer period to which such person consents), the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any person to whom an order is issued under subdivision (a) to petition for judicial review of such order shall not be affected by the failure of such person to apply to the commissioner for hearing on the order pursuant to paragraph (1) of this subdivision.

SEC. 766. Section 34103 of the Financial Code is amended to read:

34103. If, after notice and a hearing, the commissioner finds:

(a) That any licensee or any California agent of a licensee has engaged or participated, is engaging or participating, or that there is reasonable cause to believe that any licensee or any California agent of a licensee is about to engage or participate, in any unsafe or unsound act with respect to the business of such licensee; or

(b) That any licensee or any California agent of a licensee has violated, is violating, or that there is reasonable cause to believe that any licensee or any California agent of a licensee is about to violate, any provision of this division or of any regulation or order

issued under this division or any provision of any other applicable law.

The commissioner may order such licensee or such California agent to cease and desist from such action or violation. The order may require the licensee or such California agent to take affirmative action to correct any condition resulting from the action or violation.

SEC. 767. Section 34104 of the Financial Code is amended to read:

34104. (a) If the commissioner finds that any of the factors set forth in Section 34103 is true with respect to any licensee or any California agent of a licensee and that such action or violation is likely:

(1) To cause the insolvency of the licensee;

(2) To cause substantial dissipation of the assets or earnings of the licensee;

(3) To seriously weaken the condition of the licensee; or

(4) To otherwise seriously prejudice the interests of purchasers or holders of payment instruments issued by the licensee:

The commissioner may order such licensee or such California agent to cease and desist from such action or violation. Such order may require the licensee or the California agent to take affirmative action to correct any condition resulting from the action or violation.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), any licensee or California agent of a licensee to whom such order is issued may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence such hearing within 15 business days after such application is filed with the commissioner (or within such longer period to which such licensee or California agent consents), the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any licensee or California agent of a licensee to whom an order is issued under subdivision (a) to petition for judicial review of such order shall not be affected by the failure of such licensee or California agent of a licensee to apply to the commissioner for a hearing on the order pursuant to paragraph (1) of this subdivision.

SEC. 768. Section 34105 of the Financial Code is amended to read:

34105. If, after notice and a hearing, the commissioner finds:

(a) (1) That any subject person of a licensee has engaged or participated in any unsafe or unsound act with respect to the business of such licensee;

(2) That any subject person of a licensee has violated any provision of this division or of any regulation or order issued under this division or any provision of any other applicable law relating to the business of such licensee; or

(3) That any subject person of a licensee has engaged or participated in any act which constitutes a breach of his fiduciary duty as a subject person; and

(b) (1) That such act, violation, or breach of fiduciary duty has caused or is likely to cause substantial financial loss or other damage to the licensee;

(2) That such action, violation, or breach of fiduciary duty has seriously prejudiced, or is likely to seriously prejudice, the interests of purchasers or holders of payment instruments issued by the licensee; or

(3) That the subject person has received financial gain by reason of such act, violation, or breach of fiduciary duty; and

(c) That such act, violation, or breach of fiduciary duty either involves dishonesty on the part of the subject person or demonstrates the subject person's gross negligence with respect to the business of the licensee or a willful disregard for the safety and soundness of the licensee:

The commissioner may order the licensee to suspend or remove the subject person from his or her office, if any, with the licensee and to preclude such person from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner.

SEC. 769. Section 34106 of the Financial Code is amended to read:

34106. If, after notice and a hearing, the commissioner finds that any subject person of a licensee has, by engaging or participating in any act with respect to any financial or other business institution which resulted in financial loss or other damage, demonstrated:

(a) (1) Dishonesty;

(2) Gross negligence with respect to the operations of such institution; or

(3) Willful disregard for the safety and soundness of such institution; and

(b) Unfitness to continue as a subject person of such licensee or participate in the conduct of the business of such licensee:

The commissioner may order the licensee to remove the subject person from his or her office, if any, with the licensee and to preclude him or her from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner.

SEC. 770. Section 34107 of the Financial Code is amended to read:

34107. (a) If the commissioner finds:

(1) That any subject person of a licensee has been charged in an indictment issued by a grand jury or in an information, complaint, or similar pleading issued by a United States attorney, district attorney, or other governmental official or agency authorized to prosecute crimes, with a crime which is punishable by imprisonment for a term exceeding one year and which involves dishonesty or breach of trust; and

(2) That such subject person's continuing to serve as a subject person of the licensee may pose a threat to the interests of purchasers or holders of payment instruments issued by the licensee or may threaten to impair public confidence in the licensee:

The commissioner may order such licensee to suspend such subject person from his or her office, if any, with the licensee and to preclude such person from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner. In case the criminal proceedings are terminated other than by a judgment of conviction, such order shall be deemed rescinded.

(b) If the commissioner finds:

(1) That any subject person or former subject person of a licensee with respect to whom an order was issued pursuant to subdivision (a) or any other subject person of a licensee has been finally convicted of a crime which is punishable by imprisonment for a term exceeding one year and which involves dishonesty or breach of trust; and

(2) That such person's continuing to serve or resumption of service as a subject person of the licensee may pose a threat to the interests of purchasers or holders of payment instruments issued by the licensee or may threaten to impair confidence in the licensee:

The commissioner may order such licensee to suspend or remove such subject person or former subject person from his or her office, if any, with the licensee and to preclude him from further participating in any manner in the conduct of the business of the licensee, except with the prior consent of the commissioner.

(c) (1) Within 30 days after an order is issued pursuant to subdivision (a) or (b), any licensee to which such order is issued or any subject person or former subject person of a licensee with respect to whom such order is issued may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence such hearing within 15 business days after such application is filed with the commissioner (or within such longer period to which such licensee, subject person, or former subject person consents), the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any licensee to which an order is issued under subdivision (a) or (b) or of any subject person or former subject person of a licensee with respect to whom such an order is issued to petition for judicial review of such order shall not be affected by the failure of such person to apply to the commissioner for a hearing on the order pursuant to paragraph (1) of this subdivision.

(d) The fact that any subject person of a licensee charged with a crime involving dishonesty or breach of trust is not finally convicted of such crime shall not preclude the commissioner from issuing an

order regarding such licensee or such subject person pursuant to any other section of this division.

SEC. 771. Section 34108 of the Financial Code is amended to read:

34108. (a) Any licensee to which an order is issued under Section 34105, 34106, or 34107 or any subject person or former subject person of a licensee with respect to whom such an order is issued may apply to the commissioner to modify or rescind such order. The commissioner shall not grant such application unless the commissioner finds that it is in the public interest to do so and that it is reasonable to believe that such subject person or former subject person will, if and when he or she becomes a subject person of a licensee, comply with all applicable provisions of this division and of any regulation or order issued under this division.

(b) The right of any licensee to which an order is issued under Section 34105, 34106, or 34107 or any subject person or former subject person of a licensee with respect to whom such an order is issued to petition for judicial review of such order shall not be affected by the failure of such licensee, subject person, or former subject person to apply to the commissioner pursuant to subdivision (a) to modify or rescind the order.

SEC. 772. Section 34109 of the Financial Code is amended to read:

34109. If, after notice and a hearing, the commissioner finds:

(a) That any licensee has violated any provision of this division or of any regulation or order issued under this division or any provision of any other applicable law;

(b) That any licensee is conducting its business in an unsafe or unsound manner;

(c) That any licensee is in such condition that it is unsafe or unsound for it to transact the business of selling in this state payment instruments issued by it;

(d) That any licensee has ceased to transact the business of selling in this state payment instruments issued by it;

(e) That any licensee is insolvent;

(f) That any licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;

(g) That any licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any bankruptcy, reorganization, insolvency, or moratorium law, or that any person has applied for any such relief under any such law against any licensee and such licensee has by any affirmative act approved of or consented to such action or such relief has been granted; or

(h) That any fact or condition exists which, if it had existed at the time when any licensee applied for its license, would have been grounds for denying such application:

The commissioner may issue an order suspending or revoking the license of such licensee.

SEC. 773. Section 34110 of the Financial Code is amended to read:

34110. (a) If the commissioner finds that any of the factors set forth in Section 34109 is true with respect to any licensee and that it is necessary for the protection of the interests of purchasers or holders of payment instruments issued by such licensee or for the protection of the public interest that he or she immediately suspend or revoke the license of such licensee, the commissioner may issue an order suspending or revoking the license of such licensee.

(b) (1) Within 30 days after an order is issued pursuant to subdivision (a), any licensee to whom such order is issued may file with the commissioner an application for a hearing on the order. If the commissioner fails to commence such hearing within 15 business days after such application is filed with the commissioner (or within such longer period to which such licensee consents), the order shall be deemed rescinded. Within 30 days after the hearing, the commissioner shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded.

(2) The right of any licensee to which an order is issued under subdivision (a) to petition for judicial review of such order shall not be affected by the failure of such licensee to apply to the commissioner for a hearing on the order pursuant to paragraph (1) of this subdivision.

SEC. 774. Section 34111 of the Financial Code is amended to read:

34111. Any person whose license is suspended or revoked shall immediately deliver such license to the commissioner.

SEC. 775. Section 34112 of the Financial Code is amended to read:

34112. (a) Any person to whom an order is issued under Section 34109 or 34110 may apply to the commissioner to modify or rescind such order. The commissioner shall not grant such application unless he or she finds that it is in the public interest to do so and that it is reasonable to believe that such person will, if and when it becomes a licensee, comply with all applicable provisions of this division and of any regulation or order issued under this division.

(b) The right of any person to whom an order is issued under Section 34109 or 34110 to petition for judicial review of such order shall not be affected by the failure of such person to apply to the commissioner pursuant to subdivision (a) to modify or rescind the order.

SEC. 776. Section 34113 of the Financial Code is amended to read:

34113. (a) If the commissioner finds that any of the factors set forth in Section 34109 is true with respect to any licensee and that it is necessary for the protection of the interests of purchasers or holders of payment instruments issued by the licensee or for the protection of the public interest that the commissioner take immediate possession of the property and business of the licensee, the commissioner may by order forthwith take possession of the property and business of the licensee and retain possession until the licensee resumes business or is finally liquidated. The licensee may,

with the consent of the commissioner, resume business upon such conditions as the commissioner may prescribe.

(b) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the licensee may, within 10 days, apply to the superior court in any county of this state in which an office of the licensee is located (or, in case the licensee has no office in this state, in the County of Sacramento, in the City and County of San Francisco, or in the County of Los Angeles) to enjoin further proceedings. The court may, after citing the commissioner to show cause why further proceedings should not be enjoined and after a hearing, dismiss the application or enjoin the commissioner from further proceedings and order the commissioner to surrender the property and business of the licensee to the licensee or make such further order as may be just. The judgment of the superior court may be appealed by the commissioner or by the licensee in the manner provided by law for appeals from the judgment of a superior court.

(c) Whenever the commissioner takes possession of the property and business of a licensee pursuant to subdivision (a), the commissioner shall conserve or liquidate the property and business of the licensee pursuant to Article 1 (commencing with Section 3100), Chapter 17, Division 1, and the provisions of the article (except Sections 3100, 3101, and 3102) apply as if the licensee were a bank.

SEC. 777. Section 34114 of the Financial Code is amended to read:

34114. (a) No California agent of a licensee who has actual notice that the commissioner has suspended or revoked the license of such licensee or that the commissioner has issued an order taking possession of the property and business of the licensee, shall sell any payment instrument issued by the licensee.

(b) If any California agent of a licensee, after first having actual notice that the commissioner has suspended or revoked the license of such licensee or that the commissioner has issued an order taking possession of the property and business of the licensee, sells any payment instrument issued by the licensee, such agent shall be jointly and severally liable with the licensee for the payment of such payment instrument.

SEC. 778. Section 34300 of the Financial Code is amended to read:

34300. If, after notice and a hearing, the commissioner finds that any person has violated any provision of this division or of any regulation or order issued under this division, the commissioner may order such person to pay to the commissioner a civil penalty in such amount as the commissioner may specify; provided, however, that the amount of such civil penalty shall not exceed one thousand dollars ($1,000) for each violation or, in the case of a continuing violation, one thousand dollars ($1,000) for each day for which such violation continues.

SEC. 779. Section 34301 of the Financial Code is amended to read:

34301. The provisions of Section 34300 are additional to, and not alternative to, other provisions of this division which authorize the commissioner to issue orders or to take other action on account of a violation of any provision of this division or of any regulation or order issued under this division. However, no person who has been finally convicted under Chapter 10 (commencing with Section 34200) of this division on account of any violation of Section 33222 or 33400 shall be liable to pay a civil penalty under Section 34300 on account of such violation, nor shall any person who has paid a civil penalty under Section 34300 on account of any violation of Section 33222 or 33400 be liable to criminal prosecution under Chapter 10 on account of such violation.

SEC. 780. Section 6254.5 of the Government Code is amended to read:

6254.5. Notwithstanding any other provisions of the law, whenever a state or local agency discloses a public record which is otherwise exempt from this chapter, to any member of the public, this disclosure shall constitute a waiver of the exemptions specified in Sections 6254, 6254.7, or other similar provisions of law. For purposes of this section, "agency" includes a member, agent, officer, or employee of the agency acting within the scope of his or her membership, agency, office, or employment.

This section, however, shall not apply to disclosures:

(a) Made pursuant to the Information Practices Act (commencing with Section 1798 of the Civil Code) or discovery proceedings.

(b) Made through other legal proceedings or as otherwise required by law.

(c) Within the scope of disclosure of a statute which limits disclosure of specified writings to certain purposes.

(d) Not required by law, and prohibited by formal action of an elected legislative body of the local agency which retains the writings.

(e) Made to any governmental agency which agrees to treat the disclosed material as confidential. Only persons authorized in writing by the person in charge of the agency shall be permitted to obtain the information. Any information obtained by the agency shall only be used for purposes which are consistent with existing law.

(f) Of records relating to a financial institution or an affiliate thereof, if the disclosures are made to the financial institution or affiliate by a state agency responsible for the regulation or supervision of the financial institution or affiliate.

(g) Of records relating to any person that is subject to the jurisdiction of the Department of Corporations, if the disclosures are made to the person that is the subject of the records for the purpose of corrective action by that person, or if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary

to obtain information from that person for the purpose of an investigation by the Department of Corporations.

(h) Made by the Commissioner of Financial Institutions under Section 1909, 8009, or 18396 of the Financial Code.

SEC. 781. Section 7465 of the Government Code is amended to read:

7465. For the purposes of this chapter:

(a) The term "financial institution" includes state and national banks, state and federal savings associations, trust companies, industrial loan companies, and state and federal credit unions. Such term shall not include a title insurer while engaging in the conduct of the "business of title insurance" as defined by Section 12340.3 of the Insurance Code, an underwritten title company, or an escrow company.

(b) The term "financial records" means any original or any copy of any record or document held by a financial institution pertaining to a customer of the financial institution.

(c) The term "person" means an individual, partnership, corporation, limited liability company, association, trust or any other legal entity.

(d) The term "customer" means any person who has transacted business with or has used the services of a financial institution or for whom a financial institution has acted as a fiduciary.

(e) The term "state agency" means every state office, officer, department, division, bureau, board, and commission or other state agency, including the Legislature.

(f) The term "local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; or other local public agency.

(g) The term "supervisory agency" means any of the following:

(1) The Department of Financial Institutions.

(2) The Controller.

(3) The Administrator of Local Agency Security.

(4) The Department of Real Estate.

(5) The Department of Insurance.

(h) The term "investigation" includes, but is not limited to, any inquiry by a peace officer, sheriff, or district attorney, or any inquiry made for the purpose of determining whether there has been a violation of any law enforceable by imprisonment, fine, or monetary liability.

(i) The term "subpoena" includes subpoena duces tecum.

SEC. 782. Section 7480 of the Government Code is amended to read:

7480. Nothing in this chapter prohibits any of the following:

(a) The dissemination of any financial information which is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed which involves the alleged fraudulent use of drafts, checks, or other orders drawn upon any bank, credit union, or savings association in this state, the police or sheriff's department or district attorney may request a bank, credit union, or savings association to furnish, and a bank, credit union, or savings association shall supply, a statement setting forth the following information with respect to a customer account specified by the police or sheriff's department or district attorney for a period 30 days prior to and up to 30 days following the date of occurrence of the alleged illegal act involving the account:

(1) The number of items dishonored.

(2) The number of items paid which created overdrafts.

(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature and any addresses appearing on a customer's signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(c) The Attorney General, a supervisory agency, the Franchise Tax Board, the State Board of Equalization, the Employment Development Department, the Controller or an inheritance tax referee when administering the Prohibition of Gift and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the Revenue and Taxation Code), a police or sheriff's department or district attorney, a county welfare department when investigating welfare fraud, or the Department of Corporations when conducting investigations in connection with the enforcement of laws administered by the Commissioner of Corporations, from requesting of an office or branch of a financial institution, and the office or branch from responding to a request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.

No additional information beyond that specified in this section shall be released to a county welfare department without either the accountholder's written consent or a judicial writ, search warrant, subpoena, or other judicial order.

(d) The examination by, or disclosure to, any supervisory agency of financial records which relate solely to the exercise of its supervisory function. The scope of an agency's supervisory function shall be determined by reference to statutes which grant authority to examine, audit, or require reports of financial records or financial institutions as follows:

(1) With respect to the Commissioner of Financial Institutions by reference to Division 1 (commencing with Section 99), Division 1.5 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), and Division 16 (commencing with Section 33000) of the Financial Code.

(2) With respect to the Controller by reference to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(3) With respect to the Administrator of Local Agency Security by reference to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(e) The disclosure to the Franchise Tax Board of (1) the amount of any security interest a financial institution has in a specified asset of a customer or (2) financial records in connection with the filing or audit of a tax return or tax information return required to be filed by the financial institution pursuant to Part 10 (commencing with Section 17001), 11 (commencing with Section 23001), or 18 (commencing with Section 38001) of the Revenue and Taxation Code.

(f) The disclosure to the State Board of Equalization of any of the following:

(1) The information required by Sections 6702, 6703, 8954, 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155, 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46406, 50134, 50136, and 55205 of the Revenue and Taxation Code.

(2) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Parts 1 (commencing with Section 6001), 2 (commencing with Section 7301), 3 (commencing with Section 8601), 13 (commencing with Section 30001), 14 (commencing with Section 32001), and 17 (commencing with Section 37001) of Division 2 of the Revenue and Taxation Code.

(3) The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(g) The disclosure to the Controller of the information required by Section 7853 of the Revenue and Taxation Code.

(h) The disclosure to the Employment Development Department of the amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(i) The disclosure by a construction lender, as defined in Section 3087 of the Civil Code, to the Registrar of Contractors, of information concerning the making of progress payments to a prime contractor requested by the registrar in connection with an investigation under Section 7108.5 of the Business and Professions Code.

(j) Upon receipt of a written request from a district attorney referring to a support order pursuant to Section 11475.1 of the Welfare and Institutions Code, a financial institution shall disclose the following information concerning the account or the person named in the request, whom the district attorney shall identify, whenever possible, by social security number:

(1) If the request states the identifying number of an account at a financial institution, the name of each owner of the account.

(2) Each account maintained by the person at the branch to which the request is delivered, and, if the branch is able to make a computerized search, each account maintained by the person at any other branch of the financial institution located in this state.

(3) For each account disclosed pursuant to paragraphs (1) and (2), the account number, current balance, street address of the branch where the account is maintained, and, to the extent available through the branch's computerized search, the name and address of any other person listed as an owner.

Whenever the request prohibits the disclosure, a financial institution shall not disclose either the request or its response, to an owner of the account or to any other person, except the officers and employees of the financial institution who are involved in responding to the request and to attorneys, auditors, and regulatory authorities who have a need to know in order to perform their duties, and except as disclosure may be required by legal process.

No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information in response to a request pursuant to this subdivision, (B) failing to notify the owner of an account, or complying with a request under this paragraph not to disclose to the owner, the request or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the request pursuant to a computerized search of the records of the financial institution.

The district attorney may request information pursuant to this subdivision only when the district attorney has received at least one of the following types of physical evidence:

(A) Any of the following, dated within the last three years:

(i) Form 599.

(ii) Form 1099.

(iii) A bank statement.

(iv) A check.

(v) A bank passbook.

(vi) A deposit slip.

(vii) A copy of a federal or state income tax return.

(viii) A debit or credit advice.

(ix) Correspondence that identifies the child support obligor by name, the bank, and the account number.

(x) Correspondence that identifies the child support obligor by name, the bank, and the banking services related to the account of the obligor.

(xi) An asset identification report from a federal agency.

(B) A sworn declaration of the custodial parent during the 12 months immediately preceding the request that the person named in the request has had or may have had an account at an office or branch of the financial institution to which the request is made.

Information obtained by a district attorney pursuant to this subdivision shall be used only for purposes that are directly connected within the administration of the duties of the district attorney pursuant to Section 11475.1 of the Welfare and Institutions Code.

SEC. 782.1. Section 7480 of the Government Code is amended to read:

7480. Nothing in this chapter prohibits any of the following:

(a) The dissemination of any financial information which is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed which involves the alleged fraudulent use of drafts, checks, or other orders drawn upon any bank, credit union, or savings association in this state, the police or sheriff's department or district attorney may request a bank, credit union, or savings association to furnish, and a bank, credit union, or savings association shall supply, a statement setting forth the following information with respect to a customer account specified by the police or sheriff's department or district attorney for a period 30 days prior to and up to 30 days following the date of occurrence of the alleged illegal act involving the account:

(1) The number of items dishonored.

(2) The number of items paid which created overdrafts.

(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature and any addresses appearing on a customer's signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(c) The Attorney General, a supervisory agency, the Franchise Tax Board, the State Board of Equalization, the Employment Development Department, the Controller or an inheritance tax referee when administering the Prohibition of Gift and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the

Revenue and Taxation Code), a police or sheriff's department or district attorney, a county welfare department when investigating welfare fraud, or the Department of Corporations when conducting investigations in connection with the enforcement of laws administered by the Commissioner of Corporations, from requesting of an office or branch of a financial institution, and the office or branch from responding to a request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.

No additional information beyond that specified in this section shall be released to a county welfare department without either the accountholder's written consent or a judicial writ, search warrant, subpoena, or other judicial order.

(d) The examination by, or disclosure to, any supervisory agency of financial records which relate solely to the exercise of its supervisory function. The scope of an agency's supervisory function shall be determined by reference to statutes which grant authority to examine, audit, or require reports of financial records or financial institutions as follows:

(1) With respect to the Commissioner of Financial Institutions by reference to Division 1 (commencing with Section 99), Division 1.5 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), and Division 16 (commencing with Section 33000) of the Financial Code.

(2) With respect to the Controller by reference to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(3) With respect to the Administrator of Local Agency Security by reference to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(e) The disclosure to the Franchise Tax Board of (1) the amount of any security interest a financial institution has in a specified asset of a customer or (2) financial records in connection with the filing or audit of a tax return or tax information return required to be filed by the financial institution pursuant to Part 10 (commencing with Section 17001), 11 (commencing with Section 23001), or 18 (commencing with Section 38001) of the Revenue and Taxation Code.

(f) The disclosure to the State Board of Equalization of any of the following:

(1) The information required by Sections 6702, 6703, 8954, 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155, 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404, 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the Revenue and Taxation Code.

(2) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant

to Parts 1 (commencing with Section 6001), 2 (commencing with Section 7301), 3 (commencing with Section 8601), 13 (commencing with Section 30001), 14 (commencing with Section 32001), and 17 (commencing with Section 37001) of Division 2 of the Revenue and Taxation Code.

(3) The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(g) The disclosure to the Controller of the information required by Section 7853 of the Revenue and Taxation Code.

(h) The disclosure to the Employment Development Department of the amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(i) The disclosure by a construction lender, as defined in Section 3087 of the Civil Code, to the Registrar of Contractors, of information concerning the making of progress payments to a prime contractor requested by the registrar in connection with an investigation under Section 7108.5 of the Business and Professions Code.

(j) Upon receipt of a written request from a district attorney referring to a support order pursuant to Section 11475.1 of the Welfare and Institutions Code, a financial institution shall disclose the following information concerning the account or the person named in the request, whom the district attorney shall identify, whenever possible, by social security number:

(1) If the request states the identifying number of an account at a financial institution, the name of each owner of the account.

(2) Each account maintained by the person at the branch to which the request is delivered, and, if the branch is able to make a computerized search, each account maintained by the person at any other branch of the financial institution located in this state.

(3) For each account disclosed pursuant to paragraphs (1) and (2), the account number, current balance, street address of the branch where the account is maintained, and, to the extent available through the branch's computerized search, the name and address of any other person listed as an owner.

Whenever the request prohibits the disclosure, a financial institution shall not disclose either the request or its response, to an owner of the account or to any other person, except the officers and employees of the financial institution who are involved in responding to the request and to attorneys, auditors, and regulatory authorities who have a need to know in order to perform their duties, and except as disclosure may be required by legal process.

No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information in response to a request pursuant to this subdivision, (B) failing to notify the owner of an account, or complying with a request under this paragraph not to disclose to the owner, the request or disclosure

under this subdivision, or (C) failing to discover any account owned by the person named in the request pursuant to a computerized search of the records of the financial institution.

The district attorney may request information pursuant to this subdivision only when the district attorney has received at least one of the following types of physical evidence:

(A) Any of the following, dated within the last three years:

(i) Form 599.

(ii) Form 1099.

(iii) A bank statement.

(iv) A check.

(v) A bank passbook.

(vi) A deposit slip.

(vii) A copy of a federal or state income tax return.

(viii) A debit or credit advice.

(ix) Correspondence that identifies the child support obligor by name, the bank, and the account number.

(x) Correspondence that identifies the child support obligor by name, the bank, and the banking services related to the account of the obligor.

(xi) An asset identification report from a federal agency.

(B) A sworn declaration of the custodial parent during the 12 months immediately preceding the request that the person named in the request has had or may have had an account at an office or branch of the financial institution to which the request is made.

Information obtained by a district attorney pursuant to this subdivision shall be used only for purposes that are directly connected within the administration of the duties of the district attorney pursuant to Section 11475.1 of the Welfare and Institutions Code.

SEC. 783. Section 11121 of the Government Code is amended to read:

11121. As used in this article "state body" means every state board, or commission, or similar multimember body of the state which is required by law to conduct official meetings and every commission created by executive order, but does not include:

(a) State agencies provided for in Article VI of the California Constitution.

(b) Districts or other local agencies whose meetings are required to be open to the public pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).

(c) State agencies provided for in Article IV of the California Constitution whose meetings are required to be open to the public pursuant to the Grunsky-Burton Open Meeting Act (Sections 9027 to 9032, inclusive).

(d) State agencies when they are conducting proceedings pursuant to Section 3596.

(e) State agencies provided for in Section 1702 of the Health and Safety Code, except as provided in Section 1720 of the Health and Safety Code.

(f) State agencies provided for in Section 11770.5 of the Insurance Code.

(g) The Credit Union Advisory Committee established pursuant to Section 14380 of the Financial Code.

SEC. 783.1. Section 11121 of the Government Code is amended to read:

11121. As used in this article "state body" means every state board, or commission, or similar multimember body of the state that is required by law to conduct official meetings and every commission created by executive order, but does not include:

(a) State agencies provided for in Article VI of the California Constitution.

(b) Districts or other local agencies whose meetings are required to be open to the public pursuant to the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5).

(c) State agencies provided for in Article IV of the California Constitution whose meetings are required to be open to the public pursuant to the Grunsky-Burton Open Meeting Act (Sections 9027 to 9032, inclusive).

(d) State agencies when they are conducting proceedings pursuant to Section 3596.

(e) State agencies provided for in Section 109260 of the Health and Safety Code, except as provided in Section 109390 of the Health and Safety Code.

(f) State agencies provided for in Section 11770.5 of the Insurance Code.

(g) The Credit Union Advisory Committee established pursuant to Section 14380 of the Financial Code.

SEC. 784. Section 11501 of the Government Code is amended to read:

11501. (a) This chapter applies to any agency as determined by the statutes relating to that agency.

(b) The enumerated agencies referred to in Section 11500 are:

(1) Accountancy, State Board of
(2) Air Resources Board, State
(3) Alcohol and Drug Programs, State Department of
(4) Architectural Examiners, California Board of
(5) Attorney General
(6) Auctioneer Commission, Board of Governors of
(7) Automotive Repair, Bureau of
(8) Barbering and Cosmetology, State Board of
(9) Behavioral Science Examiners, Board of
(10) Boating and Waterways, Department of
(11) Cancer Advisory Council

(12) Cemetery Board
(13) Chiropractic Examiners, Board of
(14) Security and Investigative Services, Bureau of
(15) Community Colleges, Board of Governors of the California
(16) Conservation, Department of
(17) Consumer Affairs, Department of
(18) Contractors, State License Board
(19) Corporations, Commissioner of
(20) Court Reporters Board of California
(21) Dental Examiners of California, Board of
(22) Education, State Department of
(23) Electronic and Appliance Repair, Bureau of
(24) Engineers and Land Surveyors, State Board of Registration for Professional
(25) Fair Political Practices Commission
(26) Fire Marshal, State
(27) Food and Agriculture, Director of
(28) Forestry and Fire Protection, Department of
(29) Funeral Directors and Embalmers, State Board of
(30) Geologists and Geophysicists, State Board of Registration for
(31) Guide Dogs for the Blind, State Board of
(32) Health Services, State Department of
(33) Highway Patrol, Department of the California
(34) Home Furnishings and Thermal Insulation, Bureau of
(35) Horse Racing Board, California
(36) Housing and Community Development, Department of
(37) Insurance Commissioner
(38) Labor Commissioner
(39) Landscape Architects, State Board of
(40) Medical Board of California, Medical Quality Review Committees and Examining Committees
(41) Motor Vehicles, Department of
(42) Nursing, Board of Registered
(43) Nursing Home Administrators, Board of Examiners of
(44) Optometry, State Board of
(45) Osteopathic Medical Board of California
(46) Pharmacy, California State Board of
(47) Podiatric Medicine, Board of
(48) Psychology, Board of
(49) Public Employees' Retirement System, Board of Administration of the
(50) Real Estate, Department of
(51) San Francisco, San Pablo and Suisun, Board of Pilot Commissioners for the Bays of
(52) School Districts
(53) Secretary of State, Office of
(54) Social Services, State Department of
(55) Statewide Health Planning and Development, Office of

(56) Structural Pest Control Board
(57) Tax Preparers Program
(58) Teacher Credentialing, Commission on
(59) Teachers' Retirement System, State
(60) Transportation, Department of, acting pursuant to the State Aeronautics Act
(61) Veterinary Medical Board
(62) Vocational Nurse and Psychiatric Technician Examiners of the State of California, Board of

(c) This section shall become inoperative on July 1, 1997, and, as of January 1, 1998, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 1998, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 785. Section 11552 of the Government Code is amended to read:

11552. Effective January 1, 1988, an annual salary of eighty-five thousand four hundred two dollars ($85,402) shall be paid to each of the following:
(a) Commissioner of Financial Institutions.
(b) Commissioner of Corporations.
(c) Insurance Commissioner.
(d) Director of Transportation.
(e) Real Estate Commissioner.
(f) Director of Social Services.
(g) Director of Water Resources.
(h) Director of Corrections.
(i) Director of General Services.
(j) Director of Motor Vehicles.
(k) Director of the Youth Authority.
(*l*) Executive Officer of the Franchise Tax Board.
(m) Director of Employment Development.
(n) Director of Alcoholic Beverage Control.
(o) Director of Housing and Community Development.
(p) Director of Alcohol and Drug Abuse.
(q) Director of the Office of Statewide Health Planning and Development.
(r) Director of the Department of Personnel Administration.
(s) Chairperson and Member of the Board of Equalization.
(t) Director of Commerce.
(u) State Director of Health Services.
(v) Director of Mental Health.
(w) Director of Developmental Services.
(x) State Public Defender.
(y) Director of the California State Lottery.
(z) Director of Fish and Game.
(aa) Director of Parks and Recreation.
(ab) Director of Rehabilitation.
(ac) Director of Veterans Affairs.

(ad) Director of Consumer Affairs.
(ae) Director of Forestry and Fire Protection.

The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 785.1. Section 11552 of the Government Code is amended to read:

11552. (a) Effective January 1, 1988, an annual salary of eighty-five thousand four hundred two dollars ($85,402) shall be paid to each of the following:

(1) Commissioner of Financial Institutions.
(2) Commissioner of Corporations.
(3) Insurance Commissioner.
(4) Director of Transportation.
(5) Real Estate Commissioner.
(6) Director of Social Services.
(7) Director of Water Resources.
(8) Director of Corrections.
(9) Director of General Services.
(10) Director of Motor Vehicles.
(11) Director of the Youth Authority.
(12) Executive Officer of the Franchise Tax Board.
(13) Director of Employment Development.
(14) Director of Alcoholic Beverage Control.
(15) Director of Housing and Community Development.
(16) Director of Alcohol and Drug Abuse.
(17) Director of the Office of Statewide Health Planning and Development.
(18) Director of the Department of Personnel Administration.
(19) Chairperson and Member of the Board of Equalization.
(20) Director of Commerce.
(21) State Director of Health Services.
(22) Director of Mental Health.
(23) Director of Developmental Services.
(24) State Public Defender.
(25) Director of the California State Lottery.
(26) Director of Fish and Game.
(27) Director of Parks and Recreation.
(28) Director of Rehabilitation.
(29) Director of Veterans Affairs.
(30) Director of Consumer Affairs.
(31) Director of Forestry and Fire Protection.
(32) Director of Toxic Substances Control.
(33) Director of Pesticide Regulation.
(34) Director of Environmental Health Hazard Assessment.

(35) Director of Energy and Conservation.

(b) The annual compensation provided by this section shall be increased in any fiscal year in which a general salary increase is provided for state employees. The amount of the increase provided by this section shall be comparable to, but shall not exceed, the percentage of the general salary increases provided for state employees during that fiscal year.

SEC. 786. Section 12586 of the Government Code is amended to read:

12586. (a) Except as otherwise provided and except corporate trustees which are subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or to the Comptroller of the Currency of the United States, every charitable corporation and trustee subject to this article shall, in addition to filing copies of the instruments previously required, file with the Attorney General periodic written reports, under oath, setting forth information as to the nature of the assets held for charitable purposes and the administration thereof by the corporation or trustee, in accordance with rules and regulations of the Attorney General.

(b) The Attorney General shall make rules and regulations as to the time for filing reports, the contents thereof, and the manner of executing and filing them. The Attorney General may classify trusts and other relationships concerning property held for a charitable purpose as to purpose, nature of assets, duration of the trust or other relationship, amount of assets, amounts to be devoted to charitable purposes, nature of trustee, or otherwise, and may establish different rules for the different classes as to time and nature of the reports required to the ends (1) that he or she shall receive reasonably current, periodic reports as to all charitable trusts or other relationships of a similar nature, which will enable him or her to ascertain whether they are being properly administered, and (2) that periodic reports shall not unreasonably add to the expense of the administration of charitable trusts and similar relationships. The Attorney General may suspend the filing of reports as to a particular charitable trust or relationship for a reasonable, specifically designated time upon written application of the trustee filed with the Attorney General and after the Attorney General has filed in the register of charitable trusts a written statement that the interests of the beneficiaries will not be prejudiced thereby and that periodic reports are not required for proper supervision by his or her office.

(c) A copy of an account filed by the trustee in any court having jurisdiction of the trust or other relationship, if the account substantially complies with the rules and regulations of the Attorney General, may be filed as a report required by this section.

(d) The first report for a trust or similar relationship hereafter established, unless the filing thereof is suspended as herein provided, shall be filed not later than four (4) months and fifteen (15) days

following the close of the first calendar or fiscal year in which any part of the income or principal is authorized or required to be applied to a charitable purpose. If any part of the income or principal of a trust previously established is authorized or required to be applied to a charitable purpose at the time this article takes effect, the first report shall be filed at the close of the calendar or fiscal year in which it was registered with the Attorney General or not later than four (4) months and fifteen (15) days following the close of such calendar or fiscal period.

SEC. 787. Section 13975 of the Government Code is amended to read:

13975. The Business and Transportation Agency in state government is hereby renamed the Business, Transportation and Housing Agency. The agency consists of the Department of Alcoholic Beverage Control, the Department of the California Highway Patrol, the Department of Corporations, the Department of Housing and Community Development, the Department of Motor Vehicles, the Department of Real Estate, the Department of Transportation, the Department of Financial Institutions, the Stephen P. Teale Consolidated Data Center; and the California Housing Finance Agency is also located within the Business, Transportation and Housing Agency, as specified in Division 31 (commencing with Section 50000) of the Health and Safety Code.

SEC. 788. Section 53638 of the Government Code is amended to read:

53638. (a) The deposit shall not exceed the shareholder's equity of any depository bank. For the purposes of this subdivision, shareholder's equity shall be determined in accordance with Section 118 of the Financial Code, but shall be deemed to include capital notes and debentures.

(b) The deposit shall not exceed the total of the net worth of any depository savings association or federal association, except that deposits not exceeding a total of five hundred thousand dollars ($500,000) may be made to a savings association or federal association without regard to the net worth of that depository, if such deposits are insured or secured as required by law.

(c) The deposit to the share accounts of any regularly chartered credit union shall not exceed the total of the unimpaired capital and surplus of the credit union, as defined by rule of the Commissioner of Financial Institutions, except that the deposit to any credit union share account in an amount not exceeding five hundred thousand dollars ($500,000) may be made if the share accounts of that credit union are insured or guaranteed pursuant to Section 14858 of the Financial Code or are secured as required by law.

(d) The deposit in investment certificates of a federally insured industrial loan company shall not exceed the total of the unimpaired capital and surplus of the insured industrial loan company.

SEC. 789. Section 53661 of the Government Code is amended to read:

53661. (a) The Commissioner of Financial Institutions shall act as Administrator of Local Agency Security and shall be responsible for the administration of Sections 53638, 53651, 53651.2, 53651.4, 53651.6, 53652, 53654, 53655, 53656, 53657, 53658, 53659, 53660, 53661, 53663, 53664, 53665, 53666, and 53667.

(b) The administrator shall have the powers necessary or convenient to administer and enforce the sections specified in subdivision (a).

(c) (1) The administrator shall issue regulations consistent with law as the administrator may deem necessary or advisable in executing the powers, duties, and responsibilities assigned by this article. The regulations may include regulations prescribing standards for the valuation, marketability, and liquidity of the eligible securities of the class described in subdivision (m) of Section 53651, regulations prescribing procedures and documentation for adding, withdrawing, substituting, and holding pooled securities, and regulations prescribing the form, content, and execution of any application, report, or other document called for in any of the sections specified in subdivision (a) or in any regulation or order issued under any of those sections.

(2) The administrator, for good cause, may waive any provision of any regulation adopted pursuant to paragraph (1) or any order issued under this article, where the provision is not necessary in the public interest.

(d) The administrator may enter into any contracts or agreements as may be necessary, including joint underwriting agreements, to sell or liquidate eligible securities securing local agency deposits in the event of the failure of the depository or if the depository fails to pay all or part of the deposits of a local agency.

(e) The administrator shall require from every depository a report certified by the agent of depository listing all securities, and the market value thereof, which are securing local agency deposits together with the total deposits then secured by the pool, to determine whether there is compliance with Section 53652. These reports may be required whenever deemed necessary by the administrator, but shall be required at least four times each year at the times designated by the Comptroller of the Currency for reports from national banking associations. These reports shall be filed in the office of the administrator by the depository within 20 business days of the date the administrator calls for the report.

(f) The administrator may have access to reports of examination made by the Comptroller of the Currency insofar as the reports relate to national banking association trust department activities which are subject to this article.

(g) (1) The administrator shall require the immediate substitution of an eligible security, where the substitution is necessary

for compliance with Section 53652, if (i) the administrator determines that a security listed in Section 53651 is not qualified to secure public deposits, or (ii) a treasurer, who has deposits secured by the securities pool, provides written notice to the administrator and the administrator confirms that a security in the pool is not qualified to secure public deposits.

(2) The failure of a depository to substitute securities, where the administrator has required the substitution, shall be reported by the administrator promptly to those treasurers having money on deposit in that depository and, in addition, shall be reported as follows:

(A) When that depository is a national bank, to the Comptroller of the Currency of the United States.

(B) When that depository is a state bank, to the Commissioner of Financial Institutions.

(C) When that depository is a federal association, to the Office of Thrift Supervision.

(D) When that depository is a savings association, to the Commissioner of Financial Institutions.

(E) When that depository is a federal credit union, to the National Credit Union Administration.

(F) When that depository is a state credit union or a federally insured industrial loan company, to the Commissioner of Financial Institutions.

(h) The administrator may require from each treasurer a registration report and at appropriate times a report stating the amount and location of each deposit together with other information deemed necessary by the administrator for effective operation of this article. The facts recited in any report from a treasurer to the administrator are conclusively presumed to be true for the single purpose of the administrator fulfilling responsibilities assigned to him or her by this article and for no other purpose.

(i) (1) If, after notice and opportunity for hearing, the administrator finds that any depository or agent of depository has violated or is violating, or that there is reasonable cause to believe that any depository or agent of depository is about to violate, any of the sections specified in subdivision (a) or any regulation or order issued under any of those sections, the administrator may order the depository or agent of depository to cease and desist from the violation or may by order suspend or revoke the authorization of the agent of depository. The order may require the depository or agent of depository to take affirmative action to correct any condition resulting from the violation.

(2) (A) If the administrator makes any of the findings set forth in paragraph (1) with respect to any depository or agent of depository and, in addition, finds that the violation or the continuation of the violation is likely to seriously prejudice the interests of treasurers, the administrator may order the depository or agent of depository to cease and desist from the violation or may suspend or revoke the

authorization of the agent of depository. The order may require the depository or agent of depository to take affirmative action to correct any condition resulting from the violation.

(B) Within five business days after an order is issued under subparagraph (A), the depository or agent of depository may file with the administrator an application for a hearing on the order. The administrator shall schedule a hearing at least 30 days, but not more than 40 days, after receipt of an application for a hearing or within a shorter or longer period of time agreed to by a depository or an agent of depository. If the administrator fails to schedule the hearing within the specified or agreed to time period, the order shall be deemed rescinded. Within 30 days after the hearing, the administrator shall affirm, modify, or rescind the order; otherwise, the order shall be deemed rescinded. The right of a depository or agent of depository to which an order is issued under subparagraph (A) to petition for judicial review of the order shall not be affected by the failure of the depository or agent of depository to apply to the administrator for a hearing on the order pursuant to this subparagraph.

(3) Whenever the administrator issues a cease and desist order under paragraph (1) or (2), the administrator may in the order restrict the right of the depository to withdraw securities from a security pool; and, in that event, both the depository to which the order is directed and the agent of depository which holds the security pool shall comply with the restriction.

(4) In case the administrator issues an order under paragraph (1) or (2) suspending or revoking the authorization of an agent of depository, the administrator may order the agent of depository at its own expense to transfer all pooled securities held by it to such agent of depository as the administrator may designate in the order. The agent of depository designated in the order shall accept and hold the pooled securities in accordance with this article and regulations and orders issued under this article.

(j) In the discretion of the administrator, whenever it appears to the administrator that any person has violated or is violating, or that there is reasonable cause to believe that any person is about to violate, any of the sections specified in subdivision (a) or any regulation or order issued thereunder, the administrator may bring an action in the name of the people of the State of California in the superior court to enjoin the violation or to enforce compliance with those sections or any regulation or order issued thereunder. Upon a proper showing a permanent or preliminary injunction, restraining order, or writ of mandate shall be granted, and the court may not require the administrator to post a bond.

(k) In addition to other remedies, the administrator shall have the power and authority to impose the following sanctions for noncompliance with the sections specified in subdivision (a) after a hearing if requested by the party deemed in noncompliance. Any

fine assessed pursuant to this subdivision shall be paid within 30 days after receipt of the assessment.

(1) Assess against and collect from a depository a fine not to exceed two hundred fifty dollars ($250) for each day the depository fails to maintain with the agent of depository securities as required by Section 53652.

(2) Assess against and collect from a depository a fine not to exceed one hundred dollars ($100) for each day beyond the time period specified in subdivision (b) of Section 53663 the depository negligently or willfully fails to file in the office of the administrator a written report required by that section.

(3) Assess against and collect from a depository a fine not to exceed one hundred dollars ($100) for each day beyond the time period specified in subdivision (e) that a depository negligently or willfully fails to file in the office of the administrator a written report required by that subdivision.

(4) Assess and collect from an agent of depository a fine not to exceed one hundred dollars ($100) for each day the agent of depository fails to comply with any of the applicable sections specified in subdivision (a) or any applicable regulation or order issued thereunder.

(*l*) (1) In the event that a depository or agent of depository fails to pay a fine assessed by the administrator pursuant to subdivision (k) within 30 days of receipt of the assessment, the administrator may assess and collect an additional penalty of 5 percent of the fine for each month or part thereof that the payment is delinquent.

(2) If a depository fails to pay the fines or penalties assessed by the administrator, the administrator may notify local agency treasurers with deposits in the depository.

(3) If an agent of depository fails to pay the fines or penalties assessed by the administrator, the administrator may notify local agency treasurers who have authorized the agent of depository as provided in Sections 53649 and 53656, and may by order revoke the authorization of the agent of depository as provided in subdivision (i).

SEC. 790. Section 35201 of the Health and Safety Code is amended to read:

35201. If the commissioner takes possession of the property and business of any corporation he or she has the same powers and duties with respect to it as are conferred upon the Commissioner of Financial Institutions under Division 1 (commencing with Section 99) of the Financial Code with respect to banking institutions and the commissioner may liquidate the corporation pursuant to the Financial Code so far as it is applicable.

SEC. 791. Section 44559.2 of the Health and Safety Code is amended to read:

44559.2. (a) The authority may contract with any financial institution for the purpose of allowing the financial institution to

participate in the Capital Access Loan Program established by this article.

(b) For purposes of this section, the authority may contract with participating financial institutions and shall utilize a standard form of contract that is reviewed and approved by the Department of General Services. The standard form of contract shall provide for all of the following:

(1) The creation of a loss reserve account by the authority for the benefit of the financial institution.

(2) The financial institution, qualified business, and the authority will deposit moneys to the credit of the institution's loss reserve account when the financial institution makes a qualified loan to a qualified business.

(3) The liability of the state and the authority to the financial institution under the contract is limited to the amount of money credited to the loss reserve account of the institution.

(4) The financial institution shall provide the information that the authority may require, including financial information that is identifiable with, or identifiable from the financial records of a particular customer who is the recipient of a qualified loan. In addition to any other information that the authority may require, the financial institution shall provide the complete Standard Industrial Classification (SIC) code for the qualified business and information that provides the precise geographic location of both the qualified business and the borrower, if different.

(5) The financial institution will file a report with the executive director setting out a full description of the board of directors, including size, race, ethnicity, and gender.

(6) The participating financial institution will require each borrower, prior to receiving a loan under the program, to sign a written representation to the participating financial institution that the borrower has no legal, beneficial, or equitable interest in the nonrefundable premium charges or any other funds credited to the loss reserve account established by the authority for the participating financial institution.

(7) Other terms that the authority may require for purposes of this article.

(8) Any qualified business loan under the program that receives matching contributions from the Small Business Assistance Fund shall be to a business that has operations that affect the environment of the state by producing air, water, solid waste, or hazardous waste products or emissions, or otherwise affects the environment.

(c) A financial institution is not subject to laws restricting the disclosure of financial information when the financial institution provides information to the authority as required by paragraph (4) of subdivision (b).

(d) A credit union operating pursuant to a certificate issued under the California Credit Union Law (Division 5 (commencing with

Section 14000) of the Financial Code) may participate in the Capital Access Loan Program established pursuant to this article only to the extent participation is in compliance with the California Credit Union Law. Nothing in this article shall be construed to limit the authority of the Commissioner of Financial Institutions to regulate credit unions subject to the commissioner's jurisdiction under the California Credit Union Law.

(e) Any individual, company, corporation, institution, utility, government agency, or other entity, including any consortium of these persons or entities, whether public or private, may participate in the Capital Access Loan Program established pursuant to this article by depositing funds in the California Capital Access Fund under those terms and conditions as may be deemed appropriate by the authority.

SEC. 792. Section 771 of the Insurance Code is amended to read:

771. Sections 770 and 770.1 shall not prevent:

(a) The exercise by any person engaged in such business of his right to approve or disapprove, for reasonable cause, as determined by appropriate regulatory authority, of the insurer selected to underwrite the insurance, nor of his right to furnish such insurance or to renew any insurance required by the contract of sale or trust deed or other loan agreement if the borrower or purchaser shall have failed to furnish the insurance or renewal thereof within such reasonable time or form as may be specified in the sale or loan agreement. The lender shall not refuse to accept insurance provided by an acceptable insurer on the ground that such insurance provides more coverage than is required in the sale or loan agreement, unless the additional coverage consists of automobile, life or disability insurance.

The Commissioner of Financial Institutions and the Commissioner of Corporations, in conjunction with the Insurance Commissioner, shall issue appropriate regulations defining "reasonable cause."

(b) Any lender from recommending to any borrower or prospective borrower the placing of insurance with a specified insurer or through a specified insurance agent or broker as long as such recommendation, with respect to a sale of real property or a loan upon the security of real property, clearly sets forth both the name and the mailing address of the recommended insurer or insurance agent or broker and does not violate the provisions of Section 770 or of any other section of this code. On and after July 1, 1972, such recommendation clearly setting forth the name and the mailing address of the recommended insurer or insurance agent or broker, shall be in writing.

(c) The free choice of insurance agent or broker by any borrower or purchaser at any time, and he or she may revoke any designation of insurance agent or broker at any time irrespective of the provisions of any loan or purchase agreement or trust deed.

(d) The exercise of any person engaged in such business of his right to furnish such insurance or to renew such insurance, and to charge the account of the borrower or purchaser with the costs thereof, if the borrower or purchaser fails to deliver to the lender such insurance at least 30 days prior to the expiration of the policy. If an insurance policy renewing or replacing, at expiration time, the policy then in force is received by the lender less than 15 days prior to the expiration of the policy held by the lender, or if an insurance policy procured by the borrower or purchaser is subsequently substituted for that then in force, the lender may impose a reasonable service charge as determined by the Insurance Commissioner for the transaction, the payment of which charge by the agent or broker is not a violation of any other provision of this code. No service charges shall be imposed for normal insurance changes made during the term of the policy.

(e) The commissioner is authorized to adopt a uniform statewide schedule of permissive maximum charges for the substitution of policies authorized in subdivision (d).

SEC. 793. Section 12393 of the Insurance Code is amended to read:

12393. When such title insurer desires to do such a departmental business, it shall first obtain the consent of both the Commissioner of Financial Institutions and of the commissioner. In its application for such consent, it shall include a statement making a segregation of its capital and surplus for each such department. At least two hundred thousand dollars ($200,000) of its capital shall be apportioned by such statement to its trust department. When such apportionment is approved by the Commissioner of Financial Institutions and by the commissioner, the part of such capital and surplus apportioned to each department shall be treated as the separate capital and surplus of each such department, as if each such department was a separate business.

SEC. 794. Section 12395 of the Insurance Code is amended to read:

12395. Such insurer, as to its trust department, shall be subject to and shall comply with all the requirements of the banking laws and rules and regulations of the Commissioner of Financial Institutions of this state, and may invest its assets apportioned to its trust department, the accumulations therefrom, and trust funds received by it, in accordance with the laws of this state relative to the investment of funds of trust companies.

SEC. 795. Section 12524 of the Insurance Code is amended to read:

12524. Upon the segregation and assignment of each such security, copies of the appraisement and certificate shall be transmitted promptly to the commissioner and to the Commissioner of Financial Institutions. Each such copy of appraisement so transmitted shall bear an endorsement or certificate executed by the

trustee of the trust in which each such security is held. Such certificate or endorsement shall set forth the unpaid amount of the unpaid principal named in the security which covers the property described in such appraisement.

SEC. 796. Section 12527 of the Insurance Code is amended to read:

12527. Every mortgage participation trust and the administration thereof shall at all times be and hereby is expressly made subject to the inspection, supervision and control of the Commissioner of Financial Institutions as fully and completely as if the same constituted a court trust under the provisions of the Banking Law (Division 1 (commencing with Section 99) of the Financial Code).

SEC. 797. Section 12581 of the Insurance Code is amended to read:

12581. Such appointment of appraiser shall not be valid or effective unless and until approved by both the commissioner and the Commissioner of Financial Institutions. Such appointment shall be revocable at any time by either the commissioner or the Commissioner of Financial Institutions should they or either of them consider said appointee incompetent or any appraisals made by said appointee improper, after a hearing upon due notice thereof first given to the appraiser and the appointing insurer.

SEC. 798. Section 12583 of the Insurance Code is amended to read:

12583. Such appraiser's report shall state whether such property is improved or productive and shall contain a general statement showing:

(a) The character of the property appraised.

(b) The purposes for which it is being used.

(c) The kind and condition of the improvements.

(d) The fair market value of each parcel of land and of the improvements thereon.

(e) Such other information as is ordered by the commissioner or the Commissioner of Financial Institutions.

SEC. 799. Section 12603 of the Insurance Code is amended to read:

12603. Concurrently with the filing of the monthly report to the commissioner, a verified copy of such report, together with a copy of all appraisements filed therewith, shall be sent by the insurer to the Commissioner of Financial Institutions.

SEC. 800. Section 14022 of the Insurance Code is amended to read:

14022. This chapter does not apply to:

(a) A person employed exclusively and regularly by one employer in connection with the affairs of such employer only and where there exists an employer-employee relationship.

(b) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while such officer or employee is engaged in the performance of his or her official duties.

(c) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

(d) A charitable philanthropic society or association duly incorporated under the laws of this state, which is organized and maintained for the public good and not for private profit.

(e) An attorney at law in performing his or her duties as such attorney at law.

(f) A licensed collection agency or an employee thereof while acting within the scope of his or her employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his or her property where the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.

(g) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(h) The legal owner of personal property which has been sold under a conditional sales agreement or a mortgagee under the terms of a chattel mortgage.

(i) Any bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of the Currency of the United States.

(j) A person engaged solely in the business of securing information about persons or property from public records.

SEC. 800.1. Section 14022 of the Insurance Code is amended to read:

14022. This chapter does not apply to:

(a) A person employed exclusively and regularly by one employer in connection with the affairs of such employer only and where there exists an employer- employee relationship.

(b) An officer or employee of the United States of America, or of this state or a political subdivision thereof, while such officer or employee is engaged in the performance of his or her official duties.

(c) A person engaged exclusively in the business of obtaining and furnishing information as to the financial rating of persons.

(d) A charitable philanthropic society or association duly incorporated under the laws of this state, which is organized and maintained for the public good and not for private profit.

(e) An attorney at law in performing his or her duties as such attorney at law.

(f) A licensed collection agency or an employee thereof while acting within the scope of his or her employment, while making an investigation incidental to the business of the agency, including an investigation of the location of a debtor or his or her property where

the contract with an assignor creditor is for the collection of claims owed or due or asserted to be owed or due or the equivalent thereof.

(g) Admitted insurers and agents and insurance brokers licensed by the state, performing duties in connection with insurance transacted by them.

(h) The legal owner of personal property which has been sold under a conditional sales agreement or a mortgagee under the terms of a chattel mortgage.

(i) Any bank subject to the jurisdiction of the Commissioner of Financial Institutions of the State of California under Division 1 (commencing with Section 99) of the Financial Code or the Comptroller of the Currency of the United States.

(j) A person engaged solely in the business of securing information about persons or property from public records.

(k) Any building contractor, engineer, technical expert, or other person who is engaged by an insurer or licensed adjuster to provide an expert or professional evaluation of the extent, cause, or origin of damage to the insured property, but who does not otherwise participate in the process of adjusting claims.

SEC. 801. Section 14053 of the Insurance Code is amended to read:

14053. In lieu of the surety bond required by this article there may be deposited with the State of California the sum of two thousand dollars ($2,000) in cash, or evidence of deposit of the sum of two thousand dollars ($2,000) in banks authorized to do business in this state and insured by the Federal Deposit Insurance Corporation, or investment certificates or share accounts in the amount of two thousand dollars ($2,000) issued by a savings association doing business in this state and insured by the Federal Deposit Insurance Corporation, or evidence of a certificate of funds or share account of the sum of two thousand dollars ($2,000) in a credit union, as defined in Section 14000 of the Financial Code, whose share deposits are guaranteed by the National Credit Union Administration or guaranteed by any other agency approved by the Department of Financial Institutions.

SEC. 802. Section 15036 of the Insurance Code is amended to read:

15036. In lieu of the surety bond required by this chapter there may be deposited with the State of California the sum of five thousand dollars ($5,000) in cash, or evidence of deposit of the sum of five thousand dollars ($5,000) in banks authorized to do business in this state and insured by the Federal Deposit Insurance Corporation, or investment certificates or share accounts in the amount of five thousand dollars ($5,000) issued by a savings association doing business in this state and insured by the Federal Deposit Insurance Corporation, or evidence of a certificate of funds or share account of the sum of five thousand dollars ($5,000) in a credit union as defined in Section 14000 of the Financial Code whose

share deposits are guaranteed by the National Credit Union Administration or guaranteed by any other agency approved by the Department of Financial Institutions.

SEC. 803. Section 830.11 of the Penal Code is amended to read:

830.11. (a) The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the power to serve warrants as specified in Sections 1523 and 1530 during the course and within the scope of their employment, if they receive a course in the exercise of those powers pursuant to Section 832. The authority and powers of the persons designated under this section shall extend to any place in the state:

(1) Persons employed by the Department of Financial Institutions designated by the Commissioner of Financial Institutions, provided that the primary duty of those persons shall be the enforcement of, and investigations relating to, the provisions of law administered by the Commissioner of Financial Institutions.

(2) Persons employed by the Department of Real Estate designated by the Real Estate Commissioner, provided that the primary duty of these persons shall be the enforcement of the laws set forth in Part 1 (commencing with Section 10000) and Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code. The Real Estate Commissioner may designate persons under this section, who at the time of their designation, are assigned to the Special Investigations Unit, internally known as the Crisis Response Team.

(3) Persons employed by the State Lands Commission designated by the executive officer, provided that the primary duty of those persons shall be the enforcement of the law relating to the duties of the State Lands Commission.

(b) Notwithstanding any other provision of law, persons designated pursuant to this section shall not carry firearms.

(c) Persons designated pursuant to this section shall be included as "peace officers of the state" under paragraph (2) of subdivision (c) of Section 11105 for the purpose of receiving state summary criminal history information and shall be furnished that information on the same basis as peace officers of the state designated in paragraph (2) of subdivision (c) of Section 11105.

SEC. 803.1. Section 830.11 of the Penal Code is amended to read:

830.11. (a) The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the power to serve warrants as specified in Sections 1523 and 1530 during the course and within the scope of their employment, if they receive a course in the exercise of those powers pursuant to Section 832. The authority and powers of the persons designated under this section shall extend to any place in the state:

(1) Persons employed by the Department of Financial Institutions designated by the Commissioner of Financial Institutions, provided that the primary duty of those persons shall be the enforcement of,

and investigations relating to, the provisions of law administered by the Commissioner of Financial Institutions.

(2) Persons employed by the Department of Real Estate designated by the Real Estate Commissioner, provided that the primary duty of these persons shall be the enforcement of the laws set forth in Part 1 (commencing with Section 10000) and Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code. The Real Estate Commissioner may designate persons under this section, who at the time of their designation, are assigned to the Special Investigations Unit, internally known as the Crisis Response Team.

(3) Persons employed by the State Lands Commission designated by the executive officer, provided that the primary duty of those persons shall be the enforcement of the law relating to the duties of the State Lands Commission.

(4) Persons employed by the Safety and Enforcement Division of the Public Utilities Commission who are designated by the Director of the Safety and Enforcement Division, and approved by the commission, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 308.5 of the Public Utilities Code.

(b) Notwithstanding any other provision of law, persons designated pursuant to this section shall not carry firearms.

(c) Persons designated pursuant to this section shall be included as "peace officers of the state" under paragraph (2) of subdivision (c) of Section 11105 for the purpose of receiving state summary criminal history information and shall be furnished that information on the same basis as peace officers of the state designated in paragraph (2) of subdivision (c) of Section 11105.

SEC. 804. Section 25924 of the Public Resources Code is amended to read:

25924. (a) The commission shall convene one or more workshops with mortgage lenders, real estate licensees, home appraisers, home inspectors, energy utilities, energy service providers, and other appropriate parties to solicit recommendations on the implementation of the pilot program. The commission shall encourage those parties to participate in the pilot program.

(b) The commission shall consult, as needed, with the Department of Financial Institutions, the Department of Real Estate, and the Department of Housing and Community Development in carrying out this chapter.

SEC. 805. Section 408 of the Revenue and Taxation Code is amended to read:

408. (a) Except as otherwise provided in subdivisions (b), (c), (d), and (e) any information and records in the assessor's office which are not required by law to be kept or prepared by the assessor, and homeowners' exemption claims, are not public documents and shall not be open to public inspection. Property receiving the

homeowners' exemption shall be clearly identified on the assessment roll. The assessor shall maintain records which shall be open to public inspection to identify those claimants who have been granted the homeowners' exemption.

(b) The assessor may provide any appraisal data in his or her possession to the assessor of any county.

The assessor shall disclose information, furnish abstracts, or permit access to all records in his or her office to law enforcement agencies, the county grand jury, the board of supervisors or their duly authorized agents, employees or representatives when conducting an investigation of the assessor's office pursuant to Section 25303 of the Government Code, the Controller, employees of the Controller for property tax postponement purposes, probate referees, employees of the Franchise Tax Board for tax administration purposes only, staff appraisers of the Department of Financial Institutions, the Department of Transportation, the Department of General Services, the State Board of Equalization, the State Department of Social Services, and other duly authorized legislative or administrative bodies of the state pursuant to their authorization to examine the records. Whenever the assessor discloses information, furnishes abstracts, or permits access to records in his or her office to staff appraisers of the Department of Financial Institutions, the Department of Transportation, or the Department of General Services pursuant to this section, the department shall reimburse the assessor for any costs incurred as a result thereof.

(c) Upon the request of the tax collector, the assessor shall disclose and provide to the tax collector information used in the preparation of that portion of the unsecured roll for which the taxes thereon are delinquent. The tax collector shall certify to the assessor that he or she needs the information requested for the enforcement of the assessor's tax lien in collecting those delinquent taxes. Information requested by the tax collector may include social security numbers, and the assessor shall recover from the tax collector his or her actual and reasonable costs for providing the information. The tax collector shall add the costs described in the preceding sentence to the assessee's delinquent tax lien and collect those costs subject to subdivision (e) of Section 2922.

(d) The assessor shall, upon the request of an assessee or his or her designated representative, permit the assessee or representative to inspect or copy any market data in the assessor's possession. For purposes of this subdivision, "market data" means any information in the assessor's possession, whether or not required to be prepared or kept by him or her, relating to the sale of any property comparable to the property of the assessee, if the assessor bases his or her assessment of the assessee's property, in whole or in part, on that comparable sale or sales. The assessor shall provide the names of the seller and buyer of each property on which the comparison is based, the location of that property, the date of the sale, and the

consideration paid for the property, whether paid in money or otherwise. However, for purposes of providing market data, the assessor shall not display any document relating to the business affairs or property of another.

(e) (1) With respect to information, documents, and records, other than market data as defined in subdivision (d), the assessor shall, upon request of an assessee of property, or his or her designated representative, permit the assessee or representative to inspect or copy all information, documents, and records, including auditors' narrations and workpapers, whether or not required to be kept or prepared by the assessor, relating to the appraisal and the assessment of the assessee's property, and any penalties and interest thereon.

(2) After enrolling an assessment, the assessor shall respond to a written request for information supporting the assessment, including, but not limited to, any appraisal and other data requested by the assessee.

(3) Except as provided in Section 408.1, an assessee, or his or her designated representative, shall not be permitted to inspect or copy information and records that also relate to the property or business affairs of another, unless that disclosure is ordered by a competent court in a proceeding initiated by a taxpayer seeking to challenge the legality of the assessment of his or her property.

(f) (1) Permission for the inspection or copying requested pursuant to subdivision (d) or (e) shall be granted as soon as reasonably possible to the assessee or his or her designated representative.

(2) If the assessee, or his or her designated representative, requests the assessor to make copies of any of the requested records, the assessee shall reimburse the assessor for the reasonable costs incurred in reproducing and providing the copies.

(3) If the assessor fails to permit the inspection or copying of materials or information as requested pursuant to subdivision (d) or (e) and the assessor introduces any requested materials or information at any assessment appeals board hearing, the assessee or his or her representative may request and shall be granted a continuance for a reasonable period of time. The continuance shall extend the two-year period specified in subdivision (c) of Section 1604 for a period of time equal to the period of continuance.

SEC. 805.1. Section 408 of the Revenue and Taxation Code is amended to read:

408. (a) Except as otherwise provided in subdivisions (b), (c), (d), and (e) any information and records in the assessor's office which are not required by law to be kept or prepared by the assessor, and homeowners' exemption claims, are not public documents and shall not be open to public inspection. Property receiving the homeowners' exemption shall be clearly identified on the assessment roll. The assessor shall maintain records which shall be open to public

inspection to identify those claimants who have been granted the homeowners' exemption.

(b) The assessor may provide any appraisal data in his or her possession to the assessor of any county.

The assessor shall disclose information, furnish abstracts, or permit access to all records in his or her office to law enforcement agencies, the county grand jury, the board of supervisors or their duly authorized agents, employees or representatives when conducting an investigation of the assessor's office pursuant to Section 25303 of the Government Code, the Controller, employees of the Controller for property tax postponement purposes, employees of the Franchise Tax Board for tax administration purposes only, staff appraisers of the Department of Financial Institutions, the Department of Transportation, the Department of General Services, the State Board of Equalization, the State Department of Social Services, and other duly authorized legislative or administrative bodies of the state pursuant to their authorization to examine the records. Whenever the assessor discloses information, furnishes abstracts, or permits access to records in his or her office to staff appraisers of the Department of Financial Institutions, the Department of Transportation, or the Department of General Services pursuant to this section, the department shall reimburse the assessor for any costs incurred as a result thereof.

(c) Upon the request of the tax collector, the assessor shall disclose and provide to the tax collector information used in the preparation of that portion of the unsecured roll for which the taxes thereon are delinquent. The tax collector shall certify to the assessor that he or she needs the information requested for the enforcement of the assessor's tax lien in collecting those delinquent taxes. Information requested by the tax collector may include social security numbers, and the assessor shall recover from the tax collector his or her actual and reasonable costs for providing the information. The tax collector shall add the costs described in the preceding sentence to the assessee's delinquent tax lien and collect those costs subject to subdivision (e) of Section 2922.

(d) The assessor shall, upon the request of an assessee or his or her designated representative, permit the assessee or representative to inspect or copy any market data in the assessor's possession. For purposes of this subdivision, "market data" means any information in the assessor's possession, whether or not required to be prepared or kept by him or her, relating to the sale of any property comparable to the property of the assessee, if the assessor bases his or her assessment of the assessee's property, in whole or in part, on that comparable sale or sales. The assessor shall provide the names of the seller and buyer of each property on which the comparison is based, the location of that property, the date of the sale, and the consideration paid for the property, whether paid in money or otherwise. However, for purposes of providing market data, the

assessor shall not display any document relating to the business affairs or property of another.

(e) (1) With respect to information, documents, and records, other than market data as defined in subdivision (d), the assessor shall, upon request of an assessee of property, or his or her designated representative, permit the assessee or representative to inspect or copy all information, documents, and records, including auditors' narrations and workpapers, whether or not required to be kept or prepared by the assessor, relating to the appraisal and the assessment of the assessee's property, and any penalties and interest thereon.

(2) After enrolling an assessment, the assessor shall respond to a written request for information supporting the assessment, including, but not limited to, any appraisal and other data requested by the assessee.

(3) Except as provided in Section 408.1, an assessee, or his or her designated representative, shall not be permitted to inspect or copy information and records that also relate to the property or business affairs of another, unless that disclosure is ordered by a competent court in a proceeding initiated by a taxpayer seeking to challenge the legality of the assessment of his or her property.

(f) (1) Permission for the inspection or copying requested pursuant to subdivision (d) or (e) shall be granted as soon as reasonably possible to the assessee or his or her designated representative.

(2) If the assessee, or his or her designated representative, requests the assessor to make copies of any of the requested records, the assessee shall reimburse the assessor for the reasonable costs incurred in reproducing and providing the copies.

(3) If the assessor fails to permit the inspection or copying of materials or information as requested pursuant to subdivision (d) or (e) and the assessor introduces any requested materials or information at any assessment appeals board hearing, the assessee or his or her representative may request and shall be granted a continuance for a reasonable period of time. The continuance shall extend the two-year period specified in subdivision (c) of Section 1604 for a period of time equal to the period of continuance.

SEC. 805.2. Section 408 of the Revenue and Taxation Code is amended to read:

408. (a) Except as otherwise provided in subdivisions (b), (c), (d), and (e) any information and records in the assessor's office that are not required by law to be kept or prepared by the assessor, and homeowners' exemption claims, are not public documents and shall not be open to public inspection. Property receiving the homeowners' exemption shall be clearly identified on the assessment roll. The assessor shall maintain records which shall be open to public inspection to identify those claimants who have been granted the homeowners' exemption.

(b) The assessor may provide any appraisal data in his or her possession to the assessor of any county.

The assessor shall disclose information, furnish abstracts, or permit access to all records in his or her office to law enforcement agencies, the county grand jury, the board of supervisors or their duly authorized agents, employees or representatives when conducting an investigation of the assessor's office pursuant to Section 25303 of the Government Code, the Controller, employees of the Controller for property tax postponement purposes, probate referees, employees of the Franchise Tax Board for tax administration purposes only, staff appraisers of the Department of Financial Institutions, the Department of Transportation, the Department of General Services, the State Board of Equalization, the State Department of Social Services, the Department of Water Resources, and other duly authorized legislative or administrative bodies of the state pursuant to their authorization to examine the records. Whenever the assessor discloses information, furnishes abstracts, or permits access to records in his or her office to staff appraisers of the Department of Financial Institutions, the Department of Transportation, or the Department of General Services, or the Department of Water Resources pursuant to this section, the department shall reimburse the assessor for any costs incurred as a result thereof.

(c) Upon the request of the tax collector, the assessor shall disclose and provide to the tax collector information used in the preparation of that portion of the unsecured roll for which the taxes thereon are delinquent. The tax collector shall certify to the assessor that he or she needs the information requested for the enforcement of the assessor's tax lien in collecting those delinquent taxes. Information requested by the tax collector may include social security numbers, and the assessor shall recover from the tax collector his or her actual and reasonable costs for providing the information. The tax collector shall add the costs described in the preceding sentence to the assessee's delinquent tax lien and collect those costs subject to subdivision (e) of Section 2922.

(d) The assessor shall, upon the request of an assessee or his or her designated representative, permit the assessee or representative to inspect or copy any market data in the assessor's possession. For purposes of this subdivision, "market data" means any information in the assessor's possession, whether or not required to be prepared or kept by him or her, relating to the sale of any property comparable to the property of the assessee, if the assessor bases his or her assessment of the assessee's property, in whole or in part, on that comparable sale or sales. The assessor shall provide the names of the seller and buyer of each property on which the comparison is based, the location of that property, the date of the sale, and the consideration paid for the property, whether paid in money or otherwise. However, for purposes of providing market data, the

assessor shall not display any document relating to the business affairs or property of another.

(e) (1) With respect to information, documents, and records, other than market data as defined in subdivision (d), the assessor shall, upon request of an assessee of property, or his or her designated representative, permit the assessee or representative to inspect or copy all information, documents, and records, including auditors' narrations and workpapers, whether or not required to be kept or prepared by the assessor, relating to the appraisal and the assessment of the assessee's property, and any penalties and interest thereon.

(2) After enrolling an assessment, the assessor shall respond to a written request for information supporting the assessment, including, but not limited to, any appraisal and other data requested by the assessee.

(3) Except as provided in Section 408.1, an assessee, or his or her designated representative, shall not be permitted to inspect or copy information and records that also relate to the property or business affairs of another, unless that disclosure is ordered by a competent court in a proceeding initiated by a taxpayer seeking to challenge the legality of the assessment of his or her property.

(f) (1) Permission for the inspection or copying requested pursuant to subdivision (d) or (e) shall be granted as soon as reasonably possible to the assessee or his or her designated representative.

(2) If the assessee, or his or her designated representative, requests the assessor to make copies of any of the requested records, the assessee shall reimburse the assessor for the reasonable costs incurred in reproducing and providing the copies.

(3) If the assessor fails to permit the inspection or copying of materials or information as requested pursuant to subdivision (d) or (e) and the assessor introduces any requested materials or information at any assessment appeals board hearing, the assessee or his or her representative may request and shall be granted a continuance for a reasonable period of time. The continuance shall extend the two-year period specified in subdivision (c) of Section 1604 for a period of time equal to the period of continuance.

SEC. 805.3. Section 408 of the Revenue and Taxation Code is amended to read:

408. (a) Except as otherwise provided in subdivisions (b), (c), (d), and (e) any information and records in the assessor's office that are not required by law to be kept or prepared by the assessor, and homeowners' exemption claims, are not public documents and shall not be open to public inspection. Property receiving the homeowners' exemption shall be clearly identified on the assessment roll. The assessor shall maintain records which shall be open to public inspection to identify those claimants who have been granted the homeowners' exemption.

(b) The assessor may provide any appraisal data in his or her possession to the assessor of any county.

The assessor shall disclose information, furnish abstracts, or permit access to all records in his or her office to law enforcement agencies, the county grand jury, the board of supervisors or their duly authorized agents, employees or representatives when conducting an investigation of the assessor's office pursuant to Section 25303 of the Government Code, the Controller, employees of the Controller for property tax postponement purposes, employees of the Franchise Tax Board for tax administration purposes only, staff appraisers of the Department of Savings and Loan, the Department of Transportation, the Department of General Services, the State Board of Equalization, the State Department of Social Services, the Department of Water Resources, and other duly authorized legislative or administrative bodies of the state pursuant to their authorization to examine the records. Whenever the assessor discloses information, furnishes abstracts, or permits access to records in his or her office to staff appraisers of the Department of Savings and Loan, the Department of Transportation, the Department of General Services, or the Department of Water Resources pursuant to this section, the department shall reimburse the assessor for any costs incurred as a result thereof.

(c) Upon the request of the tax collector, the assessor shall disclose and provide to the tax collector information used in the preparation of that portion of the unsecured roll for which the taxes thereon are delinquent. The tax collector shall certify to the assessor that he or she needs the information requested for the enforcement of the assessor's tax lien in collecting those delinquent taxes. Information requested by the tax collector may include social security numbers, and the assessor shall recover from the tax collector his or her actual and reasonable costs for providing the information. The tax collector shall add the costs described in the preceding sentence to the assessee's delinquent tax lien and collect those costs subject to subdivision (e) of Section 2922.

(d) The assessor shall, upon the request of an assessee or his or her designated representative, permit the assessee or representative to inspect or copy any market data in the assessor's possession. For purposes of this subdivision, "market data" means any information in the assessor's possession, whether or not required to be prepared or kept by him or her, relating to the sale of any property comparable to the property of the assessee, if the assessor bases his or her assessment of the assessee's property, in whole or in part, on that comparable sale or sales. The assessor shall provide the names of the seller and buyer of each property on which the comparison is based, the location of that property, the date of the sale, and the consideration paid for the property, whether paid in money or otherwise. However, for purposes of providing market data, the

assessor shall not display any document relating to the business affairs or property of another.

(e) (1) With respect to information, documents, and records, other than market data as defined in subdivision (d), the assessor shall, upon request of an assessee of property, or his or her designated representative, permit the assessee or representative to inspect or copy all information, documents, and records, including auditors' narrations and workpapers, whether or not required to be kept or prepared by the assessor, relating to the appraisal and the assessment of the assessee's property, and any penalties and interest thereon.

(2) After enrolling an assessment, the assessor shall respond to a written request for information supporting the assessment, including, but not limited to, any appraisal and other data requested by the assessee.

(3) Except as provided in Section 408.1, an assessee, or his or her designated representative, shall not be permitted to inspect or copy information and records that also relate to the property or business affairs of another, unless that disclosure is ordered by a competent court in a proceeding initiated by a taxpayer seeking to challenge the legality of the assessment of his or her property.

(f) (1) Permission for the inspection or copying requested pursuant to subdivision (d) or (e) shall be granted as soon as reasonably possible to the assessee or his or her designated representative.

(2) If the assessee, or his or her designated representative, requests the assessor to make copies of any of the requested records, the assessee shall reimburse the assessor for the reasonable costs incurred in reproducing and providing the copies.

(3) If the assessor fails to permit the inspection or copying of materials or information as requested pursuant to subdivision (d) or (e) and the assessor introduces any requested materials or information at any assessment appeals board hearing, the assessee or his or her representative may request and shall be granted a continuance for a reasonable period of time. The continuance shall extend the two-year period specified in subdivision (c) of Section 1604 for a period of time equal to the period of continuance.

SEC. 805.4. Section 408 of the Revenue and Taxation Code is amended to read:

408. (a) Except as otherwise provided in subdivisions (b), (c), (d), and (e) any information and records in the assessor's office that are not required by law to be kept or prepared by the assessor, and homeowners' exemption claims, are not public documents and shall not be open to public inspection. Property receiving the homeowners' exemption shall be clearly identified on the assessment roll. The assessor shall maintain records which shall be open to public inspection to identify those claimants who have been granted the homeowners' exemption.

(b) The assessor may provide any appraisal data in his or her possession to the assessor of any county.

The assessor shall disclose information, furnish abstracts, or permit access to all records in his or her office to law enforcement agencies, the county grand jury, the board of supervisors or their duly authorized agents, employees or representatives when conducting an investigation of the assessor's office pursuant to Section 25303 of the Government Code, the Controller, employees of the Controller for property tax postponement purposes, employees of the Franchise Tax Board for tax administration purposes only, staff appraisers of the Department of Financial Institutions, the Department of Transportation, the Department of General Services, the State Board of Equalization, the State Department of Social Services, the Department of Water Resources, and other duly authorized legislative or administrative bodies of the state pursuant to their authorization to examine the records. Whenever the assessor discloses information, furnishes abstracts, or permits access to records in his or her office to staff appraisers of the Department of Financial Institutions, the Department of Transportation, the Department of General Services, or the Department of Water Resources pursuant to this section, the department shall reimburse the assessor for any costs incurred as a result thereof.

(c) Upon the request of the tax collector, the assessor shall disclose and provide to the tax collector information used in the preparation of that portion of the unsecured roll for which the taxes thereon are delinquent. The tax collector shall certify to the assessor that he or she needs the information requested for the enforcement of the assessor's tax lien in collecting those delinquent taxes. Information requested by the tax collector may include social security numbers, and the assessor shall recover from the tax collector his or her actual and reasonable costs for providing the information. The tax collector shall add the costs described in the preceding sentence to the assessee's delinquent tax lien and collect those costs subject to subdivision (e) of Section 2922.

(d) The assessor shall, upon the request of an assessee or his or her designated representative, permit the assessee or representative to inspect or copy any market data in the assessor's possession. For purposes of this subdivision, "market data" means any information in the assessor's possession, whether or not required to be prepared or kept by him or her, relating to the sale of any property comparable to the property of the assessee, if the assessor bases his or her assessment of the assessee's property, in whole or in part, on that comparable sale or sales. The assessor shall provide the names of the seller and buyer of each property on which the comparison is based, the location of that property, the date of the sale, and the consideration paid for the property, whether paid in money or otherwise. However, for purposes of providing market data, the

assessor shall not display any document relating to the business affairs or property of another.

(e) (1) With respect to information, documents, and records, other than market data as defined in subdivision (d), the assessor shall, upon request of an assessee of property, or his or her designated representative, permit the assessee or representative to inspect or copy all information, documents, and records, including auditors' narrations and workpapers, whether or not required to be kept or prepared by the assessor, relating to the appraisal and the assessment of the assessee's property, and any penalties and interest thereon.

(2) After enrolling an assessment, the assessor shall respond to a written request for information supporting the assessment, including, but not limited to, any appraisal and other data requested by the assessee.

(3) Except as provided in Section 408.1, an assessee, or his or her designated representative, shall not be permitted to inspect or copy information and records that also relate to the property or business affairs of another, unless that disclosure is ordered by a competent court in a proceeding initiated by a taxpayer seeking to challenge the legality of the assessment of his or her property.

(f) (1) Permission for the inspection or copying requested pursuant to subdivision (d) or (e) shall be granted as soon as reasonably possible to the assessee or his or her designated representative.

(2) If the assessee, or his or her designated representative, requests the assessor to make copies of any of the requested records, the assessee shall reimburse the assessor for the reasonable costs incurred in reproducing and providing the copies.

(3) If the assessor fails to permit the inspection or copying of materials or information as requested pursuant to subdivision (d) or (e) and the assessor introduces any requested materials or information at any assessment appeals board hearing, the assessee or his or her representative may request and shall be granted a continuance for a reasonable period of time. The continuance shall extend the two-year period specified in subdivision (c) of Section 1604 for a period of time equal to the period of continuance.

SEC. 806. Section 24370 of the Revenue and Taxation Code is amended to read:

24370. There shall also be allowed as a deduction, under Chapter 2 of this part, in the case of a mutual savings bank, the entire amount of interest paid to depositors possessing no proprietary interest in the institution or in its surplus, and interest on their deposits to members possessing a proprietary interest in the institution or in its surplus at a rate determined by the Commissioner of Financial Institutions to be the going rate of interest upon savings deposits in this state during the calendar year preceding the taxable year, such rate to be certified by the Commissioner of Financial Institutions to the Franchise Tax Board on or before the first day of March of each year.

SEC. 807. Section 8851 of the Streets and Highways Code is amended to read:

8851. Upon the application of the legislative body or of any holder or other interested party, the Commissioner of Financial Institutions shall examine into the regularity of the issuance of bonds under this division and the sufficiency of the security provided for the payment thereof and if satisfied therewith he or she may certify the same as suitable for investment by savings banks and trustees whereupon the bonds may be used for investment of savings deposits and trust funds. The cost of any such examination may on approval of the legislative body be paid out of any surplus money in the redemption fund not required for the payment of the interest or principal of the bonds.

SEC. 808. Section 27154 of the Streets and Highways Code is amended to read:

27154. Notwithstanding any contrary provision of law, or any limitation or restriction contained in any law, the board may:

(a) Invest and reinvest all or any part of lapsed, unallocated, unappropriated or other surplus moneys belonging to any fund of which the board has custody or control in bonds and other obligations for which the faith and credit of the United States of America are pledged or in any obligation, bond or security approved by the Commissioner of Financial Institutions as legal for investment by savings banks. All such investments heretofore made are legalized.

(b) Use all or any part of lapsed, unallocated, unappropriated or other surplus or reserve moneys of the district for the refunding or partial refunding or purchase of any existing bonded indebtedness against the district.

The interest or income from any funds invested under this section may be made a part of the fund from which the investment was made and may itself be so invested.

Any investment previously made in bonds and other obligations for which the faith and credit of the United States of America are pledged or in any obligation, bond or security which under the Financial Code is legal for investment by savings banks is hereby validated and made legal investments for the purposes of this section, whether such bonds or obligations are negotiable or not.

SEC. 809. Section 30240 of the Streets and Highways Code is amended to read:

30240. The Commissioner of Financial Institutions may investigate and ascertain the status or sufficiency as investments for commercial banks in this state of any such bonds. If upon investigation it is determined in the Commissioner of Financial Institutions' opinion that such bonds constitute a proper investment for commercial banks, he or she shall so certify. The Commissioner of Financial Institutions may revoke any such certificate issued by him or her at any time in his or her discretion.

SEC. 810. Section 30241 of the Streets and Highways Code is amended to read:

30241. All bonds which have been issued by the commission pursuant to this chapter or its predecessor, and which have been first certified by the Commissioner of Financial Institutions, are legal investments for all trust funds, for the funds of all insurance companies, commercial and savings banks, and trust companies, and for state school funds.

SEC. 811. Section 31172 of the Streets and Highways Code is amended to read:

31172. The Commissioner of Financial Institutions may investigate and ascertain the status or sufficiency as investments for savings banks in this state of any such bonds. If upon investigation it is determined in his or her opinion that such bonds constitute a proper investment for savings banks, he or she shall so certify. The Commissioner of Financial Institutions may revoke any such certificate issued by him or her at any time in his or her discretion.

SEC. 812. Section 31173 of the Streets and Highways Code is amended to read:

31173. All bonds issued by the authority pursuant to this chapter, and which have been first certified by the Commissioner of Financial Institutions, are legal investments for all trust funds, for the funds of all insurance companies, commercial and savings banks, and trust companies, and for state school funds.

SEC. 813. On or before May 15, 1997, the State Banking Department shall report to the chairs of the legislative fiscal committees with respect to a detailed plan for the organization and functions of the new department created by this act. The report shall include, but not be limited to, a description of plans for the new Department of Financial Institutions relative to all of the following:

(a) Achieving cost efficiencies.

(b) Consolidating office space and management.

(c) Developing standards for measuring efficiency and performance of the Department of Financial Institutions.

SEC. 814. Except as provided in Section 813, this act shall become operative on July 1, 1997.

SEC. 815. Section 2.1 of this bill incorporates amendments to Section 7522 of the Business and Professions Code proposed by both this bill and SB 1375. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 7522 of the Business and Professions Code, and (3) this bill is enacted after SB 1375, in which case Section 7522 of the Business and Professions Code as amended by SB 1375, shall remain operative only until the operative date of this bill, at which time Section 2.1 of this bill shall become operative, and Section 2 of this bill shall not become operative.

SEC. 816. Section 3.1 of this bill incorporates amendments to Section 7582.2 of the Business and Professions Code proposed by both this bill and SB 1375. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2)

each bill amends Section 7582.2 of the Business and Professions Code, and (3) this bill is enacted after SB 1375, in which case Section 7582.2 of the Business and Professions Code, as amended by SB 1375, shall remain operative only until the operative date of this bill, at which time Section 3.1 of this bill shall become operative, and Section 3 of this bill shall not become operative.

SEC. 817. If (1) this bill and AB 1684 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) each bill amends Section 14021 of the Corporations Code, Section 16 of this bill shall not become operative.

SEC. 818. Section 17.1 of this bill incorporates amendments to Section 14025 of the Corporations Code proposed by both this bill and AB 1684. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 14025 of the Corporations Code, and (3) this bill is enacted after AB 1684, in which case Section 14025 of the Corporations Code as amended by AB 1684, shall remain operative only until the operative date of this bill, at which time Section 17.1 of this bill shall become operative, and Section 17 of this bill shall not become operative.

SEC. 819. Section 18.1 of this bill incorporates amendments to Section 25100 of the Corporations Code proposed by this bill and AB 2465. It shall become operative only if (1) this bill and AB 2465 are enacted and become effective on or before January 1, 1997, (2) both bills amend Section 25100 of the Corporations Code, (3) SB 1729 does not amend Section 25100 of the Corporations Code, and (4) this bill is enacted after AB 2465, in which case Section 25100 of the Corporations Code as amended by AB 2465 shall remain operative only until the operative date of this bill, at which time Section 18.1 of this bill shall become operative, and Sections 18, 18.2, 18.3, and 18.4 of this bill shall not become operative.

SEC. 820. Section 18.2 of this bill incorporates amendments to Section 25100 of the Corporations Code proposed by this bill and SB 1729. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 25100 of the Corporations Code, (3) AB 2465 does not amend Section 25100 of the Corporations Code, and (4) this bill is enacted after SB 1729, in which case Section 25100 of the Corporations Code as amended by SB 1729, shall remain operative only until the operative date of this bill, at which time Section 18.2 of this bill shall become operative, and Sections 18, 18.1, 18.3, and 18.4 of this bill shall not become operative.

SEC. 821. Section 18.4 of this bill incorporates amendments to Section 25100 of the Corporations Code proposed by this bill, AB 2465, and SB 1729. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 25100 of the Corporations Code, and (3) this bill is enacted after AB 2465 and SB 1729, in which case Section 18.3 of this

bill, which incorporates amendments to Section 25100 of the Corporations Code proposed by AB 2465 and SB 1729, shall remain operative only until the operative date of this bill, at which time Section 18.4 of this bill shall become operative, and Sections 18, 18.1, 18.2, and 18.3 of this bill shall not be operative.

SEC. 822. Section 27.1 of this bill incorporates amendments to Section 180 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 180 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 180 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 27.1 of this bill shall become operative, and Section 27 of this bill shall not become operative.

SEC. 823. Section 53.1 of this bill incorporates amendments to Section 270 of the Financial Code proposed by both this bill and AB 2618. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 270 of the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 270 of the Financial Code, as amended by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 53.1 of this bill shall become operative, and Section 53 of this bill shall not become operative.

SEC. 824. Section 55.1 of this bill incorporates amendments to Section 271.5 of the Financial Code proposed by both this bill and AB 2618. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 271.5 of the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 271.5 of the Financial Code, as amended by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 55.1 of this bill shall become operative, and Section 55 of this bill shall not become operative.

SEC. 825. Section 56.1 of this bill incorporates amendments to Section 272 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 272 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 272 of the Financial Code as amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 56.1 of this bill shall become operative, and Section 56 of this bill shall not become operative.

SEC. 826. Section 57.1 of this bill incorporates amendments to Section 273 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 273 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 273 of the Financial Code as amended by AB 3012, shall remain operative only until the operative date of this

bill, at which time Section 57.1 of this bill shall become operative, and Section 57 of this bill shall not become operative.

SEC. 827. Section 64.1 of this bill incorporates amendments to Section 361 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 361 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 361 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 64.1 of this bill shall become operative, and Section 64 of this bill shall not become operative.

SEC. 828. Section 65.1 of this bill incorporates amendments to Section 362 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 362 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 362 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 65.1 of this bill shall become operative, and Section 65 of this bill shall not become operative.

SEC. 829. Section 68.1 of this bill incorporates amendments to Section 400 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 400 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 400 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 68.1 of this bill shall become operative, and Section 68 of this bill shall not become operative.

SEC. 830. If (1) this bill and AB 3012 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) AB 3012 repeals Section 508 of the Financial Code, Section 86 of this bill shall not become operative.

SEC. 831. Section 87.1 of this bill incorporates amendments to Section 510 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 510 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 510 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 87.1 of this bill shall become operative, and Section 87 of this bill shall not become operative.

SEC. 832. Section 94.1 of this bill incorporates amendments to Section 544 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 544 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 544 of the Financial Code, as amended by

AB 3012, shall remain operative only until the operative date of this bill, at which time Section 94.1 of this bill shall become operative, and Section 94 of this bill shall not become operative.

SEC. 833. Section 97.1 of this bill incorporates amendments to Section 547 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 547 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 547 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 97.1 of this bill shall become operative, and Section 97 of this bill shall not become operative.

SEC. 834. If (1) this bill and AB 3012 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) each bill amends Section 551 of the Financial Code, Section 98 of this bill shall not become operative.

SEC. 835. Section 99.1 of this bill incorporates amendments to Section 552 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 552 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 552 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 99.1 of this bill shall become operative, and Section 99 of this bill shall not become operative.

SEC. 836. If (1) this bill and AB 3012 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) AB 3012 repeals Section 553 of the Financial Code, Section 100 of this bill shall not become operative.

SEC. 837. If (1) this bill and AB 3012 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) AB 3012 repeals Section 554 of the Financial Code, Section 101 of this bill shall not become operative.

SEC. 838. If (1) this bill and AB 3012 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) AB 3012 repeals Section 555 of the Financial Code, Section 102 of this bill shall not become operative.

SEC. 839. If (1) this bill and AB 3012 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) AB 3012 repeals Section 556 of the Financial Code, Section 103 of this bill shall not become operative.

SEC. 840. Section 104.1 of this bill incorporates amendments to Section 557 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 557 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 557 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative date of this

bill, at which time Section 104.1 of this bill shall become operative, and Section 104 of this bill shall not become operative.

SEC. 841. Section 105.1 of this bill incorporates amendments to Section 558 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 558 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 558 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 105.1 of this bill shall become operative, and Section 105 of this bill shall not become operative.

SEC. 842. Section 108.1 of this bill incorporates amendments to Section 600.2 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 600.2 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 600.2 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 108.1 of this bill shall become operative, and Section 108 of this bill shall not become operative.

SEC. 843. Section 154.1 of this bill incorporates amendments to Section 753 of the Financial Code proposed by both this bill and SB 1440. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 753 of the Financial Code, and (3) this bill is enacted after SB 1440, in which case Section 753 of the Financial Code, as amended by SB 1440, shall remain operative only until the operative date of this bill, at which time Section 154.1 of this bill shall become operative, and Section 154 of this bill shall not become operative.

SEC. 844. If (1) this bill and AB 3012 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) AB 3012 repeals Section 601 of the Financial Code, Section 114 of this bill shall not become operative.

SEC. 845. If (1) this bill and AB 3012 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) each bill amends Section 754 of the Financial Code, Section 155 of this bill shall not become operative.

SEC. 846. Section 161.1 of this bill incorporates amendments to Section 771 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 771 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 771 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 161.1 of this bill shall become operative, and Section 161 of this bill shall not become operative.

SEC. 847. Section 166.1 of this bill incorporates amendments to Section 776 of the Financial Code proposed by both this bill and AB

3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 776 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 776 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 166.1 of this bill shall become operative, and Section 166 of this bill shall not become operative.

SEC. 848. Section 168.1 of this bill incorporates amendments to Section 800 of the Financial Code proposed by both this bill and AB 2618. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 800 of the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 800 of the Financial Code, as amended by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 168.1 of this bill shall become operative, and Section 168 of this bill shall not become operative.

SEC. 850. Section 182.1 of this bill incorporates the addition of Section 1007 to the Financial Code proposed by AB 3012 and the amendment of Section 1007 proposed by this bill. It shall only become operative if (1) this bill and AB 3012 are enacted and become effective on or before January 1, 1997, (2) AB 3012 adds Section 1007 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 1007 of the Financial Code, as added by AB 3012, shall be operative only until the operative date of this bill, at which time Section 182.1 of this bill shall become operative.

SEC. 851. Section 192.1 of this bill incorporates amendments to Section 1227 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1227 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 1227 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 192.1 of this bill shall become operative, and Section 192 of this bill shall not become operative.

SEC. 852. Section 196.1 of this bill incorporates amendments to Section 1336 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1336 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 1336 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 196.1 of this bill shall become operative, and Section 196 of this bill shall not become operative.

SEC. 853. If (1) this bill and AB 3012 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) AB 3012 repeals Section 1355.1 of the Financial Code, Section 197 of this bill shall not become operative.

SEC. 854. If (1) this bill and AB 3012 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) AB 3012 repeals Section 1360 of the Financial Code, Section 198 of this bill shall not become operative.

SEC. 855. If (1) this bill and AB 3012 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) AB 3012 repeals Section 1371 of the Financial Code, Section 199 of this bill shall not become operative.

SEC. 856. If (1) this bill and AB 3012 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) AB 3012 repeals Section 1501 of the Financial Code, Section 202 of this bill shall not become operative.

SEC. 857. If (1) this bill and AB 3012 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) AB 3012 repeals Section 1585 of the Financial Code, Section 215 of this bill shall not become operative.

SEC. 858. Section 226.1 of this bill incorporates amendments to Section 1726 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1726 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 1726 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 226.1 of this bill shall become operative, and Section 226 of this bill shall not become operative.

SEC. 859. Section 232.1 of this bill incorporates amendments to Section 1755 of the Financial Code proposed by both this bill and AB 2618. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1755 of the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 1755 of the Financial Code, as amended by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 232.1 of this bill shall become operative, and Section 232 of this bill shall not become operative.

SEC. 859.5. Section 233.1 of this bill incorporates amendments to Section 1757 of the Financial Code proposed by both this bill and AB 2618. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1757 of the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 1757 of the Financial Code as amended by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 233.1 of this bill shall become operative and Section 233 shall not become operative.

SEC. 860. Section 247.1 of this bill incorporates amendments to Section 1800.4 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1800.4 of the Financial Code, and (3) this bill is enacted after

AB 3012, in which case Section 1800.4 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 247.1 of this bill shall become operative, and Section 247 of this bill shall not become operative.

SEC. 861. Section 252.1 of this bill incorporates amendments to Section 1802 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1802 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 1802 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 252.1 of this bill shall become operative, and Section 252 of this bill shall not become operative.

SEC. 862. Section 260.1 of this bill incorporates amendments to Section 1805.5 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1805.5 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 1805.5 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 260.1 of this bill shall become operative, and Section 260 of this bill shall not become operative.

SEC. 863. Section 261.1 of this bill incorporates amendments to Section 1807 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1807 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 1807 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 261.1 of this bill shall become operative, and Section 261 of this bill shall not become operative.

SEC. 864. Section 262.1 of this bill incorporates amendments to Section 1807.5 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1807.5 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 1807.5 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 262.1 of this bill shall become operative, and Section 262 of this bill shall not become operative.

SEC. 865. Section 267.1 of this bill incorporates amendments to Section 1814 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1814 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 1814 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative

date of this bill, at which time Section 267.1 of this bill shall become operative, and Section 267 of this bill shall not become operative.

SEC. 866. Section 290.1 of this bill incorporates amendments to Section 1863.1 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1863.1 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 1863.1 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 290.1 of this bill shall become operative, and Section 290 of this bill shall not become operative.

SEC. 867. Section 293.1 of this bill incorporates amendments to Section 1868 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1868 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 1868 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 293.1 of this bill shall become operative, and Section 293 of this bill shall not become operative.

SEC. 868. Section 296.1 of this bill incorporates amendments to Section 1876.1 of the Financial Code proposed by both this bill and AB 3260. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1876.1 of the Financial Code, and (3) this bill is enacted after AB 3260, in which case Section 1876.1 of the Financial Code, as amended by AB 3260, shall remain operative only until the operative date of this bill, at which time Section 296.1 of this bill shall become operative, and Section 296 of this bill shall not become operative.

SEC. 869. If (1) this bill and AB 3260 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) AB 3260 repeals Section 1876.7 of the Financial Code, Section 301 of this bill shall not become operative.

SEC. 870. Section 302.1 of this bill incorporates amendments to Section 1876.9 of the Financial Code proposed by both this bill and AB 3260. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1876.9 of the Financial Code, and (3) this bill is enacted after AB 3260, in which case Section 1876.9 of the Financial Code, as amended by AB 3260, shall remain operative only until the operative date of this bill, at which time Section 302.1 of this bill shall become operative, and Section 302 of this bill shall not become operative.

SEC. 871. Section 321.1 of this bill incorporates amendments to Section 1900 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1900 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 1900 of the Financial Code, as

amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 321.1 of this bill shall become operative, and Section 321 of this bill shall not become operative.

SEC. 872. Section 323.1 of this bill incorporates the addition of Section 1902 to the Financial Code proposed by AB 3012 and the amendment of Section 1902 proposed by this bill. It shall become operative if (1) this bill and AB 3012 are enacted and become effective on or before January 1, 1997, (2) AB 3012 adds Section 1902 to the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 1902 of the Financial Code, as added by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 323.1 of this bill shall become operative and Section 323 shall not become operative.

SEC. 873. If (1) this bill and AB 3012 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) AB 3012 repeals Section 1903 of the Financial Code, Section 324 of this bill shall not become operative.

SEC. 874. If (1) this bill and AB 3012 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) AB 3012 repeals Section 1904 of the Financial Code, Section 325 of this bill shall not become operative.

SEC. 875. If (1) this bill and AB 3012 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) AB 3012 repeals Section 1905 of the Financial Code, Section 326 of this bill shall not become operative.

SEC. 875.5. Section 343.1 of this bill incorporates amendments to Section 1935 of the Financial Code proposed by both this bill and AB 2618. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1935 of the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 1935 of the Financial Code as amended by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 343.1 of this bill shall become operative and Section 343 shall not become operative.

SEC. 876. Section 400.1 of this bill incorporates amendments to Section 3371 of the Financial Code proposed by both this bill and AB 2618. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 3371 of the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 3371 of the Financial Code, as amended by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 400.1 of this bill shall become operative, and Section 400 of this bill shall not become operative.

SEC. 877. Section 401.1 of this bill incorporates amendments to Section 3373 of the Financial Code proposed by both this bill and SB 1440. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 3373 of the Financial Code, and (3) this bill is enacted after

SB 1440, in which case Section 3373 of the Financial Code, as amended by SB 1440, shall remain operative only until the operative date of this bill, at which time Section 401.1 of this bill shall become operative, and Section 401 of this bill shall not become operative.

SEC. 878. Section 433.1 of this bill incorporates amendments to Section 3560 of the Financial Code proposed by both this bill and AB 2618. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 3560 of the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 3560 of the Financial Code, as amended by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 433.1 of this bill shall become operative, and Section 433 of this bill shall not become operative.

SEC. 879. Section 436.1 of this bill incorporates amendments to Section 3570 of the Financial Code proposed by both this bill and AB 2618. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 3570 of the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 3570 of the Financial Code, as amended by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 436.1 of this bill shall become operative, and Section 436 of this bill shall not become operative.

SEC. 880. Section 437.1 of this bill incorporates amendments to Section 3580 of the Financial Code proposed by both this bill and AB 2618. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 3580 of the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 3580 of the Financial Code, as amended by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 437.1 of this bill shall become operative, and Section 437 of this bill shall not become operative.

SEC. 881. Section 441.1 of this bill incorporates amendments to Section 3700 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 3700 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 3700 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 441.1 of this bill shall become operative, and Section 441 of this bill shall not become operative.

SEC. 882. Section 444.1 of this bill incorporates amendments to Section 3705 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 3705 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 3705 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative

date of this bill, at which time Section 444.1 of this bill shall become operative, and Section 444 of this bill shall not become operative.

SEC. 883. Section 450.1 of this bill incorporates amendments to Section 3754 of the Financial Code proposed by both this bill and AB 2618. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 3754 of the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 3754 of the Financial Code, as amended by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 450.1 of this bill shall become operative, and Section 450 of this bill shall not become operative.

SEC. 884. Section 474.1 of this bill incorporates amendments to Section 4827 of the Financial Code proposed by both this bill and AB 2618. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 4827 of the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4827 of the Financial Code, as amended by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 474.1 of this bill shall become operative, and Section 474 of this bill shall not become operative.

SEC. 885. Section 475.1 of this bill incorporates amendments to Section 4828 of the Financial Code proposed by both this bill and AB 2618. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 4828 of the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4828 of the Financial Code, as amended by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 475.1 of this bill shall become operative, and Section 475 of this bill shall not become operative.

SEC. 886. Section 476.1 of this bill incorporates amendments to Section 4828.3 of the Financial Code proposed by both this bill and AB 2618. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 4828.3 of the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4828.3 of the Financial Code, as amended by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 476.1 of this bill shall become operative, and Section 476 of this bill shall not become operative.

SEC. 887. Section 477.1 of this bill incorporates amendments to Section 4828.7 of the Financial Code proposed by both this bill and AB 2618. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 4828.7 of the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4828.7 of the Financial Code, as amended by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 477.1 of this bill shall become operative, and Section 477 of this bill shall not become operative.

SEC. 888. Section 486.1 of this bill incorporates amendments to Section 4839 of the Financial Code proposed by both this bill and AB 2618. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 4839 of the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4839 of the Financial Code, as amended by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 486.1 of this bill shall become operative, and Section 486 of this bill shall not become operative.

SEC. 889. If (1) this bill and AB 2618 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) AB 2618 repeals Section 4856 of the Financial Code, Section 492 of this bill shall not become operative.

SEC. 890. Section 493.1 of this bill incorporates amendments to Section 4857 of the Financial Code proposed by both this bill and AB 2618. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 4857 of the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4857 of the Financial Code, as amended by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 493.1 of this bill shall become operative, and Section 493 of this bill shall not become operative.

SEC. 891. Section 497.2 of this bill incorporates the addition of Section 4876.02 to the Financial Code proposed by AB 2618 and the amendment of Section 4876.02 proposed by this bill. It shall only become operative if (1) this bill and AB 2618 are enacted and become effective on or before January 1, 1997, (2) AB 2618 adds Section 4876.02 to the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4876.02 of the Financial Code, as added by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 497.2 of this bill shall become operative.

SEC. 892. Section 497.3 of this bill incorporates the addition of Section 4876.04 to the Financial Code proposed by AB 2618 and the amendment of Section 4876.04 proposed by this bill. It shall only become operative if (1) this bill and AB 2618 are enacted and become effective on or before January 1, 1997, (2) AB 2618 adds Section 4876.04 to the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4876.04 of the Financial Code, as added by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 497.3 of this bill shall become operative.

SEC. 893. Section 497.4 of this bill incorporates the addition of Section 4876.05 to the Financial Code proposed by AB 2618 and the amendment of Section 4876.05 proposed by this bill. It shall only become operative if (1) this bill and AB 2618 are enacted and become effective on or before January 1, 1997, (2) AB 2618 adds Section 4876.05 to the Financial Code, and (3) this bill is enacted after AB

2618, in which case Section 4876.05 of the Financial Code, as added by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 497.4 of this bill shall become operative.

SEC. 894. Section 497.5 of this bill incorporates the addition of Section 4876.06 to the Financial Code proposed by AB 2618 and the amendment of Section 4876.06 proposed by this bill. It shall only become operative if (1) this bill and AB 2618 are enacted and become effective on or before January 1, 1997, (2) AB 2618 adds Section 4876.06 to the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4876.06 of the Financial Code, as added by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 497.5 of this bill shall become operative.

SEC. 895. Section 497.6 of this bill incorporates the addition of Section 4876.08 to the Financial Code proposed by AB 2618 and the amendment of Section 4876.08 proposed by this bill. It shall only become operative if (1) this bill and AB 2618 are enacted and become effective on or before January 1, 1997, (2) AB 2618 adds Section 4876.08 to the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4876.08 of the Financial Code, as added by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 497.6 of this bill shall become operative.

SEC. 896. Section 499.2 of this bill incorporates the addition of Section 4878.01 to the Financial Code proposed by AB 2618 and the amendment of Section 4878.01 proposed by this bill. It shall only become operative if (1) this bill and AB 2618 are enacted and become effective on or before January 1, 1997, (2) AB 2618 adds Section 4878.01 to the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4878.01 of the Financial Code, as added by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 499.2 of this bill shall become operative.

SEC. 897. Section 499.3 of this bill incorporates the addition of Section 4878.02 to the Financial Code proposed by AB 2618 and the amendment of Section 4878.02 proposed by this bill. It shall only become operative if (1) this bill and AB 2618 are enacted and become effective on or before January 1, 1997, (2) AB 2618 adds Section 4878.02 to the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4878.02 of the Financial Code, as added by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 499.3 of this bill shall become operative.

SEC. 898. Section 499.4 of this bill incorporates the addition of Section 4878.04 to the Financial Code proposed by AB 2618 and the amendment of Section 4878.04 proposed by this bill. It shall only become operative if (1) this bill and AB 2618 are enacted and become

effective on or before January 1, 1997, (2) AB 2618 adds Section 4878.04 to the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4878.04 of the Financial Code, as added by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 499.4 of this bill shall become operative.

SEC. 899. Section 499.5 of this bill incorporates the addition of Section 4878.05 to the Financial Code proposed by AB 2618 and the amendment of Section 4878.05 proposed by this bill. It shall only become operative if (1) this bill and AB 2618 are enacted and become effective on or before January 1, 1997, (2) AB 2618 adds Section 4878.05 to the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4878.05 of the Financial Code, as added by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 499.5 of this bill shall become operative.

SEC. 900. Section 499.6 of this bill incorporates the addition of Section 4878.07 to the Financial Code proposed by AB 2618 and the amendment of Section 4878.07 proposed by this bill. It shall become operative if (1) this bill and AB 2618 are enacted and become effective on or before January 1, 1997, (2) AB 2618 adds Section 4878.07 to the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4878.07 of the Financial Code, as added by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 499.6 of this bill shall become operative.

SEC. 901. Section 504.1 of this bill incorporates amendments to Section 4879.10 of the Financial Code proposed by both this bill and AB 2618. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 4879.10 of the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4879.10 of the Financial Code, as amended by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 504.1 of this bill shall become operative, and Section 504 of this bill shall not become operative.

SEC. 902. If (1) this bill and AB 2618 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) AB 2618 repeals Section 4879.11 of the Financial Code, Section 505 of this bill shall not become operative.

SEC. 903. Section 506.1 of this bill incorporates amendments to Section 4879.12 of the Financial Code proposed by both this bill and AB 2618. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 4879.12 of the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4879.12 of the Financial Code as amended by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 506.1 of this bill shall become operative, and Section 506 of this bill shall not become operative.

SEC. 904. Section 507.2 of this bill incorporates the addition of Section 4879.135 to the Financial Code proposed by AB 2618 and the amendment of Section 4879.135 proposed by this bill. It shall only become operative if (1) this bill and AB 2618 are enacted and become effective on or before January 1, 1997, (2) AB 2618 adds Section 4879.135 to the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4878.135 of the Financial Code, as added by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 507.2 of this bill shall become operative.

SEC. 905. Section 509.1 of this bill incorporates amendments to Section 4880 of the Financial Code proposed by both this bill and AB 2618. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 4880 of the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4880 of the Financial Code, as amended by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 509.1 of this bill shall become operative, and Section 509 of this bill shall not become operative.

SEC. 906. If (1) this bill and AB 2618 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) AB 2618 repeals Section 4886 of the Financial Code, Section 514 of this bill shall not become operative.

SEC. 907. Section 520.1 of this bill incorporates amendments to Section 4895.05 of the Financial Code proposed by both this bill and AB 2618. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 4895.05 of the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4895.05 of the Financial Code, as amended by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 520.1 of this bill shall become operative, and Section 520 of this bill shall not become operative.

SEC. 908. Section 521.2 of this bill incorporates the addition of Section 4908.02 to the Financial Code proposed by AB 2618 and the amendment of Section 4908.02 proposed by this bill. It shall only become operative if (1) this bill and AB 2618 are enacted and become effective on or before January 1, 1997, (2) AB 2618 adds Section 4908.02 to the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4908.02 of the Financial Code, as added by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 521.2 of this bill shall become operative.

SEC. 909. Section 521.3 of this bill incorporates the addition of Section 4908.04 to the Financial Code proposed by AB 2618 and the amendment of Section 4908.04 proposed by this bill. It shall only become operative if (1) this bill and AB 2618 are enacted and become effective on or before January 1, 1997, (2) AB 2618 adds Section 4908.04 to the Financial Code, and (3) this bill is enacted after AB

2618, in which case Section 4908.04 of the Financial Code, as added by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 521.3 of this bill shall become operative.

SEC. 910. Section 521.4 of this bill incorporates the addition of Section 4908.05 to the Financial Code proposed by AB 2618 and the amendment of Section 4908.05 proposed by this bill. It shall only become operative if (1) this bill and AB 2618 are enacted and become effective on or before January 1, 1997, (2) AB 2618 adds Section 4908.05 to the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4908.05 of the Financial Code, as added by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 521.4 of this bill shall become operative.

SEC. 911. Section 521.5 of this bill incorporates the addition of Section 4908.06 to the Financial Code proposed by AB 2618 and the amendment of Section 4908.06 proposed by this bill. It shall only become operative if (1) this bill and AB 2618 are enacted and become effective on or before January 1, 1997, (2) AB 2618 adds Section 4908.06 to the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4908.06 of the Financial Code, as added by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 521.5 of this bill shall become operative.

SEC. 912. Section 521.7 of this bill incorporates the addition of Section 4908.07 to the Financial Code proposed by AB 2618 and the amendment of Section 4908.07 proposed by this bill. It shall only become operative if (1) this bill and AB 2618 are enacted and become effective on or before January 1, 1997, (2) AB 2618 adds Section 4908.07 to the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4908.07 of the Financial Code, as added by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 521.7 of this bill shall become operative.

SEC. 913. Section 521.8 of this bill incorporates the addition of Section 4908.09 to the Financial Code proposed by AB 2618 and the amendment of Section 4908.09 proposed by this bill. It shall only become operative if (1) this bill and AB 2618 are enacted and become effective on or before January 1, 1997, (2) AB 2618 adds Section 4908.09 to the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 4908.09 of the Financial Code, as added by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 521.8 of this bill shall become operative.

SEC. 914. If (1) this bill and AB 2618 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) AB 2618 repeals Section 4926 of the Financial Code, Section 528 of this bill shall not become operative.

SEC. 915. If (1) this bill and AB 2618 are enacted and become effective on or before January 1, 1997, and this bill is chaptered last, and (2) AB 2618 repeals Section 4947 of the Financial Code, Section 539 of this bill shall not become operative.

SEC. 916. If (1) this bill and AB 2313 are enacted and become effective on or before January 1, 1997, and (2) AB 2313 amends Section 18427 of the Financial Code and this bill repeals Section 18427 of the Financial Code and is enacted last, Section 18427 of the Financial Code, as amended by AB 2313 shall remain operative only until the operative date of this bill, at which time Section 597 of this bill shall become operative.

SEC. 917. Section 616.1 of this bill incorporates amendments to Section 18686 of the Financial Code proposed by both this bill and AB 2618. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 18686 of the Financial Code, and (3) this bill is enacted after AB 2618, in which case Section 18686 of the Financial Code, as amended by AB 2618, shall remain operative only until the operative date of this bill, at which time Section 616.1 of this bill shall become operative, and Section 616 of this bill shall not become operative.

SEC. 918. Section 736.1 of this bill incorporates amendments to Section 33560 of the Financial Code proposed by both this bill and AB 3260. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 33560 of the Financial Code, and (3) this bill is enacted after AB 3260, in which case Section 33560 of the Financial Code, as amended by AB 3260, shall remain operative only until the operative date of this bill, at which time Section 736.1 of this bill shall become operative, and Section 736 of this bill shall not become operative.

SEC. 919. Section 741.1 of this bill incorporates amendments to Section 33568 of the Financial Code proposed by both this bill and AB 3260. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 33568 of the Financial Code, and (3) this bill is enacted after AB 3260, in which case Section 33568 of the Financial Code, as amended by AB 3260, shall remain operative only until the operative date of this bill, at which time Section 741.1 of this bill shall become operative, and Section 741 of this bill shall not become operative.

SEC. 920. If (1) this bill and AB 3260 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) AB 3260 repeals Section 33566 of the Financial Code, Section 740 of this bill shall not become operative.

SEC. 921. Section 742.1 of this bill incorporates amendments to Section 33600 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 33600 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 33600 of the Financial Code, as

amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 742.1 of this bill shall become operative, and Section 742 of this bill shall not become operative.

SEC. 922. If (1) this bill and AB 3012 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) AB 3012 repeals Section 33760 of the Financial Code, Section 751 of this bill shall not become operative.

SEC. 923. If (1) this bill and AB 3012 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) AB 3012 repeals Section 33761 of the Financial Code, Section 752 of this bill shall not become operative.

SEC. 924. If (1) this bill and AB 3012 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) AB 3012 repeals Section 33762 of the Financial Code, Section 753 of this bill shall not become operative.

SEC. 925. Section 758.1 of this bill incorporates amendments to Section 33901 of the Financial Code proposed by both this bill and AB 3012. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 33901 of the Financial Code, and (3) this bill is enacted after AB 3012, in which case Section 33901 of the Financial Code, as amended by AB 3012, shall remain operative only until the operative date of this bill, at which time Section 758.1 of this bill shall become operative, and Section 758 of this bill shall not become operative.

SEC. 926. Section 782.1 of this bill incorporates amendments to Section 7480 of the Government Code proposed by both this bill and SB 1828. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 7480 of the Government Code, and (3) this bill is enacted after SB 1828, in which case Section 7480 of the Government Code, as amended by SB 1828, shall remain operative only until the operative date of this bill, at which time Section 782.1 of this bill shall become operative, and Section 782 of this bill shall not become operative.

SEC. 927. Section 783.1 of this bill incorporates amendments to Section 11121 of the Government Code proposed by both this bill and SB 1497. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 11121 of the Government Code, and (3) this bill is enacted after SB 1497, in which case Section 11121 of the Government Code, as amended by SB 1497, shall remain operative only until the operative date of this bill, at which time Section 783.1 of this bill shall become operative, and Section 783 of this bill shall not become operative.

SEC. 928. Section 785.1 of this bill incorporates amendments to Section 11552 of the Government Code proposed by both this bill and SB 956. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends

Section 11552 of the Government Code, and (3) this bill is enacted after SB 956, in which case Section 11552 of the Government Code, as amended by SB 956, shall remain operative only until the operative date of this bill, at which time Section 785.1 of this bill shall become operative, and Section 785 of this bill shall not become operative.

SEC. 929. If (1) this bill and SB 611 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) SB 611 repeals Section 44559.2 of the Health and Safety Code, Section 791 of this bill shall not become operative.

SEC. 930. If (1) this bill and AB 3012 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) AB 3012 repeals Section 12393 of the Insurance Code, Section 793 of this bill shall not become operative.

SEC. 931. If (1) this bill and AB 3012 are enacted and become effective on or before January 1, 1997, and this bill is chaptered last (2) and AB 3012 repeals Section 12395 of the Insurance Code, Section 794 of this bill shall not become operative.

SEC. 932. If (1) this bill and SB 1862 are enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) SB 1862 repeals Section 12603 of the Insurance Code, Section 799 of this bill shall not become operative.

SEC. 933. Section 800.1 of this bill incorporates amendments to Section 14022 of the Insurance Code proposed by both this bill and SB 876. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 14022 of the Insurance Code, and (3) this bill is enacted after SB 876, in which case Section 14022 of the Insurance Code, as amended by SB 876, shall remain operative only until the operative date of this bill, at which time Section 800.1 of this bill shall become operative, and Section 800 of this bill shall not become operative.

SEC. 934. Section 803.1 of this bill incorporates amendments to Section 830.11 of the Penal Code proposed by both this bill and AB 2713. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 830.11 of the Penal Code, and (3) this bill is enacted after AB 2713, in which case Section 830.11 of the Penal Code, as amended by AB 2713, shall remain operative only until the operative date of this bill, at which time Section 803.1 of this bill shall become operative, and Section 803 of this bill shall not become operative.

SEC. 935. If (1) this bill and SB 956 are both enacted and become effective on or before January 1, 1997, and this bill is chaptered last and (2) SB 956 repeals Section 25924 of the Public Resources Code, Section 804 of this bill shall not become operative.

SEC. 936. (a) Section 805.1 of this bill incorporates amendments to Section 408 of the Revenue and Taxation Code proposed by both this bill and AB 2682. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 408 of the Revenue and Taxation Code, (3)

SB 1904 does not amend Section 408 of the Revenue and Taxation Code, and (4) this bill is enacted after AB 2682, in which case Section 408 of the Revenue and Taxation Code, as amended by AB 2682, shall remain operative only until the operative date of this bill, at which time Section 805.1 of this bill shall become operative, and Sections 805, 805.2, 805.3, and 805.4 of this bill shall not be operative. However, Section 805.1 of this bill shall not become operative if this bill and SB 1904 are enacted, become effective on or before January 1, 1997, and amend Section 408 of the Revenue and Taxation Code and if this bill is enacted after SB 1904.

(b) Section 805.2 of this bill incorporates amendments to Section 408 of the Revenue and Taxation Code proposed by both this bill and SB 1904. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 408 of the Revenue and Taxation Code, (3) AB 2682 does not amend Section 408 of the Revenue and Taxation Code, and (4) this bill is enacted after SB 1904, in which case Section 408 of the Revenue and Taxation Code, as amended by SB 1904, shall remain operative only until the operative date of this bill, at which time Section 805.2 of this bill shall become operative, and Sections 805, 805.1, 805.3, and 805.4 of this bill shall not become operative. However, Section 805.2 of this bill shall not become operative if this bill and AB 2682 are enacted, become effective on or before January 1, 1997, and amend Section 408 of the Revenue and Taxation Code and if this bill is enacted after AB 2682.

(c) Sections 805.3 and 805.4 of this bill incorporate amendments to Section 408 of the Revenue and Taxation Code proposed by this bill, AB 2682, and SB 1904. They shall become operative if (1) all three bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 408 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2682 and SB 1904, in which case Section 408 of the Revenue and Taxation Code, as amended by SB 1904, shall remain operative only until the operative date of AB 2682, at which time Section 805.3 of this bill shall become operative, and remain operative only until the operative date of this bill, at which time Section 805.4 of this bill shall become operative, and Section 805, 805.1, 805.2, and 805.3 of this bill shall not be operative.

CHAPTER 1065

An act to amend Sections 830.7 and 830.11 of the Penal Code, and to add Sections 308.5 and 5322 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. It is the intent of the Legislature that the changes effected by this act shall serve only to define peace officers, the extent of their jurisdiction, and the nature and scope of their authority, powers and duties, and that there shall be no change in the status of individuals for purposes of retirement, workers' compensation or similar injury or death benefits, or other employee benefits.

SEC. 2. Section 830.7 of the Penal Code is amended to read:

830.7. The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 during the course and within the scope of their employment, if they successfully complete a course in the exercise of those powers pursuant to Section 832:

(a) Persons designated by a cemetery authority pursuant to Section 8325 of the Health and Safety Code.

(b) Persons regularly employed as security officers for institutions of higher education, recognized under subdivision (a) of Section 94310.1 of the Education Code, if the institution has concluded a memorandum of understanding, permitting the exercise of that authority, with the sheriff or chief of police within whose jurisdiction the institution lies.

(c) Persons regularly employed as security officers for health facilities, as defined in Section 1250 of the Health and Safety Code, which are owned and operated by cities, counties, and cities and counties, if the facility has concluded a memorandum of understanding, permitting the exercise of that authority, with the sheriff or chief of police within whose jurisdictions the facility lies.

(d) Employees or classes of employees of the California Department of Forestry and Fire Protection designated by the Director of Forestry and Fire Protection, provided that the primary duty of the employee shall be the enforcement of the law as that duty is set forth in Section 4156 of the Public Resources Code.

(e) Persons regularly employed as inspectors, supervisors, or security officers for transit districts, as defined in Section 99213 of the Public Utilities Code, if the district has concluded a memorandum of understanding permitting the exercise of that authority, with, as applicable, the sheriff, chief of police, or California Highway Patrol within whose jurisdiction the district lies. For purposes of this subdivision, the exercise of peace officer authority may include the authority to remove a vehicle from a railroad right-of-way as set forth in Section 22656 of the Vehicle Code.

(f) Nonpeace officers regularly employed as county parole officers pursuant to Section 3089.

SEC. 2.5. Section 830.7 of the Penal Code is amended to read:

830.7. The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 during the course and within the scope of their employment, if

they successfully complete a course in the exercise of those powers pursuant to Section 832:

(a) Persons designated by a cemetery authority pursuant to Section 8325 of the Health and Safety Code.

(b) Persons regularly employed as security officers for institutions of higher education, recognized under subdivision (a) of Section 94310.1 of the Education Code, if the institution has concluded a memorandum of understanding, permitting the exercise of that authority, with the sheriff or chief of police within whose jurisdiction the institution lies.

(c) Persons regularly employed as security officers for health facilities, as defined in Section 1250 of the Health and Safety Code, which are owned and operated by cities, counties, and cities and counties, if the facility has concluded a memorandum of understanding, permitting the exercise of that authority, with the sheriff or chief of police within whose jurisdictions the facility lies.

(d) Employees or classes of employees of the California Department of Forestry and Fire Protection designated by the Director of Forestry and Fire Protection, provided that the primary duty of the employee shall be the enforcement of the law as that duty is set forth in Section 4156 of the Public Resources Code.

(e) Persons regularly employed as inspectors, supervisors, or security officers for transit districts, as defined in Section 99213 of the Public Utilities Code, if the district has concluded a memorandum of understanding permitting the exercise of that authority, with, as applicable, the sheriff, chief of police, or California Highway Patrol within whose jurisdiction the district lies. For purposes of this subdivision, the exercise of peace officer authority may include the authority to remove a vehicle from a railroad right-of-way as set forth in Section 22656 of the Vehicle Code.

(f) Nonpeace officers regularly employed as county parole officers pursuant to Section 3089.

(g) Persons appointed by the Executive Director of the California Museum of Science and Industry pursuant to Section 4108 of the Food and Agricultural Code.

SEC. 3. Section 830.11 of the Penal Code is amended to read:

830.11. (a) The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the power to serve warrants as specified in Sections 1523 and 1530 during the course and within the scope of their employment, if they receive a course in the exercise of those powers pursuant to Section 832. The authority and powers of the persons designated under this section shall extend to any place in the state:

(1) Persons employed by the State Banking Department designated by the Superintendent of Banks, provided that the primary duty of those persons shall be the enforcement of, and investigations relating to, the provisions of law administered by the State Banking Department.

(2) Persons employed by the Department of Savings and Loan designated by the Commissioner of Savings and Loan, provided that the primary duty of those persons shall be the enforcement of, and investigations relating to, the provisions of law administered by the Department of Savings and Loan.

(3) Persons employed by the Department of Real Estate designated by the Real Estate Commissioner, provided that the primary duty of these persons shall be the enforcement of the laws set forth in Part 1 (commencing with Section 10000) and Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code. The Real Estate Commissioner may designate persons under this section, who at the time of their designation, are assigned to the Special Investigations Unit, internally known as the Crisis Response Team.

(4) Persons employed by the State Lands Commission designated by the executive officer, provided that the primary duty of those persons shall be the enforcement of the law relating to the duties of the State Lands Commission.

(5) Persons employed by the Safety and Enforcement Division of the Public Utilities Commission who are designated by the Director of the Safety and Enforcement Division, and approved by the commission, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 308.5 of the Public Utilities Code.

(b) Notwithstanding any other provision of law, persons designated pursuant to this section shall not carry firearms.

(c) Persons designated pursuant to this section shall be included as "peace officers of the state" under paragraph (2) of subdivision (c) of Section 11105 for the purpose of receiving state summary criminal history information and shall be furnished that information on the same basis as peace officers of the state designated in paragraph (2) of subdivision (c) of Section 11105.

SEC. 3.1. Section 830.11 of the Penal Code is amended to read:

830.11. (a) The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the power to serve warrants as specified in Sections 1523 and 1530 during the course and within the scope of their employment, if they receive a course in the exercise of those powers pursuant to Section 832. The authority and powers of the persons designated under this section shall extend to any place in the state:

(1) Persons employed by the Department of Financial Institutions designated by the Commissioner of Financial Institutions, provided that the primary duty of those persons shall be the enforcement of, and investigations relating to, the provisions of law administered by the Commissioner of Financial Institutions.

(2) Persons employed by the Department of Real Estate designated by the Real Estate Commissioner, provided that the primary duty of these persons shall be the enforcement of the laws

set forth in Part 1 (commencing with Section 10000) and Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code. The Real Estate Commissioner may designate persons under this section, who at the time of their designation, are assigned to the Special Investigations Unit, internally known as the Crisis Response Team.

(3) Persons employed by the State Lands Commission designated by the executive officer, provided that the primary duty of those persons shall be the enforcement of the law relating to the duties of the State Lands Commission.

(4) Persons employed by the Safety and Enforcement Division of the Public Utilities Commission who are designated by the Director of the Safety and Enforcement Division, and approved by the commission, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 308.5 of the Public Utilities Code.

(b) Notwithstanding any other provision of law, persons designated pursuant to this section shall not carry firearms.

(c) Persons designated pursuant to this section shall be included as "peace officers of the state" under paragraph (2) of subdivision (c) of Section 11105 for the purpose of receiving state summary criminal history information and shall be furnished that information on the same basis as peace officers of the state designated in paragraph (2) of subdivision (c) of Section 11105.

SEC. 4. Section 308.5 is added to the Public Utilities Code, to read:

308.5. Persons employed as investigators and investigator supervisors of the Safety and Enforcement Division of the commission who are designated by the Director of the Safety and Enforcement Division and approved by the commission have the authority of peace officers, as specified in paragraph (5) of subdivision (a) of Section 830.11 of the Penal Code, while engaged in exercising the powers granted to or performing the duties imposed upon them in investigating the laws administered by the commission or commencing directly or indirectly any criminal prosecution arising from any investigation conducted under these laws. All persons herein referred to shall be deemed to be acting within the scope of employment with respect to all acts and matters set forth in this section.

SEC. 5. Section 5322 is added to the Public Utilities Code, to read:

5322. (a) The Legislature finds and declares that advertisement and use of telephone service is essential for household goods carriers to obtain business and conduct intrastate moving services. The unlawful advertisement by unlicensed household goods carriers, has required properly licensed and regulated household goods carriers to compete with unlicensed household goods carriers using unfair business practices. Unlicensed household goods carriers have also exposed citizens of the State of California to unscrupulous persons who portray themselves as properly licensed, qualified, and insured

household goods carriers. Many of these unlicensed household goods carriers have been found to have perpetrated acts of theft, fraud, and dishonesty upon unsuspecting citizens of the State of California.

(b) The Legislature finds and declares that the termination of telephone service utilized by unlicensed household goods carriers is essential to ensure the public safety and welfare. Therefore, the commission should take enforcement action as specified in this section to disconnect telephone service of unlicensed household goods carriers who unlawfully advertise moving services in yellow page directories, and other publications. The enforcement action provided in this section is consistent with the decision of the Supreme Court of the State of California in Goldin, et al. v. Public Utilities Commission et al., 23 Cal. 3d 638.

(c) Any telephone utility operating under the jurisdiction of the commission shall refuse telephone service to a new customer and shall disconnect telephone service of an existing customer only after it is shown that other available enforcement remedies of the commission have failed to terminate unlawful activities detrimental to the public welfare and safety, and upon receipt from any authorized official of the commission of a writing, signed by a magistrate, as defined by Sections 807 and 808 of the Penal Code, finding that probable cause exists to believe that the customer is advertising or holding out to the public to perform, or is performing, household goods carrier services without having in force a permit issued by the commission authorizing those services, or that the telephone service is otherwise being used or is to be used as an instrumentality, directly or indirectly, to violate or to assist in violation of the laws requiring a household goods carrier permit. Included in the writing of the magistrate shall be a finding that there is probable cause to believe that the subject telephone facilities have been or are to be used in the commission or facilitation of holding out to the public to perform, or in performing, household goods carrier services without having in force a permit issued by the commission authorizing those service, and that, absent immediate and summary action, a danger to public welfare or safety will result.

(d) Any person aggrieved by any action taken pursuant to this section shall have the right to file a complaint with the commission and may include therein a request for interim relief. The commission shall schedule a public hearing on the complaint to be held within 21 calendar days of the filing and assignment of a docket number to the complaint. The remedy provided by this section shall be exclusive. No other action at law or in equity shall accrue against any telephone utility because of, or as a result of, any matter or thing done or threatened to be done pursuant to the provisions of this section.

(e) At any hearing on complaint pursuant to subdivision (d), the commission staff shall have the right to participate, including the right to present evidence and argument and to present and cross-examine witnesses. The commission staff shall have both the

burden of providing that the use made or to be made of the telephone service is to hold out to the public to perform, or to assist in performing, services as a household goods carrier, or that the telephone service is being or is to be used as an instrumentality, directly or indirectly, to violate or to assist in violation of the licensing laws as applicable to household goods carriers and that the character of the acts is such that, absent immediate and summary action, a danger to public welfare or safety will result, and the burden of persuading the commission that the telephone services should be refused or should not be restored.

(f) The telephone utility immediately upon refusal or disconnection of service in accordance with subdivision (c), shall notify the customer or subscriber in writing that the refusal or disconnection of telephone service has been made pursuant to a request of the commission and the writing of a magistrate, and shall include with the notice of a copy of this section, a copy of the writing of the magistrate, and a statement that the customer or subscriber may request information from the commission at its San Francisco or Los Angeles office concerning any provision of this section and the manner in which a complaint may be filed.

(g) Each contract for telephone service, by operation of law, shall be deemed to contain the provisions of this section. The provisions shall be deemed to be a part of any application for telephone service. Applicants and customers for telephone service shall be deemed to have consented to the provisions of this section as a consideration for the furnishing of the service.

(h) The terms "person," "customer," and "subscriber" as used in this section, include a subscriber to telephone service, an applicant for that service, a corporation, a company, a partnership, an association, and an individual.

(i) The term "telephone utility," as used in this section, includes a "telephone corporation" and a "telegraph corporation," as defined in Division 1 (commencing with Section 201).

(j) The term "authorized official" as used in this section shall include the Director of the Safety and Enforcement Division of the Public Utilities Commission or any commission employee designated pursuant to paragraph (5) of subdivision (a) of Section 830.11 of the Penal Code.

SEC. 6. Section 2.5 of this bill incorporates amendments to Section 830.7 of the Penal Code proposed by both this bill and SB 1205. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 830.7 of the Penal Code, and (3) this bill is enacted after SB 1205, in which case Section 2 of this bill shall not become operative.

SEC. 7. Section 3.1 of this bill incorporates amendments to Section 830.11 of the Penal Code proposed by both this bill and AB 3351. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes

operative first, (2) each bill amends Section 830.11 of the Penal Code, and (3) this bill is enacted after AB 3351, in which case Section 830.11 of the Penal Code, as amended by Section 3 of this bill, shall remain operative only until the operative date of AB 3351, at which time Section 3.1 of this bill shall become operative.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 1066

An act to amend Section 830.11 of the Penal Code, relating to peace officers.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 830.11 of the Penal Code is amended to read:

830.11. (a) The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the power to serve warrants as specified in Sections 1523 and 1530 during the course and within the scope of their employment, if they receive a course in the exercise of those powers pursuant to Section 832. The authority and powers of the persons designated under this section shall extend to any place in the state:

(1) Persons employed by the State Banking Department designated by the Superintendent of Banks, provided that the primary duty of these persons shall be the enforcement of, and investigations relating to, the provisions of law administered by the State Banking Department.

(2) Persons employed by the Department of Savings and Loan designated by the Commissioner of Savings and Loan, provided that the primary duty of these persons shall be the enforcement of, and investigations relating to, the provisions of law administered by the Department of Savings and Loan.

(3) Persons employed by the Department of Real Estate designated by the Real Estate Commissioner, provided that the primary duty of these persons shall be the enforcement of the laws set forth in Part 1 (commencing with Section 10000) and Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code. The Real Estate Commissioner may designate persons under this section, who at the time of their designation, are assigned to the Special Investigations Unit, internally known as the Crisis Response Team.

(4) Persons employed by the State Lands Commission designated by the executive officer, provided that the primary duty of these persons shall be the enforcement of the law relating to the duties of the State Lands Commission.

(5) Persons employed as investigators of the Investigations Bureau of the Department of Insurance, who are designated by the Chief of the Investigations Bureau, provided that the primary duty of these persons shall be the enforcement of the Insurance Code and other laws relating to persons and businesses, licensed and unlicensed by the Department of Insurance, who are engaged in the business of insurance.

(b) Notwithstanding any other provision of law, persons designated pursuant to this section shall not carry firearms.

(c) Persons designated pursuant to this section shall be included as "peace officers of the state" under paragraph (2) of subdivision (c) of Section 11105 for the purpose of receiving state summary criminal history information and shall be furnished that information on the same basis as peace officers of the state designated in paragraph (2) of subdivision (c) of Section 11105.

SEC. 1.1. Section 830.11 of the Penal Code is amended to read:

830.11. (a) The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the power to serve warrants as specified in Sections 1523 and 1530 during the course and within the scope of their employment, if they receive a course in the exercise of those powers pursuant to Section 832. The authority and powers of the persons designated under this section shall extend to any place in the state:

(1) Persons employed by the State Banking Department designated by the Superintendent of Banks, provided that the primary duty of these persons shall be the enforcement of, and investigations relating to, the provisions of law administered by the State Banking Department.

(2) Persons employed by the Department of Savings and Loan designated by the Commissioner of Savings and Loan, provided that the primary duty of these persons shall be the enforcement of, and investigations relating to, the provisions of law administered by the Department of Savings and Loan.

(3) Persons employed by the Department of Real Estate designated by the Real Estate Commissioner, provided that the

primary duty of these persons shall be the enforcement of the laws set forth in Part 1 (commencing with Section 10000) and Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code. The Real Estate Commissioner may designate persons under this section, who at the time of their designation, are assigned to the Special Investigations Unit, internally known as the Crisis Response Team.

(4) Persons employed by the State Lands Commission designated by the executive officer, provided that the primary duty of these persons shall be the enforcement of the law relating to the duties of the State Lands Commission.

(5) Persons employed as investigators of the Investigations Bureau of the Department of Insurance, who are designated by the Chief of the Investigations Bureau, provided that the primary duty of these persons shall be the enforcement of the Insurance Code and other laws relating to persons and businesses, licensed and unlicensed by the Department of Insurance, who are engaged in the business of insurance.

(6) Persons employed by the Safety and Enforcement Division of the Public Utilities Commission who are designated by the Director of the Safety and Enforcement Division, and approved by the commission, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 308.5 of the Public Utilities Code.

(b) Notwithstanding any other provision of law, persons designated pursuant to this section shall not carry firearms.

(c) Persons designated pursuant to this section shall be included as "peace officers of the state" under paragraph (2) of subdivision (c) of Section 11105 for the purpose of receiving state summary criminal history information and shall be furnished that information on the same basis as peace officers of the state designated in paragraph (2) of subdivision (c) of Section 11105.

SEC. 1.2. Section 830.11 of the Penal Code is amended to read:

830.11. (a) The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the power to serve warrants as specified in Sections 1523 and 1530 during the course and within the scope of their employment, if they receive a course in the exercise of those powers pursuant to Section 832. The authority and powers of the persons designated under this section shall extend to any place in the state:

(1) Persons employed by the Department of Financial Institutions designated by the Commissioner of Financial Institutions, provided that the primary duty of these persons shall be the enforcement of, and investigations relating to, the provisions of law administered by the Commissioner of Financial Institutions.

(2) Persons employed by the Department of Real Estate designated by the Real Estate Commissioner, provided that the primary duty of these persons shall be the enforcement of the laws

set forth in Part 1 (commencing with Section 10000) and Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code. The Real Estate Commissioner may designate persons under this section, who at the time of their designation, are assigned to the Special Investigations Unit, internally known as the Crisis Response Team.

(3) Persons employed by the State Lands Commission designated by the executive officer, provided that the primary duty of these persons shall be the enforcement of the law relating to the duties of the State Lands Commission.

(4) Persons employed as investigators of the Investigations Bureau of the Department of Insurance, who are designated by the Chief of the Investigations Bureau, provided that the primary duty of these persons shall be the enforcement of the Insurance Code and other laws relating to persons and businesses, licensed and unlicensed by the Department of Insurance, who are engaged in the business of insurance.

(b) Notwithstanding any other provision of law, persons designated pursuant to this section shall not carry firearms.

(c) Persons designated pursuant to this section shall be included as "peace officers of the state" under paragraph (2) of subdivision (c) of Section 11105 for the purpose of receiving state summary criminal history information and shall be furnished that information on the same basis as peace officers of the state designated in paragraph (2) of subdivision (c) of Section 11105.

SEC. 1.3. Section 830.11 of the Penal Code is amended to read:

830.11. (a) The following persons are not peace officers but may exercise the powers of arrest of a peace officer as specified in Section 836 and the power to serve warrants as specified in Sections 1523 and 1530 during the course and within the scope of their employment, if they receive a course in the exercise of those powers pursuant to Section 832. The authority and powers of the persons designated under this section shall extend to any place in the state:

(1) Persons employed by the Department of Financial Institutions designated by the Commissioner of Financial Institutions, provided that the primary duty of these persons shall be the enforcement of, and investigations relating to, the provisions of law administered by the Commissioner of Financial Institutions.

(2) Persons employed by the Department of Real Estate designated by the Real Estate Commissioner, provided that the primary duty of these persons shall be the enforcement of the laws set forth in Part 1 (commencing with Section 10000) and Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code. The Real Estate Commissioner may designate persons under this section, who at the time of their designation, are assigned to the Special Investigations Unit, internally known as the Crisis Response Team.

(3) Persons employed by the State Lands Commission designated by the executive officer, provided that the primary duty of these persons shall be the enforcement of the law relating to the duties of the State Lands Commission.

(4) Persons employed as investigators of the Investigations Bureau of the Department of Insurance, who are designated by the Chief of the Investigations Bureau, provided that the primary duty of these persons shall be the enforcement of the Insurance Code and other laws relating to persons and businesses, licensed and unlicensed by the Department of Insurance, who are engaged in the business of insurance.

(5) Persons employed by the Safety and Enforcement Division of the Public Utilities Commission who are designated by the Director of the Safety and Enforcement Division, and approved by the commission, provided that the primary duty of these persons shall be the enforcement of the law as that duty is set forth in Section 308.5 of the Public Utilities Code.

(b) Notwithstanding any other provision of law, persons designated pursuant to this section shall not carry firearms.

(c) Persons designated pursuant to this section shall be included as "peace officers of the state" under paragraph (2) of subdivision (c) of Section 11105 for the purpose of receiving state summary criminal history information and shall be furnished that information on the same basis as peace officers of the state designated in paragraph (2) of subdivision (c) of Section 11105.

SEC. 2. (a) Section 1.1 of this bill incorporates amendments to Section 830.11 of the Penal Code proposed by both this bill and AB 2713. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 830.11 of the Penal Code, (3) AB 3351 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2713, in which case Sections 1, 1.2, and 1.3 of this bill shall not become operative.

(b) Section 1.2 of this bill incorporates amendments to Section 830.11 of the Penal Code proposed by both this bill and AB 3351. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, but this bill becomes operative first, (2) each bill amends Section 830.11 of the Penal Code, (3) AB 2713 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 3351, in which case Section 830.11 of the Penal Code as amended by Section 1 of this bill shall remain operative only until the operative date of AB 3351, at which time Section 1.2 of this bill shall become operative, and Sections 1.1 and 1.3 of this bill shall not become operative.

(c) Section 1.3 of this bill incorporates amendments to Section 830.11 of the Penal Code proposed by this bill, AB 2713, and AB 3351. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1997, but this bill and AB

2713 become operative first, (2) all three bills amend Section 830.11 of the Penal Code, and (3) this bill is enacted after AB 2713 and AB 3351, in which case Section 830.11 of the Penal Code as amended by Section 1.1 of this bill shall remain operative only until the operative date of AB 3351, at which time Section 1.3 of this bill shall become operative, and Sections 1 and 1.2 of this bill shall not become operative.

CHAPTER 1067

An act to amend Section 44262 of, and to add Sections 8208, 8244, 8360, 8360.1, 8363, and 44254 to, the Education Code, relating to teaching credentials.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 8208 of the Education Code, as amended by Chapter 204 of the Statutes of 1996, is amended to read:

8208. As used in this chapter:

(a) "Alternative payments" includes payments that are made by one child care agency to another agency or child care provider for the provision of child care and development services, and payments that are made by an agency to a parent for the parent's purchase of child care and development services.

(b) "Applicant or contracting agency" means a school district, community college district, college or university, county superintendent of schools, county, city, public agency, private non-tax-exempt agency, private tax-exempt agency, or other entity that is authorized to establish, maintain, or operate services pursuant to this chapter. Private agencies and parent cooperatives, duly licensed by law, shall receive the same consideration as any other authorized entity with no loss of parental decisionmaking prerogatives as consistent with the provisions of this chapter.

(c) "Assigned reimbursement rate" is that rate established by the contract with the agency and is derived by dividing the total dollar amount of the contract by the minimum child day of average daily enrollment level of service required.

(d) "Attendance" means the number of children present at a child care and development facility. "Attendance," for the purposes of reimbursement, includes excused absences by children because of illness, quarantine, illness or quarantine of their parent, family emergency, or to spend time with a parent or other relative as required by a court of law or that is clearly in the best interest of the child.

(e) "Capital outlay" means the amount paid for the renovation and repair of child care and development facilities to comply with state and local health and safety standards, and the amount paid for the state purchase of relocatable child care and development facilities for lease to qualifying contracting agencies.

(f) "Caregiver" means a person who provides direct care, supervision, and guidance to children in a child care and development facility.

(g) "Child care and development facility" means any residence or building or part thereof in which child care and development services are provided.

(h) "Child care and development programs" means those programs that offer a full range of services for children from infancy to 14 years of age, for any part of a day, by a public or private agency, in centers and family child care homes. These programs include, but are not limited to, all of the following:

(1) Campus child care and development.
(2) General child care and development.
(3) Intergenerational child care and development.
(4) Migrant child care and development.
(5) Schoolage parenting and infant development.
(6) State preschool.
(7) Resource and referral.
(8) Severely handicapped.
(9) Family day care.
(10) Alternative payment.
(11) Child abuse protection and prevention services.
(12) Schoolage community child care.

(i) "Child care and development services" means those services designed to meet a wide variety of needs of children and their families, while their parents or guardians are working, in training, seeking employment, incapacitated, or in need of respite. These services include direct care and supervision, instructional activities, resource and referral programs, and alternative payment arrangements.

(j) "Children at risk of abuse, neglect, or exploitation" means children who are so identified in a written referral from a legal, medical, or social service agency, or emergency shelter.

(k) "Children with exceptional needs" means children who have been determined to be eligible for special education and related services by an individualized education program team according to the special education requirements contained in Part 30 (commencing with Section 56000), and meeting eligibility criteria described in Section 56026 and Sections 56333 to 56338, inclusive, and Sections 3030 and 3031 of Title 5 of the California Code of Regulations. These children have an active individualized education program, and are receiving appropriate special education and services, unless they are under three years of age and permissive special education

programs are available. These children may be mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multihandicapped, or children with specific learning disabilities, who require the special attention of adults in a child care setting.

(*l*) "Children with special needs" includes infants and toddlers under the age of three years; limited-English-speaking-proficient children; children with exceptional needs; limited-English-proficient handicapped children; and children at risk of neglect, abuse, or exploitation.

(m) "Closedown costs" means reimbursements for all approved activities associated with the closing of operations at the end of each growing season for migrant child development programs only.

(n) "Cost" includes, but is not limited to, expenditures that are related to the operation of child development programs. "Cost" may include a reasonable amount for state and local contributions to employee benefits, including approved retirement programs, agency administration, and any other reasonable program operational costs. "Reasonable and necessary costs" are costs that, in nature and amount, do not exceed what an ordinary prudent person would incur in the conduct of a competitive business.

(o) "Elementary school," as contained in Section 425 of Title 20 of the United States Code (the National Defense Education Act of 1958, Public Law 85-864, as amended), includes early childhood education programs and all child development programs, for the purpose of the cancellation provisions of loans to students in institutions of higher learning.

(p) "Health services" includes, but is not limited to, all of the following:

(1) Referral, whenever possible, to appropriate health care providers able to provide continuity of medical care.

(2) Health screening and health treatment, including a full range of immunization recorded on the appropriate state immunization form to the extent provided by the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code) and the Child Health and Disability Prevention Program (Article 3.4 (commencing with Section 320) of Chapter 2 of Part 1 of Division 1 of the Health and Safety Code), but only to the extent that ongoing care cannot be obtained utilizing community resources.

(3) Health education and training for children, parents, staff, and providers.

(4) Followup treatment through referral to appropriate health care agencies or individual health care professionals.

(q) "Higher educational institutions" means the Regents of the University of California, the Trustees of the California State University, the Board of Governors of the California Community

Colleges, and the governing bodies of any accredited private nonprofit institution of postsecondary education.

(r) "Intergenerational staff" means persons of various generations.

(s) "Limited-English-speaking-proficient and non-English-speaking-proficient children" means children who are unable to benefit fully from an English-only child care and development program as a result of either of the following:

(1) Having used a language other than English when they first began to speak.

(2) Having a language other than English predominantly or exclusively spoken at home.

(t) "Parent" means any person living with a child who has responsibility for the care and welfare of the child.

(u) "Program director" means a person who, pursuant to Sections 8244 and 8360.1, is qualified to serve as a program director.

(v) "Proprietary child care agency" means an organization or facility providing child care, which is operated for profit.

(w) "Resource and referral programs" means programs that provide information to parents, including referrals and coordination of community resources for parents and public or private providers of care. Services frequently include, but are not limited to: technical assistance for providers, toy-lending libraries, equipment-lending libraries, toy- and equipment-lending libraries, staff development programs, health and nutrition education, and referrals to social services.

(x) "Severely handicapped children" are children who require instruction and training in programs serving pupils with the following profound disabilities: autism, blindness, deafness, severe orthopedic impairments, serious emotional disturbance, or severe mental retardation. These children, ages birth to 21 years, inclusive, may be assessed by public school special education staff, regional center staff, or another appropriately licensed clinical professional.

(y) "Short-term respite child care" means child care service to assist families whose children have been identified through written referral from a legal, medical, or social service agency, or emergency shelter as being neglected, abused, exploited, or homeless, or a at risk of being neglected, abused, exploited, or homeless. Child care is provided for less than 24 hours per day in child care centers, treatment centers for abusive parents, family child care homes, or in the child's own home.

(z) (1) "Site supervisor" means a person who, regardless of his or her title, has operational program responsibility for a child care and development program at a single site. A site supervisor shall hold a permit issued by the Commission on Teacher Credentialing that authorizes supervision of a child care and development program operating in a single site. The Superintendent of Public Instruction may waive the requirements of this subdivision if the superintendent

determines that the existence of compelling need is appropriately documented.

(2) In respect to state preschool programs, a site supervisor may qualify under any of the provisions in this subdivision, or may qualify by holding an administrative credential or an administrative services credential. A person who meets the qualifications of a site supervisor under both Section 8244 and subdivision (e) of Section 8360.1 is also qualified under this subdivision.

(aa) "Standard reimbursement rate" means that rate established by the Superintendent of Public Instruction pursuant to Section 8265.

(bb) "Startup costs" means those expenses an agency incurs in the process of opening a new or additional facility prior to the full enrollment of children.

(cc) "State preschool services" means part-day educational programs for low-income or otherwise disadvantaged prekindergarten-age children.

(dd) "Support services" means those services which, when combined with child care and development services, help promote the healthy physical, mental, social, and emotional growth of children. Support services include, but are not limited to: protective services, parent training, provider and staff training, transportation, parent and child counseling, child development resource and referral services, and child placement counseling.

(ee) "Teacher" means a person with the appropriate permit issued by the Commission on Teacher Credentialing who provides program supervision and instruction which includes supervision of a number of aides, volunteers, and groups of children.

(ff) "Workday" means the time that the parent requires temporary care for a child for any of the following reasons:

(1) To undertake training in preparation for a job.

(2) To undertake or retain a job.

(3) To undertake other activities that are essential to maintaining or improving the social and economic function of the family, are beneficial to the community, or are required because of health problems in the family.

SEC. 2. Section 8244 of the Education Code is amended to read:

8244. (a) (1) Any entity operating child care and development programs funded pursuant to this chapter that provide direct services to children at two or more sites, including through more than one contract or subcontract funded pursuant to this chapter, shall employ a program director.

(2) Programs providing direct services to children, for the purposes of this section, are general child care and development programs pursuant to Article 8 (commencing with Section 8240), migrant child care and development programs pursuant to Article 6 (commencing with Section 8230), campus child care and development programs pursuant to Article 4 (commencing with Section 8225), state preschool programs pursuant to Article 7

(commencing with Section 8235), child care and development services for children with special needs programs pursuant to Article 9 (commencing with Section 8250), infant care and development services programs pursuant to Article 17 (commencing with Section 8390), and any of these programs operated through family child care homes.

(b) (1) For purposes of this section, the following definitions shall apply:

(A) "Administrative responsibility" means awareness of the financial and business circumstances of the program, and, in appropriate cases, supervision of administrative and support personnel and the knowledge and authority to direct or modify administrative practices and procedures to ensure compliance to administrative and financial standards imposed by law.

(B) "Program director" means a person who, regardless of his or her title, has programmatic and administrative responsibility for a child care and development program that provides direct services to children at two or more sites.

(C) "Programmatic responsibility" means overall supervision of curriculum and instructional staff, including instructional aides, and the knowledge and authority to direct or modify program practices and procedures to ensure compliance to applicable quality and health and safety standards imposed by law.

(2) Administrative and programmatic responsibility also includes the responsibility to act as the representative for the child development program to the State Department of Education. With respect to programs operated through family child care homes, administrative and programmatic responsibility includes ensuring that quality services are provided in the family child care homes.

(c) The program director also may serve as the site supervisor at one of the sites, provided that he or she both fulfills the duties of a "day care center director," as set forth in Section 101315 of Title 22 of the California Code of Regulations, and meets the qualifications for a site supervisor as set forth in subdivision (aa) of Section 8208.

(d) The Superintendent of Public Instruction may waive the qualifications for program director described in Sections 8360.1 and 8360.3 upon a finding of one of the following circumstances:

(1) The applicant is making satisfactory progress toward securing a permit issued by the Commission on Teacher Credentialing authorizing supervision of a child care and development program operating in two or more sites or fulfilling the qualifications for program directors in severely handicapped programs, as specified in Section 8360.3.

(2) The place of employment is so remote from institutions offering the necessary coursework as to make continuing education impracticable and the contractor has made a diligent search but has been unable to hire a more qualified applicant.

(e) The Superintendent of Public Instruction, upon good cause, may by rule identify and apply grounds in addition to those specified in subdivision (d) for granting a waiver of the qualifications for program director.

SEC. 3. Section 8360 of the Education Code is amended to read:

8360. (a) (1) Child development programs shall include a career ladder program for classroom staff. Persons who are 18 years of age and older may be employed as aides and may be eligible for salary increases upon the completion of additional semester units in early childhood education or child development. The governing board of each contracting agency shall be encouraged to provide teachers and aides with salary increases for the successful completion of early childhood education or child development courses in six semester unit increments.

(2) Persons employed as teachers shall possess a permit issued by the Commission on Teacher Credentialing authorizing service in the care, development, and instruction of children in a child care and development program.

(b) Any person who meets the following criteria is eligible to serve in an instructional capacity in a child care and development program:

(1) Possesses a current credential issued by the Commission on Teacher Credentialing authorizing teaching service in elementary school or a single subject credential in home economics.

(2) Twelve units in early childhood education or child development, or both, or two years' experience in early childhood education or a child care and development program.

SEC. 4. Section 8360.1 of the Education Code is amended to read:

8360.1. Except as waived under Section 8242 and except as stated in Section 18203 of Title 5 of the California Code of Regulations regarding program directors in schoolage community child care services programs, any entity operating child care and development programs providing direct services to children, as defined in Section 8244, at two or more sites, shall employ a program director who possesses one of the following:

(a) A permit issued by the Commission on Teacher Credentialing authorizing supervision of a child care and development program operating in multiple sites.

(b) Any person who meets the following criteria is eligible to supervise a child care and development program operating in multiple sites and serve in an instructional capacity in a child care and development program:

(1) Possesses a current credential issued by the Commission on Teacher Credentialing authorizing teaching service in elementary school or a single subject credential in home economics.

(2) Six units in administration and supervision of early childhood education or child development, or both. The requirement set forth in this paragraph does not apply to any person who was employed as

a program director prior to January 1, 1993, in a child care and development program receiving funding under this chapter.

(3) Twelve units in early childhood education or child development, or both, or at least two years' experience in early childhood education or a child care and development program.

(c) A waiver issued by the Superintendent of Public Instruction pursuant to Section 8244.

This section shall become operative on January 1, 1997.

SEC. 5. Section 8363 of the Education Code is amended to read:

8363. The Commission on Teacher Credentialing shall by rule or regulation establish the requirements for the following:

(a) The issuance and the renewal of permits authorizing service in the care, development, and instruction of children in child care and development programs, as well as the issuance of emergency permits for this purpose.

(b) The issuance and renewal of permits authorizing supervision of a child care and development program, as well as the issuance of emergency permits for this purpose.

(c) The periods of duration of the permits set forth in this section.

SEC. 6. Section 44254 is added to the Education Code, to read:

44254. (a) The commission shall establish standards for a restricted reading certificate to enable holders of a teaching credential to provide the early development of reading and language arts skills and the early correction of a pupil's reading difficulties.

(b) (1) The standards and qualifications for the restricted reading certificate shall include demonstrated knowledge of both of the following:

(A) Current and confirmed research in teaching basic reading skills that train the candidate for the restricted reading certificate in ongoing, diagnostic techniques that inform teaching and assessment.

(B) Teaching techniques for basic reading skills that include direct instruction in phonemic awareness, systematic, explicit phonics, and comprehension skills.

(2) The candidate shall also demonstrate knowledge of early intervention techniques, and shall receive guided practice with all of the aforementioned skills within a clinical setting. For the purposes of this section, "direct, systematic, explicit phonics" means spelling patterns, direct instruction in the relationships among sounds and symbols, and practice in connected, decodable text.

(c) The commission shall be authorized to issue a restricted reading certificate to holders of a teaching credential who meet the commission's standards.

SEC. 7. Section 44262 of the Education Code is amended to read:

44262. Upon the recommendation of the governing board of a school district, the commission may issue an eminence credential to any person who has achieved eminence in a field of endeavor taught or service practiced in the public schools of California. This credential shall authorize teaching or the performance of services in

the public schools in the subject or subject area or service and at the level or levels approved by the commission as designated on the credential.

Each credential so issued shall be issued initially for a two-year period and may be renewed for a three-year period by the commission upon the request of the governing board of the school district. Upon completion of the three-year renewal period, the holder of an eminence credential shall be eligible upon application for a professional clear teaching credential.

CHAPTER 1068

An act to add Sections 44254 and 53023 to the Education Code, relating to education.

[Approved by Governor September 28, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 44254 is added to the Education Code, to read:

44254. (a) The commission shall establish standards for a restricted reading certificate to enable holders of a teaching credential to provide the early and continuing development of reading and language arts skills and the earliest possible correction of a pupil's reading difficulties.

(b) The standards and qualifications for the restricted reading certificate shall include, but not be limited to, demonstrated knowledge of the following:

(A) Current and confirmed research in the teaching of basic reading skills, including research in ongoing, diagnostic techniques that inform teaching and assessment.

(B) Techniques for teaching basic reading skills that include direct instruction in phonemic awareness, direct systematic, explicit phonics, and comprehension skills.

(C) Early intervention techniques.

(c) A candidate for a restricted reading certificate shall receive, within a clinical setting, guided practice in all of the skills set forth in subdivision (b).

(d) The commission shall be authorized to issue a restricted reading certificate to holders of a teaching credential who meet the commission's standards.

(e) For purposes of this section, "direct systematic, explicit phonics" means spelling patterns, the direct instruction of sound and symbol relationships, and practice in reading connected, decodable text.

SEC. 2. Section 53023 is added to the Education Code, to read:

53023. For the 1996–97 fiscal year and each fiscal year thereafter, as a condition of receiving funding pursuant to the Categorical Program Funding Restructuring Act of 1996, as enacted by Assembly Bill No. 2769 of the 1995-96 Regular Session, a school district shall maintain the same level of expenditures on reading specialists that it expended in the 1995-96 fiscal year, unless the governing board of the school district, at a public hearing, finds that the district has redirected the funds to a higher direct instruction or classroom priority or a more cost-effective and research based tutorial reading strategy will be employed to assist poor readers.

SEC. 3. Section 2 of this act shall be operative only if Assembly Bill No. 2769 of the 1995–96 Regular Session is enacted and adds the Categorical Program Funding Restructuring Act of 1996 to the Education Code.

CHAPTER 1069

An act to add Chapter 2.65 (commencing with Section 7286.25) to Part 1.7 of Division 2 of the Revenue and Taxation Code, relating to local taxation.

[Approved by Governor September 29, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Chapter 2.65 (commencing with Section 7286.25) is added to Part 1.7 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 2.65. AVALON TRANSACTIONS AND USE TAX

7286.25. (a) The City Council of Avalon may levy a transactions and use tax at a rate of 0.5 percent, if the ordinance or resolution proposing that tax is approved by a majority vote of all members of the city council and the tax is approved by a two-thirds vote of the qualified voters of the city voting in an election on the issue pursuant to Section 53722 of the Government Code. The transactions and use tax shall conform to Part 1.6 (commencing with Section 7251).

(b) The transactions and use tax imposed pursuant to this chapter shall be deemed a special tax pursuant to Article 3.7 (commencing with Section 53720) of Chapter 4 of Division 2 of Title 5 of the Government Code.

(c) Notwithstanding any provision of this section or any other provision of law, no tax authorized under this section shall be submitted to the voters unless and until every tax that currently is

imposed by the city that is seeking authority to impose a new tax pursuant to this section and that was not approved by the voters in a manner consistent with the holding of the California Supreme Court in the case of Santa Clara County Local Transportation Authority v. Guardino (1995), 11 Cal. 4th 220, and in accordance with the requirements of Article 3.7 (commencing with Section 53720) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code, has been placed before the voters for continued approval or rescission.

7286.26. The net proceeds of the tax imposed by Section 7286.25 shall be used exclusively for the Avalon Municipal Hospital and Clinic.

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the uniquely difficult fiscal pressures being experienced by the City of Avalon in providing essential medical and hospital services.

CHAPTER 1070

An act to amend and supplement the Budget Act of 1996 by amending Item 9210-103-0001 of, and adding Item 9210-490 to, Section 2.00 thereof, relating to local government finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Item 9210-103-0001 of Section 2.00 of the Budget Act of 1996 is amended to read:

9210–103–0001—For local assistance, Local Government Financing. For assistance to redevelopment agencies, to be allocated by the State Controller 5,000,000

Provisions:

1. The appropriation made by this item shall be in lieu of any appropriation required pursuant to Chapter 1.5 (commencing with Section 16110) of Part 1 of Division 4 of Title 2 of the Government Code.

2. The Controller shall allocate funds appropriated in this item to redevelopment agencies that have pledged, pursuant to bond instruments and supporting documents, special supplemental subventions as security for payment of the principal and interest on bonds, and have demonstrated that gross tax increment revenues allocated to them in the 1995–96 fiscal year (as reported for inclusion in the Controller's "Annual Report of Financial Transactions Concerning Community Redevelopment Agencies of California, Fiscal Year 1995–96"), less housing set−aside amounts not available for debt service, and less any reserve requirement deficiency existing as of December 31, 1996, would be insufficient to cover their maximum annual debt service requirements on bonds to which special supplemental subventions have been pledged. The amount allocated to any redevelopment agency shall not exceed the lesser of: (a) the amount that the redevelopment agency would otherwise be entitled to receive pursuant to paragraph (3) of subdivision (c) of Section 16111 of the Government Code, or (b) the amount required by the redevelopment agency to cover its maximum annual debt service requirements on bonds to which special supplemental subventions have been pledged, plus any reserve requirement deficiency existing as of December 31, 1996, less the amount of gross tax increment revenues allocated to it in the 1995–96 fiscal year, less housing set−aside amounts not available for debt service.
3. If the allocation required pursuant to Provision 2 would exceed the amount of the appropriation in this item, the Controller shall prorate the allocation to those redevelopment agencies that meet the requirements of Provision 2.
4. Notwithstanding Section 2.00, the Controller shall allocate 50 percent of the appropriation in this item on or before December 31, 1996, and 50 percent of the appropriation in this item on July 31, 1997. Expenditure of the amount to be allocated on July 31, 1997, shall

be accounted by the Controller as an expenditure of the 1997–98 fiscal year.

5. The Controller shall allocate any funds remaining following the allocation required pursuant to Provision 2 to those redevelopment agencies that met the requirements of Provision 2 of Item 9210−103−001 of Section 2.00 of the Budget Act of 1994 (Chapter 139, Statutes of 1994), in an amount sufficient to eliminate any then remaining shortfall in payment of eligible claims from the 1994–95 fiscal year.
6. If the allocation required by Provision 5 would exceed the amount of the appropriation remaining following the allocation required pursuant to Provision 2, the Controller shall prorate the allocation required pursuant to Provision 5.
7. Any allocation required pursuant to Provision 5 shall be made by the Controller on or before September 30, 1997.

SEC. 2. Item 9210-490 is added to Section 2.00 of the Budget Act of 1996, to read:

9210–490—Reappropriation, Local Government Financing. Notwithstanding any other provision of law, any unencumbered balance of the appropriation made by Item 9210–103–001 of Section 2.00 of the Budget Act of 1995 (Chapter 303, Statutes of 1995) subsequent to July 31, 1996, for allocations as described in Provision 4 of that item, is hereby reappropriated for allocation by the Controller to those redevelopment agencies that met the requirements of Provision 2 of Item 9210–103–001 of Section 2.00 of the Budget Act of 1994 (Chapter 139, Statutes of 1994), and received prorated allocations, in an amount sufficient to eliminate any shortfall in the payment of eligible claims for the 1994–95 fiscal year. If the allocations required by this item would exceed the amount of the reappropriation, the Controller shall prorate the allocations required by this item. The allocations required by this item shall be made by the Controller on or before September 30, 1996.

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

In order to provide timely and essential fiscal relief to redevelopment agencies that have pledged, pursuant to bond instruments and supporting documents, special supplemental subventions as security for payment of the principal and interest on the bonds, and to safeguard the credit rating of those redevelopment agencies, it is necessary that this act take effect immediately.

CHAPTER 1071

An act to amend Sections 17850, 17882, 17883, and 17899.3 of, and to add and repeal Section 17899.4 of, the Education Code, relating to school facilities, and making an appropriation therefor.

[Approved by Governor September 29, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 17850 of the Education Code is amended to read:

17850. (a) Upon the approval by the governing board of the school district to proceed with the issuance of certificates of participation revenue bonds or to enter into any agreement for financing school construction pursuant to Chapter 28 (commencing with Section 17870), the school district shall notify the county superintendent of schools and the county auditor. The superintendent of the school district shall provide the repayment schedules for that debt obligation, and evidence of the ability of the school district to repay that obligation, to the county auditor, the county superintendent, the governing board, and the public. Within 15 days of the receipt of the information, the county superintendent of schools and the county auditor may comment publicly to the governing board of the school district regarding the capability of the school district to repay that debt obligation.

(b) Upon the approval by the county board of education to proceed with the issuance of certificates of participation or revenue bonds or to enter into any agreement for financing pursuant to Chapter 28 (commencing with Section 17870), the county superintendent of schools or superintendent of a school district for which the county board serves as governing board shall notify the Superintendent of Public Instruction. The county superintendent of schools or the superintendent of a school district for which the county board serves as the governing board shall provide the repayment schedules for that debt obligation and evidence of the ability of the county office of education or school district to repay that obligation, to the Superintendent of Public Instruction, the governing board, and the public. Within 15 days of the receipt of the information the Superintendent of Public Instruction may comment publicly to the county board of education regarding the capability of the county office of education or school district to repay that debt obligation.

SEC. 1.5. Section 17850 of the Education Code is amended to read:

17850. (a) Upon the approval by the governing board of the school district to proceed with the issuance of certificates of participation revenue bonds or to enter into any agreement for financing school construction pursuant to Chapter 28 (commencing with Section 17870), the school district shall notify the county superintendent of schools. The superintendent of the school district shall provide the repayment schedules for that debt obligation, and evidence of the ability of the school district to repay that obligation, to the county superintendent, the governing board, and the public. Within 15 days of the receipt of the information, the county superintendent of schools may comment publicly to the governing

board of the school district regarding the capability of the school district to repay that debt obligation.

(b) Upon the approval by the county board of education to proceed with the issuance of certificates of participation or revenue bonds or to enter into any agreement for financing school construction pursuant to Chapter 28 (commencing with Section 17870), the county superintendent of schools or superintendent of a school district for which the county board serves as governing board shall notify the Superintendent of Public Instruction. The county superintendent of schools or the superintendent of a school district for which the county board serves as the governing board shall provide the repayment schedules for that debt obligation and evidence of the ability of the county office of education or school district to repay that obligation, to the Superintendent of Public Instruction, the governing board, and the public. Within 15 days of the receipt of the information the Superintendent of Public Instruction may comment publicly to the county board of education regarding the capability of the county office of education or school district to repay that debt obligation.

SEC. 2. Section 17882 of the Education Code is amended to read:

17882. (a) Except as otherwise provided in subdivision (b), all expenses incurred by the authority in implementing this chapter shall be payable solely from funds appropriated for purposes of this chapter, and the authority shall not incur liabilities in excess of the amount of those funds.

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

SEC. 3. Section 17883 of the Education Code is amended to read:

17883. (a) From time to time, the authority may, by resolution, issue its revenue bonds in order to provide funds for any of the purposes of this chapter. Bonds may be issued to finance any of the following:

(1) A single project or financing of working capital for a single participating district.

(2) A series of projects or financings of working capital for a single participating district.

(3) A single project or financing of working capital for several participating districts.

(4) Several projects or financing of working capital for several participating districts.

(5) A joint venture school facilities construction project undertaken pursuant to Article 5 (commencing with Section 17760) of Chapter 22.

(b) Except as otherwise expressly provided by the authority, all revenue bonds shall be payable from any available revenues or moneys of the authority not otherwise pledged, subject only to any agreements with holders of particular bonds or notes pledging any particular revenue or moneys. Notwithstanding that revenue bonds issued pursuant to this section may be payable from a special fund, the revenue bonds shall be, and shall be deemed to be for all purposes, negotiable instruments, subject only to the provisions of the revenue bonds for registration.

(c) The revenue bonds of the authority may be issued as serial bonds, term bonds, or the authority, in its discretion, may issue bonds of both types. The issuance shall be in accordance with the indenture, trust agreement, or resolution relating to the revenue bonds, which shall provide all of the following:

(1) The date or dates of the bonds.

(2) The date or dates upon which the bonds will mature, not to exceed 40 years from their respective dates.

(3) The interest rate or rates, or methods of determining the interest rate or rates, of the bonds.

(4) When the bonds are payable.

(5) The denominations of the bonds.

(6) The form of the bonds, which shall be either bearer or registered.

(7) The registration privileges of the bonds.

(8) The manner in which the bonds are to be executed.

(9) The place or places at which the bonds shall be payable in lawful money of the United States of America.

(10) The terms of redemption of the bonds.

(d) After giving due consideration to the recommendations of the participating district or districts, the revenue bonds of the authority shall be sold by the Treasurer at either a public or private sale at a price or prices, and upon the terms and conditions prescribed by the authority. The revenue bonds of the authority may be sold at, above, or below the par value of the bonds.

(e) Pending the preparation of the definitive bonds, the authority may issue interim receipts or certificates or temporary bonds which shall be exchanged for the definitive bonds.

(f) Any resolution authorizing the issuance of any bonds of the authority, or any issue of revenue bonds of the authority, may include any of the following provisions:

(1) Provisions pledging all or any part of the proceeds of the bonds or revenue of a project or loan.

(2) Provisions concerning the replacement of mutilated, destroyed, stolen, or lost bonds.

(3) Provisions specifying insurance to be maintained on the project and the authorized uses of the proceeds of the insurance.

(4) Covenants against the mortgaging or otherwise encumbering, selling, leasing, pledging, placing a charge upon, or otherwise disposing of the project prior to the payment of the bonds issued to finance the project.

(5) Provisions specifying the events of default, terms upon which the bonds may be declared due before maturity, and the terms upon which the declaration and its consequences may be waived.

(6) The rights, liabilities, powers, and duties arising upon the breach of any covenants, conditions, or obligations.

(7) Vesting of the right to enforce covenants in a trustee.

(8) The terms upon which all or any percentage of the bondholders may enforce covenants or duties.

(9) Procedures for amending the terms of the resolution, with or without the consent of the holders of a specified number of bonds.

(10) Provision for any other acts or things deemed necessary, convenient, or desirable by the authority to secure the bonds or improve their marketability.

(g) The validity of the authorization and issuance of any bond issue shall not be affected by proceedings for the acquisition, construction, or improvement of any project, or by contracts relating to those proceedings. Any resolution authorizing the issuance of any bonds of the authority may provide authorization for the bonds to bear a statement certifying that they are issued pursuant to this chapter. Bonds bearing such a statement shall be conclusively deemed valid and issued in conformity with this chapter. Reference on the face of the bonds to the resolution by its date of adoption shall incorporate the provisions of the resolution and of this chapter into the terms of the bonds.

(h) Members of the authority, or any person executing the revenue bonds of the authority, shall not incur personal liability on the bonds, nor shall these persons incur personal liability or accountability by reason of the issuance of the revenue bonds of the authority.

(i) The authority is authorized, out of any funds available for that purpose, to purchase revenue bonds of the authority. The authority may hold, pledge, cancel, or resell any bonds purchased under the authority of this subdivision, subject to, and in accordance with, agreements with bondholders.

(j) The financing or refinancing of projects or working capital may be provided pursuant to this chapter by means other than revenue bonds, at the discretion of the authority, including financing or refinancing through certificates of participation, or other interests, in bonds, loans, leases, installment sales, or other agreements of the participating district or districts. In this connection, the authority may do all things and execute and deliver all documents and instruments as may be necessary or desirable with regard to issuance

of the certificates of participation or other means of financing or refinancing.

(k) The authority may by resolution issue its revenue bonds in the form of commercial paper.

SEC. 4. Section 17899.3 of the Education Code is amended to read:

17899.3. (a) The total amount of revenue bonds which may be issued and outstanding at any time for purposes of this chapter, other than those revenue bonds under Section 17899.4, shall not exceed four hundred million dollars ($400,000,000).

(b) The total amount of revenue bonds that may be issued under this chapter each fiscal year, for purposes of Section 17899.4 only, shall not exceed four hundred million dollars ($400,000,000). Of that total amount of revenue bonds, not more than one hundred fifty million dollars ($150,000,000) in revenue bonds may be issued for the purposes of joint venture school facilities construction projects undertaken pursuant to Article 5 (commencing with Section 17760) of Chapter 22. The total amount that may be outstanding at any time under this chapter, for purposes of Section 17899.4 only, shall not exceed four billion dollars ($4,000,000,000).

(c) For purposes of subdivisions (a) and (b), bonds which meet any of the following conditions shall not be deemed to be outstanding:

(1) Bonds which have been refunded pursuant to Section 17888.

(2) Bonds for which money or securities in amounts necessary to pay or redeem the principal, interest, or any redemption premium on the bonds have been deposited in trust.

(3) Bonds which have been issued to provide working capital.

SEC. 5. Section 17899.4 is added to the Education Code, to read:

17899.4. (a) Notwithstanding any other law, any participating school district or county office of education, in connection with securing financing or refinancing of projects, except working capital, pursuant to this chapter may elect to guarantee or provide for payment of the bonds in accordance with the following conditions:

(1) If a participating school district or county office of education adopts a resolution by a majority vote of its board to participate under this section, it shall provide notice to the Controller of that election. The notice shall include a schedule for the repayment of principal and interest on the bonds and identify a trustee appointed by the participating school district or county office of education or the authority for purposes of this section. The notice shall be provided not later than the date of issuance of the bonds.

(2) If, for any reason, the school district or county office of education will not make the payment of principal and interest at the time the payment is required, the participating school district or county office of education shall notify the trustee of that fact and of the amount of the deficiency. The trustee shall immediately communicate that information to the Controller.

(3) Upon receipt of the notice required by paragraph (2), the Controller shall make an apportionment to the trustee in the amount of the deficiency for the purpose of making the required payment of principal or interest, or both. The Controller shall make that apportionment only from moneys in Section A of the State School Fund designated for apportionment to the district pursuant to Section 42238 or to the county office of education pursuant to Section 2558.

(4) As an alternative to the procedures set forth in paragraphs (2) and (3), the participating school district or county office of education may provide a transfer schedule in its notice to the Controller of its election to participate under this section. The transfer schedule shall set forth amounts to be transferred to the trustee and the date for the transfers. The Controller shall, subject to the limitation in the last sentence of paragraph (3), make apportionments to the trustee of those amounts on the specified date for the purpose of making those transfers.

(b) The amount apportioned for a school district or for a county office of education pursuant to this section shall be deemed to be an allocation to the district or the county office of education for purposes of subdivision (b) of Section 8 of Article XVI of the California Constitution. For purposes of computing revenue limits pursuant to Section 42238 for any school district or pursuant to Section 2558 for any county office of education, the revenue limit for any fiscal year in which funds are apportioned for the district or for the county office of education pursuant to this section shall include any amounts apportioned by the Controller pursuant to paragraphs (3) and (4) of subdivision (a).

(c) (1) School districts or county offices of education that elect to participate under this section shall apply to the authority. The authority shall consider each of the following priorities in making funds available:

(A) First priority shall be given to school districts or county offices of education that apply for funding for instructional classroom space.

(B) Second priority shall be given to school districts or county offices of education that apply for funding of modernization of instructional classroom space.

(C) Third priority shall be given to all other eligible costs, as defined in Section 17873.

(2) The authority shall prioritize applications at appropriate intervals.

(3) A school district electing to participate under this section that has applied for revenue bond moneys for the purposes of joint venture school facilities construction projects, pursuant to Article 5 (commencing with Section 17760) of Chapter 22, shall not be subject to the priorities set forth in paragraph (1) of this subdivision.

(d) This section shall not be construed to make the State of California liable for any payment of principal or interest on any bonds

or certificates of participation within the meaning of Section 1 of Article XVI of the California Constitution or otherwise, except as expressly provided in this section.

(e) A school district that has a qualified or negative certification pursuant to Section 42131, or a county office of education that has a qualified or negative certification pursuant to Section 1240, may not participate under this section.

(f) The authority shall report to the Legislature by January 1, 2001, on the number of school districts or county offices of education electing to participate under this section and on the financial stability of the participating school districts and county offices of education.

(g) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

SEC. 6. Section 1.5 of this bill incorporates amendments to Section 17850 of the Education Code proposed by both this bill and AB 3472. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 17850 of the Education Code, and (3) this bill is enacted after AB 3472, in which case Section 1 of this bill shall not become operative.

CHAPTER 1072

An act to amend Sections 15300, 15301, 15303, 15320, 15322, 15323, 15324, 15326, 15327, 15336, 15342, 15349, 15350, 15351, 15352, 15353, 15356, 15357, 15358, 15359, 15359.1, 15359.2, 15380, 15381, 15384, 15390, 15391, 15400, 15401, 15403, 15404, 15405, 15410, 15411, 15412, 15421, and 15425 of, and to add Section 15334.5 to, the Education Code, relating to school bonds.

[Approved by Governor September 29, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 15300 of the Education Code is amended to read:

15300. This chapter provides a method for the formation of school facilities improvement districts consisting of a portion of the territory within a school district or community college district and for the issuance of general obligation bonds by a school facilities improvement district.

SEC. 2. Section 15301 of the Education Code is amended to read:

15301. (a) Any school district or community college district that has a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, as set forth in Chapter 2.5

(commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code, that has as one of its purposes the construction of school facilities within a portion of the territory of the school district or community college district, may proceed under this chapter.

(b) The boundaries of any school facilities improvement district formed pursuant to this chapter shall include all of the portion of the territory within the boundaries of the school district or community college district that is not located within the boundaries of the community facilities district as described in subdivision (a).

(c) A school district or community college district may proceed under this chapter without meeting the requirements of subdivisions (a) and (b) if the governing board of the school district or community college district determines that it is necessary and in the best interest of the school district or community college district, respectively, to form a school facilities improvement district pursuant to this chapter to finance any or all of the improvements set forth in Section 15302. As a part of that determination, the governing board of the school district or community college district shall make a finding that the overall cost of financing the bonds issued pursuant to this chapter would be less than the overall cost of other school facilities financing options available to the school district or community college district, including, but not limited to, issuing bonds pursuant to the Mello-Roos Communities Facilities Act of 1982 (Ch. 2.5 (commencing with Sec. 53311), Pt. 1, Div. 2, Title 5, Gov. C.). The governing board of the school district or community college district proceeding under this subdivision shall define the boundaries of the school facilities improvement district to include any portion of territory within the jurisdiction of the school district or community college district, except that the boundaries may not include all or a portion of the territory of the community facilities district described in subdivision (a).

SEC. 3. Section 15303 of the Education Code is amended to read:

15303. This chapter shall not be operative in any county or counties until the board of supervisors of either the county in which the county superintendent of schools having jurisdiction over the school district or community college district in which the school facilities improvement district is located or, if a school facilities improvement district lies in two or more counties, the board of supervisors for those counties, by resolution adopted by a majority vote of the board of supervisors, makes this chapter applicable in the county or counties.

SEC. 4. Section 15320 of the Education Code is amended to read:

15320. Whenever the governing board of a school district or community college district meeting the requirements set forth in Section 15301 determines that a school facilities improvement district is necessary, the governing board shall adopt a resolution of intention that states all of the following:

(a) The intention of the governing board to form the proposed school facilities improvement district.

(b) The purpose for which the proposed school facilities improvement district is to be formed, consistent with the requirements set forth in Section 15302.

(c) The estimated cost of the school facilities improvement project.

(d) That any taxes levied for the purpose of financing the general obligation bonds issued to finance the project shall be levied exclusively upon the lands in the proposed school facilities improvement district.

(e) That a map showing the exterior boundaries of the proposed school facilities improvement district is on file with the governing board of the school district or community college district and is available for inspection by the public. The boundaries of the school facilities improvement district shall meet the requirements set forth in subdivision (b) of Section 15301.

(f) The time and place for a hearing by the governing board on the formation of the proposed school facilities improvement district.

(h) That any interested persons, including all persons owning lands in the school district or community college district, or in the proposed school facilities improvement district, may appear and be heard.

SEC. 5. Section 15322 of the Education Code is amended to read:

15322. The governing board of the school district or community college district shall hold the hearing provided for by resolution of intention at the time and place fixed by that resolution. Any interested person, including, but not limited to, all persons owning land in the school district, or in the proposed school facilities improvement district or community college district, may appear and be heard concerning any matters set forth in the resolution of intention.

SEC. 6. Section 15323 of the Education Code is amended to read:

15323. At the hearing, the governing board of the school district or community college district may adopt a resolution proposing modifications, consistent with Section 15302, of the purpose stated in the resolution of intention. A resolution proposing modification shall describe the proposed modifications, state the change, if any, in the estimated cost of carrying out the purpose, and shall fix a time and place for hearing by the governing board.

SEC. 7. Section 15324 of the Education Code is amended to read:

15324. The governing board of the school district or community college district shall publish the resolution proposing the modifications to the resolution of intention once in the same newspaper in which the resolution of intention was published at least 14 days prior to the date of hearing on the proposed modifications.

SEC. 8. Section 15326 of the Education Code is amended to read:

15326. At the conclusion of the hearing on the resolution of intention and of the hearing, if any, upon proposed modifications, the governing board may by resolution order the school facilities improvement district formed for the purpose and with the boundaries described in the resolution of intention, and, if relevant, the resolution proposing modifications. The resolution ordering the school facilities improvement district formed shall state the estimated cost of carrying out the purpose described in the resolution. The resolution shall also number and designate the school facilities improvement district substantially as "School Facilities Improvement District of the _____ School District" or "School Facilities Improvement District of the _____ Community College District."

SEC. 9. Section 15327 of the Education Code is amended to read:

15327. The governing board of the school district or community college district in which a school facilities improvement district has been formed shall have the same rights, powers, duties and responsibilities with respect to the formation and government of school facilities improvement district as the governing board has with respect to the school district or community college district.

SEC. 10. Section 15334.5 is added to the Education Code, to read:

15334.5. Notwithstanding any other provision of law, no bonded indebtedness may be incurred pursuant to this chapter in an amount that would cause the bonded indebtedness of the territory of the school district or community college district of which the school facilities improvement district is a part, to exceed the limitation of indebtedness specified in Sections 15102 and 15106. No bonded indebtedness may be incurred pursuant to this chapter in an amount that would cause the bonded indebtedness of the territory of the school facilities improvement district to exceed the limitation of indebtedness specified in Sections 15330 and 15332.

SEC. 11. Section 15336 of the Education Code is amended to read:

15336. Within 30 days after the end of each fiscal year, the governing board of the school district or community college district in which the school facilities improvement district is located shall submit a report containing the information to an election held pursuant to Article 4 (commencing with Section 15340), to the county superintendent of schools who has jurisdiction over the school district or community college district:

(a) The total amount of the bond issue, bonded indebtedness, or other indebtedness involved.

(b) The percentage of qualified electors who are residents of the school facilities improvement district who voted at the election.

(c) The results of the election, with the percentage of votes cast for and against the proposition involved.

SEC. 12. Section 15342 of the Education Code is amended to read:

15342. Any one or more of the purposes enumerated in Section 15302, except that of refunding any outstanding valid indebtedness

of the school facilities improvement district evidenced by bonds, may, by order of the governing board of the school district or community college district in which the school facilities improvement district is located, be united and voted upon in a single proposition.

SEC. 13. Section 15349 of the Education Code is amended to read:

15349. If it appears from the certificate of election results that two-thirds of the votes cast by the voters voting on the proposition of issuing bonds of the school facilities improvement district are in favor of issuing the bonds, the governing board of the school district or community college district in which the school facilities improvement district is located shall cause an entry of that fact to be made upon its minutes. The governing board of the school district or community college district shall then certify to the board of supervisors of the county whose superintendent of schools has jurisdiction over the school district or community college district, all proceedings had in the premises. The county superintendent of schools shall send a copy of the certificate of election results to the board of supervisors of the county.

SEC. 14. Section 15350 of the Education Code is amended to read:

15350. Bonds of a school facilities improvement district shall be offered for sale by the board of supervisors of the county in which the county superintendent of schools has jurisdiction over the school district or community college district in which the school facilities improvement district is located as soon as possible, when appropriate, following receipt of a resolution duly adopted by the governing board of that school district or community college district. The resolution shall prescribe the total amount of bonds to be sold. The resolution may also prescribe the maximum acceptable interest rate, not to exceed 8 percent, and the time or times when the whole or any part of the principal of the bonds shall be payable, which shall not be more than 25 years from the date of the bonds.

SEC. 15. Section 15351 of the Education Code is amended to read:

15351. When authorized by the governing board of the school district or community college district in which the school facilities improvement district is located, bonds of the school facilities improvement district may be offered for sale as a group by the board of supervisors of the county in which the county superintendent of schools has jurisdiction over the school district or community college district in which the school facilities improvement district is located, at a time determined by the board of supervisors following receipt of a resolution duly adopted by the governing board of that school district or community college district. The resolution shall prescribe the total amount of bonds to be sold. The resolution may also prescribe the maximum acceptable interest rate, not to exceed 8 percent, and the time or times when the whole or any part of the principal of the bonds shall be payable, which shall not be more than 25 years from the date of the bonds. Bidders shall be required to bid

a lump-sum bid on all bonds as a group. If bids satisfactory to the governing board of each school district or community college district in which a school facilities improvement district is located are received, the bonds offered for sale shall be awarded to the bidder whose bid will result in the lowest net interest cost for the group or for the bonds of any district included within the group. Bonds shall be issued and sold in the name of each school facilities improvement district in the same manner as provided in this chapter.

SEC. 16. Section 15352 of the Education Code is amended to read:

15352. The bonds shall be issued in the name of the school facilities improvement district and shall be designated "Bonds of the School Facilities Improvement District of the _____ School District" or "Bonds of the School Facilities Improvement District of the _____ Community College District" and each bond and all interest coupons shall state that the tax for the payment thereof shall be limited to annual taxes to be levied upon and collected from the lands within the school facilities improvement district.

SEC. 17. Section 15353 of the Education Code is amended to read:

15353. The bonds shall be issued in the denomination or denominations as the board of supervisors of the county in which the county superintendent of schools has jurisdiction over the school district or community college district in which the school facilities improvement district is located may prescribe.

SEC. 18. Section 15356 of the Education Code is amended to read:

15356. (a) (1) The board of supervisors of the county in which the county superintendent of schools has jurisdiction over the school district or community college district in which the school facilities improvement district is located shall prescribe the form of the bonds by an order entered upon its minutes.

(2) The bonds shall be signed by the chairperson of the board of supervisors, or by any other member thereof as the board of supervisors shall, by resolution adopted by a four-fifths vote of all its members, authorize and designate for that purpose, and also signed by the treasurer of the county, and shall be countersigned by the clerk of the board of supervisors or by a deputy of either of the officers. Unless the board of supervisors otherwise provides, all the signatures and countersignatures may be printed, lithographed, engraved, or otherwise mechanically reproduced except that one of the signatures or countersignatures to the bonds shall be manually affixed. Any signature may be affixed in accordance with the provisions of the Uniform Facsimile Signatures of Public Officials Act, Chapter 6 (commencing with Section 5500) of Title 1 of the Government Code.

(3) All expenses incurred for the preparation, sale, and delivery of the school facilities improvement bonds, including but not limited to, fees of an independent financial consultant, the publication of the official notice of sale of the bonds, the preparation, printing, and

distribution of the official statement, the obtaining of a rating, the purchase of insurance insuring the prompt payment of interest and principal, the preparation of the certified copy of the transcript for the successful bidder, the printing of the bonds, and legal fees of independent bond counsel retained by the school facilities improvement district issuing the bonds are legal charges against the funds of the school facilities improvement district issuing the bonds and may be paid from the proceeds of sale of the bonds.

(b) Notwithstanding subdivision (a), the board of supervisors may, in its discretion, determine that all of the required signatures and countersignatures shall be by facsimiles, provided, however, that the bonds shall not be valid or become obligatory for any purpose until manually signed by an authenticating agent duly appointed by the board or its authorized designee.

SEC. 19. Section 15357 of the Education Code is amended to read:

15357. The board of supervisors shall establish within the county treasury a school facilities improvement fund for each school facilities improvement district the purpose of depositing the proceeds of the bonds issued pursuant to this chapter. The board of supervisors shall also establish within the county treasury a school facilities improvement bond interest and sinking fund for each school facilities improvement district.

SEC. 20. Section 15358 of the Education Code is amended to read:

15358. (a) The bonds shall be issued by the board of supervisors, payable out of the interest and sinking fund of the school facilities improvement district. The board of supervisors, in its discretion, and without further authorization from the governing board of the school district or community college district in which the school facilities improvement district is located, may sell the bonds at a negotiated sale or by competitive bidding. The bonds may be sold at a discount not to exceed 5 percent and at an interest rate not exceeding the maximum permitted by Section 15354. If the sale is by competitive bid, the board of supervisors shall comply with the provisions of Sections 15359 and 15359.1. The bonds shall be sold by the board of supervisors no later than the date designated by the governing board of the school district or community college district in which the school facilities improvement district is located as the final date for the sale of the bonds.

(b) The proceeds of the sale of the bonds, exclusive of any premium received, shall be deposited in the county treasury to the credit of the school facilities improvement fund of the school facilities improvement district. The proceeds deposited shall be drawn out as necessary to finance the purposes approved by the voters pursuant to this chapter. The bond proceeds withdrawn shall not be applied to any other purposes than those for which the bonds were issued. Any premium or accrued interest received from the sale of the bonds shall be deposited in the interest and sinking fund of the county treasury established for the school facilities improvement district.

SEC. 21. Section 15359 of the Education Code is amended to read:

15359. Before selling the bonds, or any part of them, the board of supervisors as appropriate, shall advertise for bids at least two weeks in some daily or weekly newspaper of general circulation published in the county whose county superintendent of schools has jurisdiction over the governing board of the school district or community college district in which the school facilities improvement district is located or if there is no newspaper published in the county, in a newspaper published in some other county in the state having a general circulation in the county.

SEC. 22. Section 15359.1 of the Education Code is amended to read:

15359.1. (a) If satisfactory bids are received, the bonds offered for sale shall be awarded to the highest responsible bidder or bidders, and the county clerk shall prepare and certify to all of the proceedings on file in his or her office relative to the issuance and sale of the bonds, which transcript of proceedings shall be delivered to the successful bidder or bidders without charge. If no bids are received, or if the board determines that the bids received exceed either the maximum acceptable interest rate prescribed by the governing board or the maximum rate prescribed by Section 15353, or that they are not satisfactory as to price or responsibility of the bidders, the board may reject all bids received, if any, and without further authorization from the governing board of the school district or community college district in which the school facilities improvement district is located, either readvertise or sell the bonds at private sale.

(b) For the purpose of determining whether or not a bid exceeds the maximum acceptable interest rate, the interest rate of that bid shall be deemed to be the interest rate resulting from the total net interest cost arrived at by computing the total amount of interest that the school facilities improvement district would be required to pay from the date of the bonds to the respective maturity dates thereof at the rate or rates specified in the bid and by deducting therefrom any premium bid.

SEC. 23. Section 15359.2 of the Education Code is amended to read:

15359.2. (a) The issuing school facilities improvement district, by action of the governing board of the school district or community college district in which the school facilities improvement district is located, may prepare, or have prepared, bond brochures to serve as a prospectus for bond buyers to assist in the satisfactory sale of the bonds, the expense of the brochures shall be payable out of the funds of the district. The brochures may be prepared only after the issuance of the bonds to be sold has been approved by the electors of the school facilities improvement district pursuant to Article 4 (commencing with Section 15340).

(b) The issuing school facilities improvement district by action of the governing board in which the school facilities improvement district is located may expend funds of the school facilities improvement district for the purposes of advertising the availability of the bonds for purchase in any publication or newspaper that in the opinion of that governing board will give notice to prospective bond buyers that the bonds are available for purchase by bond buyers.

SEC. 24. Section 15380 of the Education Code is amended to read:

15380. If any bonds authorized under this chapter have not been offered for sale for one year from the date of the election at which they were authorized or remain unsold for a period of six months after having been offered for sale in the manner prescribed by the board of supervisors, the governing board of the school district or community college district in which the school facilities improvement district is located and for which the bonds were authorized, may petition the board of supervisors that has jurisdiction of the issuance and sale of the bonds to cause the unsold bonds to be canceled.

SEC. 25. Section 15381 of the Education Code is amended to read:

15381. Upon receiving the petition, signed by a majority of the members of the governing board of the school district or community college district in which the school facilities improvement district is located, the board of supervisors shall fix a time for a hearing, which shall not be more than 30 days after receipt of the petition, and shall cause a notice stating the time and place of the hearing, and the object of the petition in general terms, to be published for 10 days prior to the hearing, in a newspaper published in the school facilities improvement district if there is one, and if there is no newspaper published in the school facilities improvement district, in a newspaper published at the county seat of the county.

SEC. 26. Section 15384 of the Education Code is amended to read:

15384. The governing board of a school district or community college district in which a school facilities improvement district is located may petition the board of supervisors to cancel the remaining authorization of that district to issue and sell bonds resulting from any particular school bond election after the sale of at least 90 percent of the bonds authorized at the election if the amount of the remaining authorization is not more than twenty-five thousand dollars ($25,000) and in the opinion of the governing board the sale of the remaining bonds would not be economically justified. Sections 15381 and 15382 shall be applicable and at or following the hearing therein provided for, the board of supervisors, if it determines that the public interest will be served thereby, may make and enter an order in the minutes of its proceedings that the remaining authorization be canceled. Upon the entry of the order, the vote by which the remaining authorization was created shall cease to be of any validity with respect to the remaining authorization.

SEC. 27. Section 15390 of the Education Code is amended to read:

15390. The governing board of a school district or community college district in which a school facilities improvement district is located may purchase in the open market bonds issued by the school facilities improvement district with available funds from the school facilities improvement fund.

SEC. 28. Section 15391 of the Education Code is amended to read:

15391. When any bonds issued by a school facilities improvement district have been purchased by the governing board of the school district or community college district in which the school facilities improvement district is located, the bonds shall be deemed canceled and of no further validity. The governing board of the school district or community college district in which the school facilities improvement district is located shall immediately, after purchasing the bonds, notify the board of supervisors of its action, describing the bonds purchased. At its first meeting thereafter, the board of supervisors shall note the purchase and cancellation of the bonds in the minutes of its proceedings.

SEC. 29. Section 15400 of the Education Code is amended to read:

15400. (a) The board of supervisors, by an order entered upon its minutes, shall fix the time when the whole or any part of the principal of the bonds shall be payable, which shall not be more than 25 years from the date of the bonds. If the governing board of the school district or community college district in which the school facilities improvement district is located has prescribed in its resolution the time or times when the whole or any part of the bonds shall be payable, the times and amounts shall be fixed by the order of the board of supervisors.

(b) Any bonds may be issued subject to call and redemption before maturity at the option of the governing board of the school district or community college district in which the school facilities improvement district exists. The governing board may include in its resolution a requirement that all or any part of the bonds shall be issued subject to call and redemption before maturity and the price or prices at which said bonds shall be redeemed. The board of supervisors, in its order fixing the form of the bonds and the maturities thereof, shall provide that the bonds be redeemable at the option of the governing board and at the price or prices fixed in the resolution. Bonds issued subject to call and redemption prior to maturity shall contain a recital to that effect, and no bond shall be subject to call or redemption prior to maturity unless it contains the recital. The board of supervisors in its order shall fix the method of giving notice of redemption to holders of bonds to be redeemed.

SEC. 30. Section 15401 of the Education Code is amended to read:

15401. The board of supervisors, at the direction of the governing board of the school district or community college district in which the school facilities improvement district is located, may divide the principal amount of bonds authorized at any election into two or more series and may fix different dates for the bonds of each series,

in which event the maximum maturity date of the bonds shall be calculated from the date of each series respectively. When the issuance of bonds shall have been authorized pursuant to two or more propositions submitted at the same or different elections, all or any part of the bonds not theretofore issued may be combined and issued and sold as one or more series.

SEC. 31. Section 15403 of the Education Code is amended to read:

15403. The principal and interest on the bonds shall be paid by the county treasurer of the county in which the superintendent of schools has jurisdiction of the school district or community college district in which the school facilities improvement district is located, at the place required by the terms of the bonds, upon presentation and surrender of warrants drawn by the county auditor in payment thereof, after he or she has canceled the bonds and coupons, or upon the receipt of the registered owner, if the bonds are registered, after a proper warrant has been drawn by the auditor, out of the fund provided for their payment.

SEC. 32. Section 15404 of the Education Code is amended to read:

15404. Upon the order of the auditor, any money remaining in the interest and sinking fund of any school facilities improvement district after the payment of all bonds and coupons payable from the fund, or any money in excess of an amount sufficient to pay all unpaid bonds and coupons payable from the fund, shall be transferred to the general fund of the governing board of the school district or community college district in which the school facilities improvement district is located .

SEC. 33. Section 15405 of the Education Code is amended to read:

15405. Any money paid into the county treasury of the county and credited to the interest and sinking fund of any school facilities improvement district remaining after the payment of all bonds and coupons payable from the fund, or which is in excess of an amount sufficient to pay all unpaid bonds and coupons payable from the fund, shall be transferred to the special reserve fund of the school district or community college district in which the school facilities improvement district is located and may be used only for the purpose specified in Section 42840.

SEC. 34. Section 15410 of the Education Code is amended to read:

15410. The board of supervisors of the county in which the county superintendent of schools has jurisdiction over a school district or community college district in which a school facilities improvement district is located shall annually at the time of making the levy of taxes for county purposes levy a tax for that year upon the property in the school facilities improvement district for the interest and redemption of all outstanding bonds of the district. The tax shall not be less than sufficient to pay the interest on the bonds as it becomes due and to provide a sinking fund for the payment of the principal on or before maturity and may include an allowance for an annual reserve, established for the purpose of avoiding fluctuating tax levies. The tax

shall be sufficient to provide funds for the payment of the interest on the bonds as it becomes due and also that part of the principal and interest as is to become due before the proceeds of a tax levied at the time for making the next general tax levy can be made available for the payment of the principal and interest.

SEC. 35. Section 15411 of the Education Code is amended to read:

15411. All taxes levied, when collected, shall be paid into the county treasury of the county whose superintendent of schools has jurisdiction over the school district or community college district in which the school facilities improvement district is located and on behalf of which the tax was levied. All collected tax revenues shall be used exclusively for the payment of the principal and interest of the bonds of the school facilities improvement district, including any sinking fund.

SEC. 36. Section 15412 of the Education Code is amended to read:

15412. The board of supervisors of the county whose superintendent of schools has jurisdiction over the school district or community college district in which the school facilities improvement district is located, shall annually at the time of making the levy of taxes for county purposes estimate the amount of money required to meet the payment of the principal and interest on bonds of the district authorized by the electors of the district and not sold, and that the governing board of the school district or community college district informs the board on their belief will be sold before the next tax levy, and the board of supervisors shall levy a tax sufficient to pay the principal and interest so estimated.

SEC. 37. Section 15421 of the Education Code is amended to read:

15421. (a) The tax shall be entered upon the assessment roll and collected in the same manner as other on real property.

(b) The tax when collected shall be paid into the county treasury of the county. The treasurer of any county, other than the one whose superintendent of schools has jurisdiction over the school district or community college district in which the school facilities improvement district is located, shall, upon order of the county auditor, pay the sum collected on account of the tax into the treasury of the county whose superintendent of schools has jurisdiction over the school district or community college district in which the community facilities district is located.

SEC. 38. Section 15425 of the Education Code is amended to read:

15425. Notwithstanding any other provision of this chapter, it is the intent of the Legislature that the rate of taxes levied annually upon the property in a school facilities improvement district formed pursuant to subdivision (a) of Section 15301 not be greater than the rate of the annual special tax levied upon parcels in the same school district or community college district that are part of a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, as set forth in Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government

Code. A determination by the governing board of a school district or community college district, made at the time bonds are sold pursuant to this chapter, that the rate of taxes to be levied annually upon the property in the school facilities improvement district, based upon tax rate estimates prepared pursuant to Section 9401 of the Elections Code, does not exceed the rate of the annual special tax levied upon parcels in the same school district or community college district that are part of a community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, shall be conclusive evidence of compliance with the intent of this section.

CHAPTER 1073

An act to amend Section 95.3 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1996. Filed with Secretary of State September 30, 1996.]

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

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

(a) Counties in California no longer receive ad valorem property tax revenues in an amount sufficient to adequately maintain the property tax administration system, and incentives designed to assist counties with the burdens of property tax administration have been diluted or eliminated.

(b) Recent economic difficulties in California have, in combination with other factors, given rise to a massive increase in the number of property tax assessment appeals filed throughout the state.

(c) As a result of limited resources and legal restrictions, counties are unable to adequately respond to the increased numbers of assessment appeals, to the great detriment of both the counties and taxpayers.

(d) It is the intent of the Legislature in enacting this act to specify that the equalization of local property tax assessments is an inseparable part of administering the property tax, the costs of which are required to be offset by financial assistance under state law.

SEC. 2. Section 95.3 of the Revenue and Taxation Code is amended to read:

95.3. (a) Notwithstanding any other provision of law, for the 1990–91 fiscal year and each fiscal year thereafter, the auditor shall divide the sum of the amounts calculated with respect to each jurisdiction, Educational Revenue Augmentation Fund (ERAF), or

community redevelopment agency pursuant to Sections 96.1 and 100, or their predecessor sections, and Section 33670 of the Health and Safety Code, by the countywide total of those calculated amounts. The resulting ratio shall be known as the "administrative cost apportionment factor" and shall be multiplied by the sum of the property tax administrative costs incurred in the immediately preceding fiscal year by the assessor, tax collector, county board of equalization and assessment appeals boards, and auditor to determine the fiscal year property tax administrative costs proportionately attributable to each jurisdiction, ERAF, or community redevelopment agency. For purposes of this paragraph, property tax administrative costs shall also include applicable administrative overhead costs allowed by the federal Office of Management and Budget Circular A-87 standards, but shall not include any amount reimbursed pursuant to Section 75.60 and former Section 98.6, or include any amount in excess of the amounts reimbursable pursuant to Section 75.60, unless a county meets the conditions of paragraph (2) of subdivision (b) of Section 75.60. However, no amount of funds appropriated to counties for purposes of property tax administration in Item 9100-102-001 of the Budget Act of 1994 or any subsequent Budget Act shall result in any deduction from those property tax administrative costs that are eligible for reimbursement pursuant to this subdivision.

(b) (1) Each proportionate share of property tax administrative costs determined pursuant to subdivision (a), except for those proportionate shares determined with respect to a school entity or ERAF, shall be deducted from the property tax revenue allocation of the relevant jurisdiction or community redevelopment agency, and shall be added to the property tax revenue allocation of the county. For purposes of applying this paragraph for the 1990–91 fiscal year, each proportionate share of property tax administrative costs shall be deducted from those amounts allocated to the relevant jurisdiction or community redevelopment agency after January 1, 1991.

(2) It is the intent of the Legislature that the portion of those shares of property tax administrative costs that are calculated by the auditor for each fiscal year pursuant to subdivision (a) for school entities and the county's ERAF, that is attributable to the county's costs in providing boards and hearing officers for the review of property tax assessment appeals, be calculated by local officials and reimbursed by the state in the time and manner specified by a future act of the Legislature that makes an appropriation for purposes of that reimbursement.

(c) Reductions made pursuant to this section to property tax revenue allocations shall be made without regard to Section 907 of the Government Code.

(d) Any additional amounts of property tax revenue allocated to the county pursuant to this section shall be used only to fund costs incurred by the county in assessing, equalizing, and collecting

property taxes, and in allocating property tax revenues, and shall constitute charges for those services, not exceeding the actual and reasonable costs incurred by the county in performing those services.

(e) It is the intent of the Legislature in enacting this section to recognize that since the adoption of Article XIII A of the California Constitution by the voters, county governments have borne an unfair and disproportionate part of the financial burden of assessing, collecting, and allocating property tax revenues for other jurisdictions and for redevelopment agencies. The Legislature finds and declares that this section is intended to fairly apportion the burden of collecting property tax revenues and is not a reallocation of property tax revenue shares or a transfer of any financial or program responsibility.

(f) Commencing with the 1992–93 fiscal year and each fiscal year thereafter, this section shall supersede and replace Section 95.2, as authority for a county to recover property tax administrative costs.

(g) This section shall apply to the entire 1993–94 fiscal year, regardless of the operative date of the act adding the predecessor to this section, and to each fiscal year thereafter.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

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

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide timely and essential fiscal and legal relief to counties with respect to property tax administration, it is necessary that this act take effect immediately.

CHAPTER 1074

An act to amend Sections 44010 and 44237 of, and to add Section 44020 to, the Education Code, relating to education.

[Approved by Governor September 29, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 44010 of the Education Code is amended to read:

44010. "Sex offense," as used in Sections 44020, 44237, 44346, 44425, 44436, 44836, 45123, and 45304, means any one or more of the offenses listed below:

(a) Any offense defined in Section 220, 261, 261.5, 262, 264.1, 266, 266j, 267, 285, 286, 288, 288a, 289, 311.3, 311.4, 313.1, 647b, 647.6, or former Section 647a, subdivision (a), (b), or (c) of Section 243.4, subdivisions (b), (c), and (d) of Section 311.2, or subdivision (a) or (d) of Section 647 of the Penal Code.

(b) Any offense defined in former subdivision (5) of former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined in former subdivision (2) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961, if the offense defined in those sections was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(c) Any offense defined in Section 314 of the Penal Code committed on or after September 15, 1961.

(d) Any offense defined in former subdivision (1) of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961 committed on or after September 7, 1955, and prior to September 15, 1961.

(e) Any offense involving lewd and lascivious conduct under Section 272 of the Penal Code committed on or after September 15, 1961.

(f) Any offense involving lewd and lascivious conduct under former Section 702 of the Welfare and Institutions Code repealed by Chapter 1616 of the Statutes of 1961, if that offense was committed prior to September 15, 1961, to the same extent that an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(g) Any offense defined in Section 286 or 288a of the Penal Code prior to the effective date of the amendment of either section enacted at the 1975–76 Regular Session of the Legislature committed prior to the effective date of the amendment.

(h) Any attempt to commit any of the above-mentioned offenses.

(i) Any offense committed or attempted in any other state which, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses.

(j) Any conviction for an offense resulting in the requirement to register as a sex offender pursuant to Section 290 of the Penal Code.

(k) Commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of

Part 2 of the Welfare and Institutions Code, as repealed by Chapter 928 of the Statutes of 1981.

SEC. 2. Section 44020 is added to the Education Code, to read:

44020. Every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall notify, in writing, the parents or guardians who reside with each pupil of that school whenever that school hires an employee who, in the course of his or her employment, will come in contact with minor pupils and who has been convicted of a sex offense, as defined in Section 44010. Notwithstanding any other provision of law, any person who conveys or receives information in good-faith conformity with this section is exempt from prosecution under Section 11142 or 11143 of the Penal Code for that conveying or receiving of information.

SEC. 3. Section 44237 of the Education Code is amended to read:

44237. (a) Commencing October 1, 1985, every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall require each new employee having contact with minor pupils and not possessing a valid California state teaching credential, or not currently licensed by another state agency that requires a criminal record summary, to submit on or before the first day of his or her employment, two sets of fingerprints to the Department of Justice for the purpose of obtaining a criminal record summary from the Department of Justice and the Federal Bureau of Investigation. This requirement is a condition of employment. It is the intent of the Legislature under this section to assist in the employment decision. This section shall not be construed, however, to prohibit the employment of any person based upon his or her criminal record.

(b) The Department of Justice shall furnish a criminal record summary to the employer designated by a new employee submitting fingerprints pursuant to subdivision (a). The criminal record summary shall contain only arrests resulting in a conviction and arrests pending final adjudication. The criminal record summary furnished to the employer shall be maintained by the employer in a secured file separate from personnel files, and shall be maintained in accordance with regulations for Criminal Offender Record Information Security as specified in Subchapter 7 (commencing with Section 700) of Chapter 1 of Title 11 of the California Administrative Code.

(c) The Department of Justice shall review the criminal record summary it obtains from the Federal Bureau of Investigation to ascertain whether or not a new employee has a conviction record or an arrest pending final adjudication for any sex offense, controlled substance offense, or crime of violence. The Department of Justice shall provide written notification to the private school employer only as to whether or not a new employee has any convictions or arrests pending final adjudication for any of those crimes, but shall not

provide information identifying any offense for which an employee was convicted or arrested.

(d) The employer may request subsequent arrest service from the Department of Justice as is provided under Section 11105.2 of the Penal Code.

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

(1) "Crime of violence" means a conviction for any of the offenses specified in Section 273a of, in Section 273d of, or in subdivision (c) of Section 667.5 of, the Penal Code, or a violation or attempted violation of Chapter 8 (commencing with Section 236) or Chapter 9 (commencing with Section 240) of Title 8 of Part 1 of the Penal Code.

An out-of-state conviction for any violation or attempted violation of any crime prescribed in this paragraph shall also be deemed a crime of violence.

(2) "Controlled substance offense" means a felony conviction for a violation or attempted violation of Division 10 (commencing with Section 11000) of the Health and Safety Code.

An out-of-state conviction for any violation or attempted violation of any crime prescribed in this paragraph shall also be deemed a crime of violence.

(3) "Employer" means every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level.

(4) "New employee" means any person hired to work in a private school on or after July 1, 1985, on a regular, paid full-time, or regular, paid part-time, basis who will have contact with minor pupils.

(5) "Sex offense" has the same meaning as defined in Section 44010.

(f) Any new employee who wishes to have his or her employer consider information relevant to his or her criminal record, such as evidence of rehabilitation, shall be responsible for submitting these facts or documentation to his or her employer.

(g) The Commission on Teacher Credentialing shall send on a monthly basis to each private school a list of all teachers who have had their state teaching credential revoked or suspended. The list shall be identical to the list compiled for public schools in the state. The commission shall also send on a quarterly basis a complete and updated list of all teachers who have had their teaching credentials revoked or suspended, excluding teachers who have had their credentials reinstated, or who are deceased.

(h) The Department of Justice may charge each applicant for a criminal record summary a reasonable fee to cover costs associated with the processing, reviewing, and supplying of the criminal record summary as required by this section. In no event, shall the fee exceed the actual costs incurred by the department.

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CHAPTER 1075

An act to amend Section 2236.1 of the Business and Professions Code, to amend Sections 44237, 67380, and 87010 of the Education Code, to amend Sections 352.1, 782, and 1103 of the Evidence Code, to amend Sections 358 and 3021 of the Family Code, to amend Sections 6254, 12970, 13960, and 19702 of the Government Code, to amend Section 273.5 of, and to add Section 679.04 to, the Penal Code, and to amend Sections 1732, 1767.1, 1781, 6500, 8103, and 15610.63 of the Welfare and Institutions Code, relating to crimes.

[Approved by Governor September 29, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 2236.1 of the Business and Professions Code is amended to read:

2236.1. (a) A physician and surgeon's certificate shall be suspended automatically during any time that the holder of the certificate is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The Division of Medical Quality shall, immediately upon receipt of the certified copy of the record of conviction, determine whether the certificate of the physician and surgeon has been automatically suspended by virtue of his or her incarceration, and if so, the duration of that suspension. The division shall notify the physician and surgeon of the license suspension and of his or her right to elect to have the issue of penalty heard as provided in this section.

(b) Upon receipt of the certified copy of the record of conviction, if after a hearing it is determined therefrom that the felony of which the licensee was convicted was substantially related to the qualifications, functions, or duties of a physician and surgeon, the Division of Medical Quality shall suspend the license until the time for appeal has elapsed, if no appeal has been taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the division. The issue of substantial relationship shall be heard by an administrative law judge from the Medical Quality Hearing Panel sitting alone or with a panel of the division, in the discretion of the division.

(c) Notwithstanding subdivision (b), a conviction of any crime referred to in Section 2237, or a conviction of Section 187, 261, 262, or 288 of the Penal Code, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a physician and surgeon and no hearing shall be held on this issue. Upon its own motion or for good cause shown, the division may decline to impose or may set aside the suspension when it appears to

be in the interest of justice to do so, with due regard to maintaining the integrity of and confidence in the medical profession.

(d) (1) Discipline may be ordered in accordance with Section 2227, or the Division of Licensing may order the denial of the license when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge from the Medical Quality Hearing Panel sitting alone or with a panel of the division, in the discretion of the division. The hearing shall not be had until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal Code, an order granting probation has been made suspending the imposition of sentence; except that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of penalty shall be heard in the manner described in this section at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of a physician and surgeon. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the division from pursuing disciplinary action based on any cause other than the overturned conviction.

(e) The record of the proceedings resulting in the conviction, including a transcript of the testimony therein, may be received in evidence.

(f) The other provisions of this article setting forth a procedure for the suspension or revocation of a physician and surgeon's certificate shall not apply to proceedings conducted pursuant to this section.

SEC. 2. Section 44237 of the Education Code is amended to read:

44237. (a) Commencing October 1, 1985, every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall require each new employee having contact with minor pupils and not possessing a valid California state teaching credential, or not currently licensed by another state agency that requires a criminal record summary, to submit on or before the first day of his or her employment, two sets of fingerprints to the Department of Justice for the purpose of obtaining a criminal record summary from the Department of Justice and the Federal Bureau of Investigation. This requirement is a condition of employment. It is the intent of the Legislature under this section to assist in the employment decision.

This section shall not be construed, however, to prohibit the employment of any person based upon his or her criminal record.

(b) The Department of Justice shall furnish a criminal record summary to the employer designated by a new employee submitting fingerprints pursuant to subdivision (a). The criminal record summary shall contain only arrests resulting in a conviction and arrests pending final adjudication. The criminal record summary furnished to the employer shall be maintained by the employer in a secured file separate from personnel files, and shall be maintained in accordance with regulations for Criminal Offender Record Information Security as specified in Subchapter 7 (commencing with Section 700) of Chapter 1 of Title 11 of the California Code of Regulations.

(c) The Department of Justice shall review the criminal record summary it obtains from the Federal Bureau of Investigation to ascertain whether or not a new employee has a conviction record or an arrest pending final adjudication for any sex offense, controlled substance offense, or crime of violence. The Department of Justice shall provide written notification to the private school employer only as to whether or not a new employee has any convictions or arrests pending final adjudication for any of those crimes, but shall not provide information identifying any offense for which an employee was convicted or arrested.

(d) The employer may request subsequent arrest service from the Department of Justice as is provided under Section 11105.2 of the Penal Code.

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

(1) "Crime of violence" means a conviction for any of the offenses specified in subdivision (c) of Section 667.5 of the Penal Code, or a violation or attempted violation of Chapter 8 (commencing with Section 236) or Chapter 9 (commencing with Section 240) of Title 8 of Part 1 of the Penal Code.

Out-of-state convictions for any violation or attempted violation of any crime prescribed in this paragraph shall also be deemed a crime of violence.

(2) "Controlled substance offense" means a felony conviction for a violation or attempted violation of Division 10 (commencing with Section 11000) of the Health and Safety Code.

Out-of-state convictions for any violation or attempted violation of any crime prescribed in this paragraph shall also be deemed a crime of violence.

(3) "Employer" means every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level.

(4) "New employee" means any person hired to work in a private school on or after July 1, 1985, on a regular, paid full-time or regular, paid part-time basis who will have contact with minor pupils.

(5) "Sex offense" means a conviction for any violation or attempted violation of Section 220, 261, 261.5, 262, 264, 266, 266j, 267, 273a, 273d, 285, 286, 288, 289, 311.2, 311.3, 311.4, 313.1, 314, 647b, or 647d of the Penal Code, or former Section 647a of the Penal Code, or commitment as a mentally disordered sex offender under former Article 1 (commencing with Section 6300) of Chapter 2 of Part 2 of the Welfare and Institutions Code as repealed by Chapter 928 of the Statutes of 1981.

Out-of-state convictions for any violation or attempted violation of any crime prescribed in this paragraph shall also be deemed a sex offense.

(f) Any new employee who wishes to have his or her employer consider information relevant to his or her criminal record, such as evidence of rehabilitation, shall be responsible for submitting these facts or documentation to his or her employer.

(g) The Commission on Teacher Credentialing shall send on a monthly basis to each private school a list of all teachers who have had their state teaching credential revoked or suspended. The list shall be identical to the list compiled for public schools in the state. The commission shall also send on a quarterly basis a complete and updated list of all teachers who have had their teaching credentials revoked or suspended, excluding teachers who have had their credentials reinstated, or who are deceased.

(h) The Department of Justice may charge each applicant for a criminal record summary a reasonable fee to cover costs associated with the processing, reviewing, and supplying of the criminal record summary as required by this section. In no event shall the fee exceed the actual costs incurred by the department.

SEC. 2.5. Section 44237 of the Education Code is amended to read:

44237. (a) Commencing October 1, 1985, every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level shall require each new employee having contact with minor pupils and not possessing a valid California state teaching credential, or not currently licensed by another state agency that requires a criminal record summary, to submit on or before the first day of his or her employment, two sets of fingerprints to the Department of Justice for the purpose of obtaining a criminal record summary from the Department of Justice and the Federal Bureau of Investigation. This requirement is a condition of employment. It is the intent of the Legislature under this section to assist in the employment decision. This section shall not be construed, however, to prohibit the employment of any person based upon his or her criminal record.

(b) The Department of Justice shall furnish a criminal record summary to the employer designated by a new employee submitting fingerprints pursuant to subdivision (a). The criminal record summary shall contain only arrests resulting in a conviction and

arrests pending final adjudication. The criminal record summary furnished to the employer shall be maintained by the employer in a secured file separate from personnel files, and shall be maintained in accordance with regulations for Criminal Offender Record Information Security as specified in Subchapter 7 (commencing with Section 700) of Chapter 1 of Title 11 of the California Code of Regulations.

(c) The Department of Justice shall review the criminal record summary it obtains from the Federal Bureau of Investigation to ascertain whether or not a new employee has a conviction record or an arrest pending final adjudication for any sex offense, controlled substance offense, or crime of violence. The Department of Justice shall provide written notification to the private school employer only as to whether or not a new employee has any convictions or arrests pending final adjudication for any of those crimes, but shall not provide information identifying any offense for which an employee was convicted or arrested.

(d) The employer may request subsequent arrest service from the Department of Justice as is provided under Section 11105.2 of the Penal Code.

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

(1) "Crime of violence" means a conviction for any of the offenses specified in Section 273a of, in Section 273d of, or in subdivision (c) of Section 667.5 of the Penal Code, or a violation or attempted violation of Chapter 8 (commencing with Section 236) or Chapter 9 (commencing with Section 240) of Title 8 of Part 1 of the Penal Code.

An out-of-state conviction for any violation or attempted violation of any crime prescribed in this paragraph shall also be deemed a crime of violence.

(2) "Controlled substance offense" means a felony conviction for a violation or attempted violation of Division 10 (commencing with Section 11000) of the Health and Safety Code.

An out-of-state conviction for any violation or attempted violation of any crime prescribed in this paragraph shall also be deemed a crime of violence.

(3) "Employer" means every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level.

(4) "New employee" means any person hired to work in a private school on or after July 1, 1985, on a regular, paid full-time or regular, paid part-time basis who will have contact with minor pupils.

(5) "Sex offense" has the same meaning as defined in Section 44010.

An out-of-state conviction for any violation or attempted violation of any crime prescribed in this paragraph shall also be deemed a sex offense.

(f) Any new employee who wishes to have his or her employer consider information relevant to his or her criminal record, such as evidence of rehabilitation, shall be responsible for submitting these facts or documentation to his or her employer.

(g) The Commission on Teacher Credentialing shall send on a monthly basis to each private school a list of all teachers who have had their state teaching credential revoked or suspended. The list shall be identical to the list compiled for public schools in the state. The commission shall also send on a quarterly basis a complete and updated list of all teachers who have had their teaching credentials revoked or suspended, excluding teachers who have had their credentials reinstated, or who are deceased.

(h) The Department of Justice may charge each applicant for a criminal record summary a reasonable fee to cover costs associated with the processing, reviewing, and supplying of the criminal record summary as required by this section. In no event shall the fee exceed the actual costs incurred by the department.

SEC. 3. Section 67380 of the Education Code is amended to read:

67380. (a) The governing board of each community college district, the Trustees of the California State University, the Board of Directors of the Hastings College of the Law, the Regents of the University of California, and the governing board of any postsecondary institution receiving public funds for student financial assistance shall do all of the following:

(1) Require the appropriate officials at each campus within their respective jurisdictions to compile records of both of the following:

(A) All occurrences reported to campus police, campus security personnel, or campus safety authorities of, and arrests for, crimes that are committed on campus and that involve violence, hate violence, theft or destruction of property, illegal drugs, or alcohol intoxication.

(B) All occurrences of noncriminal acts of hate violence reported to, and for which a written report is prepared by, designated campus authorities.

(2) Require any written record of a noncriminal act of hate violence to include, but not be limited to, the following:

(A) A description of the act of hate violence.

(B) Victim characteristics.

(C) Offender characteristics, if known.

(3) Make the information concerning the crimes compiled pursuant to subparagraph (A) of paragraph (1) available within two business days following the request of any student or employee of, or applicant for admission to, any campus within their respective jurisdictions, or to the media, unless the information is the type of information exempt from disclosure pursuant to subdivision (f) of Section 6254 of the Government Code, in which case the information is not required to be disclosed. Notwithstanding paragraph (2) of subdivision (f) of Section 6254 of the Government Code, the name of a victim of any crime defined by Section 261, 262, 264, 264.1, 273a,

273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, or 422.75 of the Penal Code shall not be disclosed without the permission of the victim, or the victim's parent or guardian if the victim is a minor.

For purposes of this paragraph and subparagraph (A) of paragraph (1), the campus police, campus security personnel, and campus safety authorities described in subparagraph (A) of paragraph (1) shall be included within the meaning of "state or local police agency" and "state and local law enforcement agency," as those terms are used in subdivision (f) of Section 6254 of the Government Code.

(4) Require the appropriate officials at each campus within their respective jurisdictions to prepare, prominently post, and copy for distribution on request a campus safety plan that sets forth all of the following: the availability and location of security personnel, methods for summoning assistance of security personnel, any special safeguards that have been established for particular facilities or activities, any actions taken in the preceding 18 months to increase safety, and any changes in safety precautions expected to be made during the next 24 months. For the purposes of this section, posting and distribution may be accomplished by including relevant safety information in a student handbook or brochure that is made generally available to students.

(5) Require the appropriate officials at each campus within their respective jurisdictions to report information compiled pursuant to paragraph (1) relating to hate violence to the governing board, trustees, board of directors, or regents, as the case may be. The governing board, trustees, board of directors, or regents, as the case may be, shall, upon collection of that information from all of the campuses within their jurisdiction, transmit a report containing a compilation of that information to the California Postsecondary Education Commission no later than January 1 of each year, commencing January 1, 1993. The commission shall submit a report to the Legislature and the Governor on July 1, 1993, and every two years thereafter, on the type and number of incidents of hate violence occurring in institutions of public higher education in California. It is the intent of the Legislature that the governing board of each community college district, the Trustees of the California State University, the Board of Directors of the Hastings College of the Law, the Regents of the University of California, and the governing board of any postsecondary institution receiving public funds for student financial assistance establish guidelines for identifying and reporting occurrences of hate violence. It is the intent of the Legislature that the guidelines established by these institutions of higher education be as consistent with each other as possible. These guidelines shall be developed in consultation with the California Postsecondary Education Commission, the Department of Fair Employment and Housing, and the California Association of Human Rights Organizations. The report shall include, but not be limited to, the following:

(A) A comparison of incidents occurring in the year being reported to previous years for which there is hate violence data.

(B) To the extent possible, a comparison of incidents of hate violence occurring at community colleges, the California State University, the Hastings College of the Law, the University of California, and postsecondary institutions receiving funds for student financial assistance with incidents occurring at colleges and universities in other states and private universities in California.

(C) Findings and recommendations to the Legislature on the means of addressing hate violence at community colleges, the California State University, the Hastings College of the Law, the University of California, and postsecondary institutions receiving public funds for student financial assistance.

(b) Any person who is refused information required to be made available pursuant to subparagraph (A) of paragraph (1) of subdivision (a) may maintain a civil action for damages against any institution that refuses to provide the information, and the court shall award that person an amount not to exceed one thousand dollars ($1,000) if the court finds that the institution refused to provide the information.

(c) For purposes of this section, "hate violence" means any act of physical intimidation or physical harassment, physical force or physical violence, or the threat of physical force or physical violence, that is directed against any person or group of persons, or the property of any person or group of persons because of the ethnicity, race, national origin, religion, sex, sexual orientation, disability, or political or religious beliefs of that person or group.

(d) This section does not apply to the governing board of any private postsecondary institution receiving funds for student financial assistance with a full-time enrollment of less than 1,000 students.

(e) This section shall apply to a campus of one of the public postsecondary educational systems identified in subdivision (a) only if that campus has a full-time equivalent enrollment of more than 1,000 students.

(f) Notwithstanding any other provision of this section, this section shall not apply to the California Community Colleges unless and until the Legislature makes funds available to the California Community Colleges for the purposes of this section.

SEC. 4. Section 87010 of the Education Code is amended to read:

87010. "Sex offense," as used in Sections 87405, 88022, and 88123, means any one or more of the offenses listed below:

(a) Any offense defined in Section 261.5, 266, 267, 285, 286, 288, 288a, 647.6, or former Section 647a, paragraph (2) or (3) of subdivision (a) of Section 261, paragraph (1) or (2) of subdivision (a) of Section 262, or subdivision (a) or (d) of Section 647 of the Penal Code.

(b) Any offense defined in former subdivision 5 of former Section 647 of the Penal Code repealed by Chapter 560 of the Statutes of 1961, or any offense defined in former subdivision 2 of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961, if the offense defined in those sections was committed prior to September 15, 1961, to the same extent that such an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(c) Any offense defined in Section 314 of the Penal Code committed on or after September 15, 1961.

(d) Any offense defined in former subdivision 1 of former Section 311 of the Penal Code repealed by Chapter 2147 of the Statutes of 1961 committed on or after September 7, 1955, and prior to September 15, 1961.

(e) Any offense involving lewd and lascivious conduct under Section 272 of the Penal Code committed on or after September 15, 1961.

(f) Any offense involving lewd and lascivious conduct under former Section 702 of the Welfare and Institutions Code repealed by Chapter 1616 of the Statutes of 1961, if the offense was committed prior to September 15, 1961, to the same extent that such an offense committed prior to that date was a sex offense for the purposes of this section prior to September 15, 1961.

(g) Any offense defined in Section 286 or 288a of the Penal Code prior to the effective date of the amendment of either section enacted at the 1975–76 Regular Session of the Legislature committed prior to the effective date of the amendment.

(h) Any attempt to commit any of the above-mentioned offenses.

(i) Any offense committed or attempted in any other state that, if committed or attempted in this state, would have been punishable as one or more of the above-mentioned offenses.

SEC. 5. Section 352.1 of the Evidence Code is amended to read:

352.1. In any criminal proceeding under Section 261, 262, or 264.1, subdivision (d) of Section 286, or subdivision (d) of Section 288a of the Penal Code, or in any criminal proceeding under subdivision (c) of Section 286 or subdivision (c) of Section 288a of the Penal Code in which the defendant is alleged to have compelled the participation of the victim by force, violence, duress, menace, or threat of great bodily harm, the district attorney may, upon written motion with notice to the defendant or the defendant's attorney, if he or she is represented by an attorney, within a reasonable time prior to any hearing, move to exclude from evidence the current address and telephone number of any victim at the hearing.

The court may order that evidence of the victim's current address and telephone number be excluded from any hearings conducted pursuant to the criminal proceeding if the court finds that the probative value of the evidence is outweighed by the creation of substantial danger to the victim.

Nothing in this section shall abridge or limit the defendant's right to discover or investigate the information.

SEC. 6. Section 782 of the Evidence Code is amended to read:

782. (a) In any prosecution under Section 261, 262, 264.1, 286, 288, 288a, 288.5, or 289 of the Penal Code, or for assault with intent to commit, attempt to commit, or conspiracy to commit any crime defined in any of those sections, except where the crime is alleged to have occurred in a local detention facility, as defined in Section 6031.4, or in a state prison, as defined in Section 4504, if evidence of sexual conduct of the complaining witness is offered to attack the credibility of the complaining witness under Section 780, the following procedure shall be followed:

(1) A written motion shall be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of the sexual conduct of the complaining witness proposed to be presented and its relevancy in attacking the credibility of the complaining witness.

(2) The written motion shall be accompanied by an affidavit in which the offer of proof shall be stated.

(3) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and at the hearing allow the questioning of the complaining witness regarding the offer of proof made by the defendant.

(4) At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the sexual conduct of the complaining witness is relevant pursuant to Section 780, and is not inadmissible pursuant to Section 352 of this code, the court may make an order stating what evidence may be introduced by the defendant, and the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court.

(b) As used in this section, "complaining witness" means the alleged victim of the crime charged, the prosecution of which is subject to this section.

SEC. 7. Section 1103 of the Evidence Code is amended to read:

1103. (a) In a criminal action, evidence of the character or a trait of character (in the form of an opinion, evidence of reputation, or evidence of specific instances of conduct) of the victim of the crime for which the defendant is being prosecuted is not made inadmissible by Section 1101 if the evidence is:

(1) Offered by the defendant to prove conduct of the victim in conformity with the character or trait of character.

(2) Offered by the prosecution to rebut evidence adduced by the defendant under paragraph (1).

(b) In a criminal action, evidence of the defendant's character for violence or trait of character for violence (in the form of an opinion, evidence of reputation, or evidence of specific instances of conduct) is not made inadmissible by Section 1101 if the evidence is offered by

the prosecution to prove conduct of the defendant in conformity with the character or trait of character and is offered after evidence that the victim had a character for violence or a trait of character tending to show violence has been adduced by the defendant under paragraph (1) of subdivision (a).

(c) (1) Notwithstanding any other provision of this code to the contrary, and except as provided in this subdivision, in any prosecution under Section 261, 262, or 264.1 of the Penal Code, or under Section 286, 288a, or 289 of the Penal Code, or for assault with intent to commit, attempt to commit, or conspiracy to commit a crime defined in any of those sections, except where the crime is alleged to have occurred in a local detention facility, as defined in Section 6031.4, or in a state prison, as defined in Section 4504, opinion evidence, reputation evidence, and evidence of specific instances of the complaining witness' sexual conduct, or any of that evidence, is not admissible by the defendant in order to prove consent by the complaining witness.

(2) Paragraph (1) shall not be applicable to evidence of the complaining witness' sexual conduct with the defendant.

(3) If the prosecutor introduces evidence, including testimony of a witness, or the complaining witness as a witness gives testimony, and that evidence or testimony relates to the complaining witness' sexual conduct, the defendant may cross-examine the witness who gives the testimony and offer relevant evidence limited specifically to the rebuttal of the evidence introduced by the prosecutor or given by the complaining witness.

(4) Nothing in this subdivision shall be construed to make inadmissible any evidence offered to attack the credibility of the complaining witness as provided in Section 782.

(5) As used in this section, "complaining witness" means the alleged victim of the crime charged, the prosecution of which is subject to this subdivision.

SEC. 8. Section 358 of the Family Code is amended to read:

358. (a) The State Department of Health Services shall prepare and publish a brochure which shall contain the following:

(1) Information concerning the possibilities of genetic defects and diseases and contain a listing of centers available for the testing and treatment of genetic defects and diseases.

(2) Information concerning acquired immune deficiency syndrome (AIDS) and the availability of testing for antibodies to the probable causative agent of AIDS.

(3) Information concerning domestic violence, including resources available to victims and a statement that physical, emotional, psychological, and sexual abuse, and assault and battery, are against the law.

(b) The State Department of Health Services shall make the brochures available to county clerks who shall distribute a copy of the brochure to each applicant for a marriage license, including

applicants for a confidential marriage license and notary publics receiving a confidential marriage license pursuant to Section 503.

(c) Each notary public authorizing a confidential marriage under Section 503 shall distribute a copy of the brochure to the applicants for a confidential marriage license.

(d) To the extent possible, the State Department of Health Services shall seek to combine in a single brochure all statutorily required information for marriage license applicants.

SEC. 8.5. Brochures containing the information required by Section 8 of this act, which amends Section 358 of the Family Code, shall not be required to be prepared and published until the existing supply of brochures is depleted.

SEC. 9. Section 3021 of the Family Code is amended to read:

3021. This part applies in any of the following:

(a) A proceeding for dissolution of marriage.

(b) A proceeding for nullity of marriage.

(c) A proceeding for legal separation of the parties.

(d) An action for exclusive custody pursuant to Section 3120.

(e) A proceeding to determine custody or visitation in a proceeding pursuant to the Domestic Violence Prevention Act (Division 10 (commencing with Section 6200).

Nothing in this subdivision shall be construed to authorize custody or visitation rights to be granted to any nonparent party to a Domestic Violence Prevention Act proceeding. As used in this section, "nonparent" does not include a biological parent, alleged or presumed parent, adoptive parent, pending adoptive parent, foster parent, or step parent. By amending this subdivision during the 1995–96 Regular Session, it is the intent of the Legislature to restate existing law, and to clarify that nonparent parties may not seek a determination of custody or visitation rights through a Domestic Violence Prevention Act proceeding, but only through a proceeding for dissolution or legal separation, or an action to determine paternity or a petition for guardianship in accordance with the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

(f) A proceeding to determine custody or visitation in an action pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

SEC. 11. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, which are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (c) of Section 13960, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of

those investigative files that reflect the analysis or conclusions of the investigating officer.

Other provisions of this subdivision notwithstanding, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code, except that the address of the victim of any crime defined by Section 220, 261, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6,

422.7, 422.75, or 646.9 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph shall not be used directly or indirectly to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's legal affairs secretary, provided that public records shall not be transferred to the custody of the Governor's legal affairs secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel, except those records in the public data base maintained by the Legislative Counsel that are described in Section 10248.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making

available to the public those portions of an application which are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under these chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Articles 2.6 (commencing with Section 14081), 2.8 (commencing with Section 14087.5), and 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State

Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695), and Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695), or Part 6.5 (commencing with Section 12700), of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The Joint Legislative Audit Committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or, financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

SEC. 12. Section 12970 of the Government Code is amended to read:

12970. (a) If the commission finds that a respondent has engaged in any unlawful practice under this part, it shall state its findings of fact and determination and shall issue and cause to be served on the parties an order requiring the respondent to cease and desist from the unlawful practice and to take action, including, but not limited to, any of the following:

(1) The hiring, reinstatement or upgrading of employees, with or without backpay.

(2) The admission or restoration to membership in any respondent labor organization.

(3) The payment of actual damages as may be available in civil actions under this part, except as otherwise provided in this section. Actual damages include, but are not limited to, damages for

emotional injuries if the accusation or amended accusation prays for those damages. Actual damages awarded under this section for emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses shall not exceed, in combination with the amounts of any administrative fines imposed pursuant to subdivision (c), fifty thousand dollars ($50,000) per aggrieved person per respondent.

(4) Notwithstanding paragraph (3), the payment of actual damages up to one hundred fifty thousand dollars ($150,000) assessed against a respondent for a violation of Section 51.7 of the Civil Code, as an unlawful practice under this part.

(5) Affirmative or prospective relief to prevent the recurrence of the unlawful practice.

(6) A report to the commission as to the manner of compliance with the commission's order.

(b) An unlawful practice under this part alone is not sufficient to sustain an award of actual damages pursuant to this section. The department is required to prove, by a preponderance of the evidence, that an aggrieved person has sustained actual injury. In determining whether to award damages for emotional injuries, and the amount of any award for these damages, the commission shall consider relevant evidence of the effects of discrimination on the aggrieved person with respect to any or all of the following:

(1) Physical and mental well-being.

(2) Personal integrity, dignity, and privacy.

(3) Ability to work, earn a living, and advance in his or her career.

(4) Personal and professional reputation.

(5) Family relationships.

(6) Access to the job and ability to associate with peers and coworkers.

The commission shall also consider the duration of the emotional injury, and whether that injury was caused or exacerbated by an aggrieved person's knowledge of a respondent's failure to respond adequately to, or to correct, the discriminatory practice or by the egregiousness of the discriminatory practice.

(c) In addition to the foregoing, in order to vindicate the purposes and policies of this part, the commission may assess against the respondent, if the accusation or amended accusation so prays, an administrative fine per aggrieved person per respondent, the amount of which shall be determined in accordance with the combined amount limitation of paragraph (3) of subdivision (a).

(d) In determining whether to assess an administrative fine pursuant to this section, the commission shall find that the respondent has been guilty of oppression, fraud, or malice, expressed or implied, as required by Section 3294 of the Civil Code. In determining the amount of fines, the commission shall consider relevant evidence of, including, but not limited to, the following:

(1) Willful, intentional, or purposeful conduct.

(2) Refusal to prevent or eliminate discrimination.
(3) Conscious disregard for the rights of employees.
(4) Commission of unlawful conduct.
(5) Intimidation or harassment.
(6) Conduct without just cause or excuse.
(7) Multiple violations of the Fair Employment and Housing Act.

The moneys derived from an administrative fine assessed pursuant to this subdivision shall be deposited in the General Fund. No administrative fine shall be assessed against a public entity. The commission shall have no authority to award punitive damages as a remedy for a finding of employment discrimination.

(e) In addition to the foregoing, in order to vindicate the purposes and policies of this part, the commission may assess against the respondent if the accusation or amended accusation so prays, a civil penalty of up to twenty-five thousand dollars ($25,000) to be awarded to a person denied any right provided for by Section 51.7 of the Civil Code, as an unlawful practice prohibited under this part.

(f) If the commission finds the respondent has engaged in an unlawful practice under this part, and the respondent is licensed or granted a privilege by an agency of the state to do business, provide a service, or conduct activities, and the unlawful practice is determined to have occurred in connection with the exercise of that license or privilege, the commission shall provide the licensing or privilege granting agency with a copy of its decision or order.

(g) If the commission finds that a respondent has not engaged in an unlawful practice under this part, the commission shall state its findings of fact and determination and issue and cause to be served on the parties an order dismissing the accusation as to that respondent.

(h) Any findings and determination made or any order issued pursuant to this section shall be written and shall indicate the identity of the members of the commission who participated herein.

(i) Any order issued by the commission shall have printed on its face references to the rights of appeal of any party to the proceeding to whose position the order is adverse.

(j) If the commission finds that a respondent has engaged in an unlawful practice under this part, and it appears that this practice consisted of acts described in Section 243.4, 261, 262, 286, 288, 288a, or 289 of the Penal Code, the commission, with the consent of the complainant, shall provide the local district attorney's office with a copy of its decision and order.

(k) Notwithstanding Section 12960, if the commission finds that a respondent has engaged in unlawful discrimination in housing under Section 12948, the remedies afforded in Section 12987 or any other provision in this part pertaining to housing discrimination, shall apply.

SEC. 13. Section 13960 of the Government Code is amended to read:

13960. As used in this article:

(a) (1) "Victim" means a resident of the State of California, a member of the military stationed in California, or a family member living with a member of the military stationed in California who sustains injury or death as a direct result of a crime.

(2) "Derivative victim" means a resident of California who is one of the following:

(A) At the time of the crime was the parent, sibling, spouse, or child of the victim.

(B) At the time of the crime was living in the household of the victim.

(C) A person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).

(D) Is another family member of the victim, including the victim's fiance, and witnessed the crime.

(b) "Injury" includes physical or emotional injury, or both. However, this article does not apply to emotional injury unless that injury is incurred by a victim who also sustains physical injury or threat of physical injury. For purposes of this article, a victim of a crime committed in violation of Section 261, 262, 270, 270a, 270c, 271, 272, 273a, 273b, 273d, 285, 286, 288, 288.1, 288a, or 289 of the Penal Code, who sustains emotional injury is presumed to have sustained physical injury.

(c) "Crime" means a crime or public offense that would constitute a misdemeanor or a felony if committed in California by a competent adult that results in injury to a resident of this state, including a crime or public offense, wherever it may take place, when the resident is temporarily absent from the state. No act involving the operation of a motor vehicle, aircraft, or water vehicle that results in injury or death constitutes a crime for the purposes of this article, except that a crime shall include any of the following:

(1) Injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(2) Injury or death caused by a driver in violation of Section 20001 of the Vehicle Code.

(3) Injury or death caused by a person who is under the influence of any alcoholic beverage or drug.

(4) Injury or death caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated.

For the purpose of the limitations imposed by this article, a crime shall mean one act or series of related acts arising from the same course of conduct with the same perpetrator or perpetrators.

(d) "Pecuniary loss" means the following expenses for which the victim or derivative victim has not been and will not be reimbursed from any other source:

(1) The amount of medical or medical-related expenses incurred by the victim, including in-patient psychological or psychiatric expenses, and including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) The amount of out-patient mental health counseling related expenses that became necessary as a direct result of the crime. These counseling services may be provided by a person licensed as a clinical social worker or a person licensed as a marriage, family, and child counselor practicing within the scope of licensure, or within the scope of his or her respective practice acts.

(3) The loss of income that the victim or the loss of support that the derivative victim has incurred or will incur as a direct result of an injury or death.

(4) Pecuniary loss also includes nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(5) The amount of family psychiatric, psychological, or mental health counseling expenses necessary as a direct result of the crime for the successful treatment of the victim, provided to family members of the victim in the presence of the victim, whether or not the family member relationship existed at the time of the crime.

(e) "Board" means the State Board of Control.

(f) "Victim centers" means those centers as specified in Section 13835.2 of the Penal Code.

(g) "Peer counselor" means a provider of mental health counseling services who has completed a specialized course in rape crisis counseling skills development, participates in continuing education in rape crisis counseling skills development, and provides rape crisis counseling in consultation with a mental health practitioner licensed within the State of California.

SEC. 14. Section 19702 of the Government Code is amended to read:

19702. (a) A person shall not be discriminated against under this part because of sex, race, religious creed, color, national origin, ancestry, marital status, physical disability, or mental disability. A person shall not be retaliated against because he or she has opposed any practice made an unlawful employment practice, or made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. For purposes of this article, "discrimination" includes harassment. This subdivision is declaratory of existing law.

(b) As used in this section, "physical disability" includes, but is not limited to, impairment of sight, hearing, or speech, or impairment of physical ability because of amputation or loss of function or coordination, or any other health impairment which requires special education or related services.

(c) As used in this section, "mental disability" includes, but is not limited to, any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(d) Notwithstanding subdivisions (b) and (c), if the definition of disability used in the Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (b) or (c), then that broader protection shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (b) and (c). The definitions of subdivisions (b) and (c) shall not be deemed to refer to or include conditions excluded from the federal definition of "disability" pursuant to Section 511 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12211).

(e) If the board finds that a person has engaged in discrimination under this part, and it appears that this practice consisted of acts described in Section 243.4, 261, 262, 286, 288, 288a, or 289 of the Penal Code, the board, with the consent of the complainant, shall provide the local district attorney's office with a copy of its decision and order.

(f) If the board finds that discrimination has occurred in violation of this part, the board shall issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take any action, including, but not limited to, hiring, reinstatement or upgrading of employees, with or without backpay, and compensatory damages, which, in the judgment of the board, will effectuate the purposes of this part. Consistent with this authority, the board may establish rules governing the award of compensatory damages. The order shall include a requirement of reporting the manner of compliance.

(g) Any person claiming discrimination within the state civil service may submit a complaint which shall be in writing and set forth the particulars of the alleged discrimination, the name of the appointing authority, the persons alleged to have committed the unlawful discrimination, and any other information that may be required by the board. The complaint shall be filed with the appointing authority or, in accordance with board rules, with the board itself.

(h) Complaints shall be filed within one year of the alleged unlawful discrimination or the refusal to act in accordance with this section, except that this period may be extended for not to exceed 90 days following the expiration of that year, if a person allegedly aggrieved by unlawful discrimination first obtained knowledge of the facts of the alleged unlawful discrimination after the expiration of one year from the date of its occurrence. Complaints of discrimination in adverse actions or rejections on probation shall be filed in accordance with Sections 19175 and 19575.

(i) When an employee of the appointing authority refuses, or threatens to refuse, to cooperate in the investigation of a complaint of discrimination, the appointing authority may seek assistance from the board. The board may provide for direct investigation or hearing of the complaint, the use of subpoenas, or any other action which will effect the purposes of this section.

SEC. 15. Section 273.5 of the Penal Code is amended to read:

273.5. (a) Any person who willfully inflicts upon his or her spouse, or any person who willfully inflicts upon any person with whom he or she is cohabiting, or any person who willfully inflicts upon any person who is the mother or father of his or her child, corporal injury resulting in a traumatic condition, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars ($6,000), or by both.

(b) Holding oneself out to be the husband or wife of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this section.

(c) As used in this section, "traumatic condition" means a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by a physical force.

(d) For the purpose of this section, a person shall be considered the father or mother of another person's child if the alleged male parent is presumed the natural father under Sections 7611 and 7612 of the Family Code.

(e) In any case in which a person is convicted of violating this section and probation is granted, the court shall require participation in a batterer's treatment program as a condition of probation, as specified in Section 1203.097.

(f) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under subdivision (a) who previously has been convicted under subdivision (a) for an offense that occurred within seven years of the offense of the second conviction, the person shall be punished pursuant to subdivision (a) of Section 273.56.

(g) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under subdivision (a) who previously has been convicted of two or more violations of subdivision (a) for offenses that occurred within seven years of the most recent conviction, the person shall be punished pursuant to subdivision (b) of Section 273.56.

(h) If probation is granted upon conviction of a violation of subdivision (a), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000), pursuant to Section 1203.097.

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

SEC. 16. Section 679.04 is added to the Penal Code, to read:

679.04. A victim of sexual assault, as defined in subdivisions (a) and (b) of Section 11165.1, or spousal rape has the right to have advocates present at any evidentiary, medical, or physical examination or interview by law enforcement authorities or defense attorneys. As used in this section, "advocates" means a sexual assault victim counselor, as defined in Section 1035.2 of the Evidence Code, and at least one additional support person chosen by the victim.

SEC. 17. Section 1732 of the Welfare and Institutions Code is amended to read:

1732. No person convicted of violating Section 261, 262, or 264.1, subdivision (b) of Section 288, Section 289, or of sodomy or oral copulation by force, violence, duress, menace or threat of great bodily harm as provided in Section 286 or 288a of the Penal Code committed when that person was 18 years of age who has previously been convicted of any such felony shall be committed to the Youth Authority. This section does not prohibit the adjournment of criminal proceedings pursuant to Division 3 (commencing with Section 3000) or Division 6 (commencing with Section 6000) of the Welfare and Institutions Code.

SEC. 18. Section 1767.1 of the Welfare and Institutions Code is amended to read:

1767.1. At least 30 days before the Youthful Offender Parole Board meets to review or consider the parole of any person who has been committed to the control of the Department of the Youth Authority for the commission of any offense described in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707, or for the commission of an offense in violation of paragraph (2) of subdivision (a) of Section 262 or paragraph (3) of subdivision (a) of Section 261 of the Penal Code, the board shall send written notice of the hearing to each of the following persons: the judge of the court

that committed the person to the authority, the attorney for the person, the district attorney of the county from which the person was committed, and the law enforcement agency that investigated the case. The Youthful Offender Parole Board shall also send a progress report regarding the ward, prepared by the Department of the Youth Authority, to the judge of the court that committed the person at the same time it sends the written notice to the judge.

Each of the persons so notified shall have the right to submit a written statement to the board at least 10 days prior to the scheduled hearing for the board's consideration at the hearing. Nothing in this subdivision shall be construed to permit any person so notified to attend the hearing. With respect to the parole of any person over the age of 18 years, the presiding officer shall state findings and supporting reasons for the decision of the board at the hearing. The findings and reasons shall be reduced to writing, and shall be made available for inspection by members of the public no later than 30 days from the date of the hearing.

SEC. 19. Section 1781 of the Welfare and Institutions Code is amended to read:

1781. Upon the filing of a petition under this article, the court shall notify the person whose liberty is involved, and if he or she is a minor, his or her parent or guardian if practicable, of the application and shall afford him or her an opportunity to appear in court with the aid of counsel and of process to compel attendance of witnesses and production of evidence. When he or she is unable to provide his or her own counsel, the court shall appoint counsel to represent him or her.

In the case of any person who is the subject of such a petition and who is under the control of the Youth Authority for the commission of any offense of rape in violation of paragraph (1) or (2) of subdivision (a) of Section 262 or subdivision (2) or subdivision (3) of Section 261 of the Penal Code, or murder, the Youthful Offender Parole Board shall send written notice of the petition and of any hearing set for the petition to each of the following persons: the attorney for the person who is the subject of the petition, the district attorney of the county from which the person was committed, and the law enforcement agency that investigated the case. The board shall also send written notice to the victim of the rape or the next of kin of the person murdered if he or she requests notice from the board and keeps it apprised of his or her current mailing address. Notice shall be sent at least 30 days before the hearing.

SEC. 20. Section 6500 of the Welfare and Institutions Code is amended to read:

6500. On and after July 1, 1971, no mentally retarded person may be committed to the State Department of Developmental Services pursuant to this article, unless he or she is a danger to himself or herself or others. For the purposes of this article, dangerousness to self or others shall be considered to include, but not be limited to, a

finding of incompetence to stand trial pursuant to the provisions of Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code when the defendant has been charged with murder, mayhem, aggravated mayhem, a violation of Section 207, 209, or 209.5 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, robbery perpetrated by torture or by a person armed with a dangerous or deadly weapon or in which the victim suffers great bodily injury, carjacking perpetrated by torture or by a person armed with a dangerous or deadly weapon or in which the victim suffers great bodily injury, a violation of subdivision (b) of Section 451 of the Penal Code, a violation of paragraph (1) or (2) of subdivision (a) of Section 262 or paragraph (2) or (3) of subdivision (a) of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section 12303.1, 12303.3, 12308, 12309, or 12310 of the Penal Code, or if the defendant has been charged with a felony involving death, great bodily injury, or an act that poses a serious threat of bodily harm to another person.

Any order of commitment made pursuant to this article shall expire automatically one year after the order of commitment is made. This section shall not be construed to prohibit any party enumerated in Section 6502 from filing subsequent petitions for additional periods of commitment. In the event subsequent petitions are filed, the procedures followed shall be the same as with an initial petition for commitment.

In any proceedings conducted under the authority of this article the alleged mentally retarded person shall be informed of his or her right to counsel by the court; and if the person does not have an attorney for the proceedings the court shall immediately appoint the public defender or other attorney to represent him or her. The person shall pay the cost for that legal service if he or she is able to do so. At any judicial proceeding under the provisions of this article, allegations that a person is mentally retarded and a danger to himself or herself or to others shall be presented by the district attorney for the county unless the board of supervisors, by ordinance or resolution, delegates this authority to the county counsel.

SEC. 21. Section 8103 of the Welfare and Institutions Code is amended to read:

8103. (a) (1) No person who after October 1, 1955, has been adjudicated by a court of any state to be a danger to others as a result of a mental disorder or mental illness, or who has been adjudicated to be a mentally disordered sex offender, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession, custody, or control any firearm or any other deadly weapon unless there has been issued to the person a certificate by the court of adjudication upon release from treatment or at a later date stating that the person may possess a firearm or any other deadly weapon

without endangering others, and the person has not, subsequent to the issuance of the certificate, again been adjudicated by a court to be a danger to others as a result of a mental disorder or mental illness.

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

(b) (1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of murder, mayhem, a violation of Section 207, 209, or 209.5 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, carjacking or robbery in which the victim suffers great bodily injury, a violation of Section 451 or 452 of the Penal Code involving a trailer coach, as defined in Section 635 of the Vehicle Code, or any dwelling house, a violation of paragraph (1) or (2) of subdivision (a) of Section 262 or paragraph (2) or (3) of subdivision (a) of Section 261 of the Penal Code, a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section 12303.1, 12303.2, 12303.3, 12308, 12309, or 12310 of the Penal Code, or of a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person, or a violation of the law of any other state or the United States that includes all the elements of any of the above felonies as defined under California law, shall purchase or receive, or attempt to purchase or receive, or have in his or her possession or under his or her custody or control any firearm or any other deadly weapon.

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

(c) (1) No person who has been found, pursuant to Section 1026 of the Penal Code or the law of any other state or the United States, not guilty by reason of insanity of any crime other than those described in subdivision (b) shall purchase or receive, or attempt to purchase or receive, or shall have in his or her possession, custody, or control any firearm or any other deadly weapon unless the court of commitment has found the person to have recovered sanity, pursuant to Section 1026.2 of the Penal Code or the law of any other state or the United States.

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

(d) (1) No person found by a court to be mentally incompetent to stand trial, pursuant to Section 1370 or 1370.1 of the Penal Code or the law of any other state or the United States, shall purchase or receive, or attempt to purchase or receive, or shall have in his or her

possession, custody, or control any firearm or any other deadly weapon, unless there has been a finding with respect to the person of restoration to competence to stand trial by the committing court, pursuant to Section 1372 of the Penal Code or the law of any other state or the United States.

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

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

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

(3) All information provided to the Department of Justice pursuant to paragraph (2) shall be kept confidential, separate, and apart from all other records maintained by the department, and shall be used only to determine eligibility to purchase or possess firearms or other deadly weapons. Any person who knowingly furnishes that information for any other purpose is guilty of a misdemeanor. All the information concerning any person shall be destroyed upon receipt by the Department of Justice of notice of the termination of conservatorship as to that person pursuant to paragraph (2).

(f) (1) No person who has been (A) taken into custody as provided in Section 5150 because that person is a danger to himself, herself, or to others, (B) assessed within the meaning of Section 5151, and (C) admitted to a designated facility within the meaning of

Sections 5151 and 5152 because that person is a danger to himself, herself, or others, shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years after the person is released from the facility. A person described in the preceding sentence, however, may own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm if the superior court has, pursuant to paragraph (4), upon petition of the person, found, by a preponderance of the evidence, that the person is likely to use firearms in a safe and lawful manner.

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

Any report prescribed by this subdivision shall be confidential, except for purposes of the court proceedings described in this subdivision and for determining the eligibility of the person to own, possess, control, receive, or purchase a firearm.

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

(4) Any person who is subject to paragraph (1) may petition the superior court of his or her county of residence for an order that he or she may own, possess, control, receive, or purchase firearms. At the time the petition is filed, the clerk of the court shall set a hearing date and notify the person, the Department of Justice, and the district attorney. The People of the State of California shall be the respondent in the proceeding and shall be represented by the district attorney. Upon motion of the district attorney, or on its own motion, the superior court may transfer the petition to the county in which the person resided at the time of his or her detention, the county in which the person was detained, or the county in which the person was evaluated or treated. Within seven days after receiving notice of the petition, the Department of Justice shall file copies of the reports described in this section with the superior court. The reports shall be disclosed upon request to the person and to the district attorney. The district attorney shall be entitled to a continuance of the hearing to a date of not less than 14 days after the district attorney was notified of the hearing date by the clerk of the court. The district attorney may notify the county mental health director of the petition who shall provide information about the detention of the person that may be relevant to the court and shall file that information with the superior

court. That information shall be disclosed to the person and to the district attorney. The court, upon motion of the person subject to paragraph (1) establishing that confidential information is likely to be discussed during the hearing that would cause harm to the person, shall conduct the hearing in camera with only the relevant parties present, unless the court finds that the public interest would be better served by conducting the hearing in public. Notwithstanding any other law, declarations, police reports, including criminal history information, and any other material and relevant evidence that is not excluded under Section 352 of the Evidence Code, shall be admissible at the hearing under this section. If the court finds by a preponderance of the evidence that the person would be likely to use firearms in a safe and lawful manner, the court may order that the person may own, control, receive, possess, or purchase firearms. A copy of the order shall be submitted to the Department of Justice. Upon receipt of the order, the Department of Justice shall delete any reference to the prohibition against firearms from the person's state summary criminal history information.

(5) Nothing in this subdivision shall prohibit the use of reports filed pursuant to this section to determine the eligibility of persons to own, possess, control, receive, or purchase a firearm if the person is the subject of a criminal investigation, a part of which involves the ownership, possession, control, receipt, or purchase of a firearm.

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

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

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

(3) Prior to, or concurrent with, the discharge of each person certified for intensive treatment under paragraph (1), the facility shall inform the person of that information specified in paragraph (3) of subdivision (f).

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

(h) For all persons identified in subdivisions (f) and (g), facilities shall report to the Department of Justice as specified in those subdivisions, except facilities shall not report persons under

subdivision (g) if the same persons previously have been reported under subdivision (f).

Additionally, all facilities shall report to the Department of Justice upon the discharge of persons from whom reports have been submitted pursuant to subdivision (f) or (g). However, a report shall not be filed for persons who are discharged within 31 days after the date of admission.

(i) Every person who owns or possesses or has under his or her custody or control, or purchases or receives, or attempts to purchase or receive, any firearm or any other deadly weapon in violation of this section shall be punished by imprisonment in the state prison or in a county jail for not more than one year.

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

SEC. 22. Section 15610.63 of the Welfare and Institutions Code is amended to read:

15610.63. "Physical abuse" means any of the following:

(a) Assault, as defined in Section 240 of the Penal Code.

(b) Battery, as defined in Section 242 of the Penal Code.

(c) Assault with a deadly weapon or force likely to produce great bodily injury, as defined in Section 245 of the Penal Code.

(d) Unreasonable physical constraint, or prolonged or continual deprivation of food or water.

(e) Sexual assault, that means any of the following:

(1) Sexual battery, as defined in Section 243.4 of the Penal Code.

(2) Rape, as defined in Section 261 of the Penal Code.

(3) Rape in concert, as described in Section 264.1 of the Penal Code.

(4) Spousal rape, as defined in Section 262 of the Penal Code.

(5) Incest, as defined in Section 285 of the Penal Code.

(6) Sodomy, as defined in Section 286 of the Penal Code.

(7) Oral copulation, as defined in Section 288a of the Penal Code.

(8) Penetration of a genital or anal opening by a foreign object, as defined in Section 289 of the Penal Code.

(f) Use of a physical or chemical restraint or psychotropic medication under any of the following conditions:

(1) For punishment.

(2) For a period beyond that for which the medication was ordered pursuant to the instructions of a physician and surgeon licensed in the State of California, who is providing medical care to the elder or dependent adult at the time the instructions are given.

(3) For any purpose not authorized by the physician and surgeon.

SEC. 23. Section 2.5 of this bill incorporates amendments to Section 44237 of the Education Code proposed by both this bill and Assembly Bill 2738. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 44237 of the Education Code, and (3) this bill is

enacted after Assembly Bill 2738, in which case Section 2 of this bill shall not become operative.

SEC. 24. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 1076

An act to amend Sections 1370 and 1370.1 of the Penal Code, and to amend Sections 4800, 4801, 6500, 6504.5, 6506, 6509, and 6513 of the Welfare and Institutions Code, relating to criminal procedure.

[Approved by Governor September 29, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 1370 of the Penal Code is amended to read:

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

(B) A defendant charged with a violent felony may not be delivered to a state hospital or treatment facility pursuant to this subdivision unless the state hospital or treatment facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.

(C) For purposes of this paragraph, "violent felony" means an offense specified in subdivision (c) of Section 667.5.

(D) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1600, only if the court finds that the placement will not pose a danger to the health or safety of others.

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

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

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

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

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

(D) State Summary Criminal History information.

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

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

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

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

(5) If the defendant is committed or transferred to a state hospital pursuant to this section, the court may, upon receiving the written recommendation of the medical director of the state hospital and the community program director that the defendant be transferred to a public or private treatment facility approved by the community program director, order the defendant transferred to that facility. If

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

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

(b) (1) Within 90 days of a commitment made pursuant to subdivision (a), the medical director of the state hospital or other treatment facility to which the defendant is confined shall make a written report to the court and the community program director for the county or region of commitment, or a designee, concerning the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, the outpatient treatment staff shall make a written report to the community program director concerning the defendant's progress toward recovery of mental competence. Within 90 days of placement on outpatient status, the community program director shall report to the court on this matter. If the defendant has not recovered mental competence, but the report discloses a substantial likelihood that the defendant will regain mental competence in the foreseeable future, the defendant shall remain in the state hospital or other treatment facility or on outpatient status. Thereafter, at six-month intervals or until the defendant becomes mentally competent, where the defendant is confined in a treatment facility, the medical director of the hospital or person in charge of the facility shall report in writing to the court and the community program director or a designee regarding the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, after the initial 90-day report, the outpatient treatment staff shall report to the community program director on the defendant's progress toward recovery, and the community program director shall report to the court on this matter at six-month intervals. A copy of these reports shall be provided to the prosecutor and defense counsel by the court. If the

report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c). The court shall transmit a copy of its order to the community program director or a designee.

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

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

(4) At each review by the court specified in this subdivision, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination.

(c) (1) At the end of three years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, whichever is shorter, a defendant who has not recovered mental competence shall be returned to the committing court. The court shall notify the community program director or a designee of the return and of any resulting court orders.

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

(3) Where the defendant is confined in a treatment facility, a copy of any report to the committing court regarding the defendant's progress toward recovery of mental competence shall be provided by the committing court to the prosecutor and to the defense counsel.

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

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

(f) As used in this chapter, "community program director" means the person, agency, or entity designated by the State Department of Mental Health pursuant to Section 1605 of this code and Section 4360 of the Welfare and Institutions Code.

SEC. 1.5. Section 1370 of the Penal Code is amended to read:

1370. (a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent.

(i) In the meantime, the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, or to any other available public or private treatment facility approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified in Section 1600.

(ii) However, if the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of a Section 290 offense. If either determination is made, the prosecutor shall so notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that the defendant be delivered by the sheriff to a state hospital or other secure treatment facility for the care and treatment of the mentally disordered unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California

Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iv) The clerk of the court shall notify the Department of Justice in writing of any finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in his or her state summary criminal history information.

(C) Upon the filing of a certificate of restoration to competence, the court shall order that the defendant be returned to court in accordance with Section 1372. The court shall transmit a copy of its order to the community program director or a designee.

(D) A defendant charged with a violent felony may not be delivered to a state hospital or treatment facility pursuant to this subdivision unless the state hospital or treatment facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.

(E) For purposes of this paragraph, "violent felony" means an offense specified in subdivision (c) of Section 667.5.

(F) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1600, only if the court finds that the placement will not pose a danger to the health or safety of others.

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

(3) When the court orders that the defendant be confined in a state hospital or other public or private treatment facility, the court shall provide copies of the following documents which shall be taken with the defendant to the state hospital or other treatment facility where the defendant is to be confined:

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

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

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

(D) State summary criminal history information.

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

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

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

(H) Records of any finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or any pending Section 1368 proceeding arising out of a charge of a Section 290 offense.

(4) When the defendant is committed to a treatment facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a treatment facility other than a state hospital or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility of any finding of mental incompetence pursuant to this chapter arising out of a charge of a Section 290 offense.

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

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

present evidence bearing on the order of transfer. The court shall use the same standards as are used in conducting probation revocation hearings pursuant to Section 1203.2.

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

(B) If the defendant is initially committed to a state hospital or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to any other facility, copies of the documents specified in paragraph (3) shall be taken with the defendant to each subsequent facility to which the defendant is transferred. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

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

The court shall transmit a copy of its order to the community program director or a designee.

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

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

(4) At each review by the court specified in this subdivision, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination.

(c) (1) At the end of three years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, whichever is shorter, a defendant who has not recovered mental competence shall be returned to the committing court. The court shall notify the community program director or a designee of the return and of any resulting court orders.

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

(3) Where the defendant is confined in a treatment facility, a copy of any report to the committing court regarding the defendant's progress toward recovery of mental competence shall be provided by the committing court to the prosecutor and to the defense counsel.

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

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

(f) As used in this chapter, "community program director" means the person, agency, or entity designated by the State Department of Mental Health pursuant to Section 1605 of this code and Section 4360 of the Welfare and Institutions Code.

(g) For the purpose of this section, "secure treatment facility" shall not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.

SEC. 2. Section 1370.1 of the Penal Code is amended to read:

1370.1. (a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced. If the defendant is found mentally incompetent and is developmentally disabled, the trial or judgment shall be suspended until the defendant becomes mentally competent, and the court shall consider a recommendation for placement, which recommendation shall be made to the court by the director of a regional center or designee, and shall order that (i) in the meantime, the defendant be delivered by the sheriff or other person designated by the court to a state hospital or developmental center for the care and treatment of the developmentally disabled or any other available residential facility approved by the director of a regional center for the developmentally disabled established under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code as will promote the defendant's speedy attainment of mental competence, or be placed on outpatient status pursuant to the provisions of Section 1370.4 and Title 15 (commencing with Section 1600) of Part 2, and (ii) upon becoming competent, the defendant be returned to the committing court pursuant to the procedures set forth in paragraph (2) of subdivision (a) of Section 1372 or by another person designated by the court. The court shall further determine conditions under which the person may be absent from the placement for medical treatment, social visits, and other similar activities. Required levels of supervision and security for these activities shall be specified. The court shall transmit a copy of its order to the regional center director or designee and to the Director of Developmental Services.

(B) A defendant charged with a violent felony may not be placed in a facility or delivered to a state hospital, developmental center, or

residential facility pursuant to this subdivision unless the facility, state hospital, developmental center, or residential facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.

(C) For purposes of this paragraph, "violent felony" means an offense specified in subdivision (c) of Section 667.5.

(D) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1370.4 or 1600, only if the court finds that the placement will not pose a danger to the health or safety of others.

(E) As used in this section, "developmental disability" means a disability that originates before an individual attains age 18, continues, or can be expected to continue, indefinitely and constitutes a substantial handicap for the individual, and shall not include other handicapping conditions that are solely physical in nature. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

(2) Prior to making the order directing the defendant be confined in a state hospital, developmental center, or other residential facility or be placed on outpatient status, the court shall order the regional center director or designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be committed to a state hospital or developmental center or to any other available residential facility approved by the regional center director. No person shall be admitted to a state hospital, developmental center, or other residential facility or accepted for outpatient status under Section 1370.4 without having been evaluated by the regional center director or designee.

If the defendant is committed or transferred to a state hospital or developmental center pursuant to this section, the court may, upon receiving the written recommendation of the executive director of the state hospital or developmental center and the regional center director that the defendant be transferred to a residential facility approved by the regional center director, order the defendant transferred to the facility. If the defendant is committed or transferred to a residential facility approved by the regional center director, the court may, upon receiving the written recommendation of the regional center director, transfer the defendant to a state hospital or developmental center or to another residential facility approved by the regional center director.

In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code.

The defendant or prosecuting attorney may contest either kind of order of transfer by filing a petition with the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as used in conducting probation revocation hearings pursuant to Section 1203.2.

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

(b) (1) Within 90 days of admission of a person committed pursuant to subdivision (a), the executive director or designee of the state hospital, developmental center, or other facility to which the defendant is committed or the outpatient supervisor where the defendant is placed on outpatient status shall make a written report to the committing court and the regional center director or a designee concerning the defendant's progress toward becoming mentally competent. If the defendant has not become mentally competent, but the report discloses a substantial likelihood the defendant will become mentally competent within the next 90 days, the court may order that the defendant shall remain in the state hospital, developmental center, or other facility or on outpatient status for that period of time. Within 150 days of an admission made pursuant to subdivision (a) or if the defendant becomes mentally competent, the executive director or designee of the hospital or developmental center or person in charge of the facility or the outpatient supervisor shall report to the court and the regional center director or his or her designee regarding the defendant's progress toward becoming mentally competent. The court shall provide to the prosecutor and defense counsel copies of all reports under this section. If the report indicates that there is no substantial likelihood that the defendant has become mentally competent, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c). The court shall transmit a copy of its order to the regional center director or designee and to the executive director of the developmental center.

(2) Any defendant who has been committed or has been on outpatient status for 18 months, and is still hospitalized or on outpatient status shall be returned to the committing court where a hearing shall be held pursuant to the procedures set forth in Section

1369. The court shall transmit a copy of its order to the regional center director or designee and the executive director of the developmental center.

(3) If it is determined by the court that no treatment for the defendant's mental impairment is being conducted, the defendant shall be returned to the committing court. A copy of this order shall be sent to the regional center director or designee and to the executive director of the developmental center.

(4) At each review by the court specified in this subdivision, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination.

(c) (1) (A) At the end of three years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, whichever is shorter, any defendant who has not become mentally competent shall be returned to the committing court.

(B) The court shall notify the regional center director or designee and the executive director of the developmental center of that return and of any resulting court orders.

(2) In the event of dismissal of the criminal charges before the defendant becomes mentally competent, the defendant shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), or to commitment and detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code. If it is found that the person is not subject to commitment or detention pursuant to the applicable provision of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code, the individual shall not be subject to further confinement pursuant to this article and the criminal action remains subject to dismissal pursuant to Section 1385. The court shall notify the regional center director and the executive director of the developmental center of any dismissal.

(d) Notwithstanding any other provision of this section, the criminal action remains subject to dismissal pursuant to Section 1385. If at any time prior to the maximum period of time allowed for proceedings under this article, the regional center director concludes that the behavior of the defendant related to the defendant's criminal offense has been eliminated during time spent in court-ordered programs, the court may, upon recommendation of the regional center director, dismiss the criminal charges. The court shall transmit a copy of any order of dismissal to the regional center director and to the executive director of the developmental center.

SEC. 2.5. Section 1370.1 of the Penal Code is amended to read:

1370.1. (a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent and is developmentally disabled, the trial or judgment shall be suspended until the defendant becomes mentally competent.

(i) Except as provided in clause (ii) or (iii), the court shall consider a recommendation for placement, which recommendation shall be made to the court by the director of a regional center or designee. In the meantime, the court shall order that the mentally incompetent defendant be delivered by the sheriff or other person designated by the court to a state hospital or developmental center for the care and treatment of the developmentally disabled or any other available residential facility approved by the director of a regional center for the developmentally disabled established under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code as will promote the defendant's speedy attainment of mental competence, or be placed on outpatient status pursuant to the provisions of Section 1370.4 and Title 15 (commencing with Section 1600) of Part 2.

(ii) However, if the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of a Section 290 offense. If either determination is made, the prosecutor shall so notify the court and defendant in writing. After this notification, and opportunity for hearing, the court shall order that the defendant be delivered by the sheriff to a state hospital or other secure treatment facility for the care and treatment of the developmentally disabled unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a state hospital for the care and treatment of the developmentally disabled unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the

defendant and would not pose a danger to the health and safety of others.

(iv) The clerk of the court shall notify the Department of Justice in writing of any finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in his or her state summary criminal history information.

(C) Upon becoming competent, the court shall order that the defendant be returned to the committing court pursuant to the procedures set forth in paragraph (2) of subdivision (a) of Section 1372 or by another person designated by the court. The court shall further determine conditions under which the person may be absent from the placement for medical treatment, social visits, and other similar activities. Required levels of supervision and security for these activities shall be specified.

(D) The court shall transmit a copy of its order to the regional center director or designee and to the Director of Developmental Services.

(E) A defendant charged with a violent felony may not be placed in a facility or delivered to a state hospital, developmental center, or residential facility pursuant to this subdivision unless the facility, state hospital, developmental center, or residential facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.

(F) For purposes of this paragraph, "violent felony" means an offense specified in subdivision (c) of Section 667.5.

(G) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1370.4 or 1600, only if the court finds that the placement will not pose a danger to the health or safety of others.

(H) As used in this section, "developmental disability" means a disability that originates before an individual attains age 18, continues, or can be expected to continue, indefinitely and constitutes a substantial handicap for the individual, and shall not include other handicapping conditions that are solely physical in nature. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include handicapping conditions found to be closely related to mental retardation or to require treatment similar to that required for mentally retarded individuals, but shall not include other handicapping conditions that are solely physical in nature.

(2) Prior to making the order directing the defendant be confined in a state hospital, developmental center, or other residential facility or be placed on outpatient status, the court shall order the regional center director or designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be committed

to a state hospital or developmental center or to any other available residential facility approved by the regional center director. No person shall be admitted to a state hospital, developmental center, or other residential facility or accepted for outpatient status under Section 1370.4 without having been evaluated by the regional center director or designee.

(3) When the court orders that the defendant be confined in a state hospital or other secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1), the court shall provide copies of the following documents which shall be taken with the defendant to the state hospital or other secure treatment facility where the defendant is to be confined:

(A) State summary criminal history information.

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

(C) Records of any finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or any pending Section 1368 proceeding arising out of a charge of a Section 290 offense.

(4) When the defendant is committed to a residential facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a facility other than a state hospital or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility of any finding of mental incompetence pursuant to this chapter arising out of a charge of a Section 290 offense.

(5) (A) If the defendant is committed or transferred to a state hospital or developmental center pursuant to this section, the court may, upon receiving the written recommendation of the executive director of the state hospital or developmental center and the regional center director that the defendant be transferred to a residential facility approved by the regional center director, order the defendant transferred to that facility. If the defendant is committed or transferred to a residential facility approved by the regional center director, the court may, upon receiving the written recommendation of the regional center director, transfer the defendant to a state hospital or developmental center or to another residential facility approved by the regional center director.

In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code.

The defendant or prosecuting attorney may contest either kind of order of transfer by filing a petition with the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as used in conducting probation revocation hearings pursuant to Section 1203.2.

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

(B) If the defendant is committed to a state hospital or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to any other facility, copies of the documents specified in paragraph (3) shall be taken with the defendant to the new facility. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

(b) (1) Within 90 days of admission of a person committed pursuant to subdivision (a), the executive director or designee of the state hospital, developmental center, or other facility to which the defendant is committed or the outpatient supervisor where the defendant is placed on outpatient status shall make a written report to the committing court and the regional center director or a designee concerning the defendant's progress toward becoming mentally competent. If the defendant has not become mentally competent, but the report discloses a substantial likelihood the defendant will become mentally competent within the next 90 days, the court may order that the defendant shall remain in the state hospital, developmental center, or other facility or on outpatient status for that period of time. Within 150 days of an admission made pursuant to subdivision (a) or if the defendant becomes mentally competent, the executive director or designee of the hospital or developmental center or person in charge of the facility or the outpatient supervisor shall report to the court and the regional center director or his or her designee regarding the defendant's progress toward becoming mentally competent. The court shall provide to the prosecutor and defense counsel copies of all reports under this section. If the report indicates that there is no substantial likelihood that the defendant has become mentally competent, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c). The court shall transmit a copy of its order to the regional center director or designee and to the executive director of the developmental center.

(2) Any defendant who has been committed or has been on outpatient status for 18 months, and is still hospitalized or on

outpatient status shall be returned to the committing court where a hearing shall be held pursuant to the procedures set forth in Section 1369. The court shall transmit a copy of its order to the regional center director or designee and the executive director of the developmental center.

(3) If it is determined by the court that no treatment for the defendant's mental impairment is being conducted, the defendant shall be returned to the committing court. A copy of this order shall be sent to the regional center director or designee and to the executive director of the developmental center.

(4) At each review by the court specified in this subdivision, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination.

(c) (1) (A) At the end of three years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, whichever is shorter, any defendant who has not become mentally competent shall be returned to the committing court.

(B) The court shall notify the regional center director or designee and the executive director of the developmental center of that return and of any resulting court orders.

(2) In the event of dismissal of the criminal charges before the defendant becomes mentally competent, the defendant shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), or to commitment and detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code. If it is found that the person is not subject to commitment or detention pursuant to the applicable provision of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or to commitment or detention pursuant to a petition filed pursuant to Section 6502 of the Welfare and Institutions Code, the individual shall not be subject to further confinement pursuant to this article and the criminal action remains subject to dismissal pursuant to Section 1385. The court shall notify the regional center director and the executive director of the developmental center of any dismissal.

(d) Notwithstanding any other provision of this section, the criminal action remains subject to dismissal pursuant to Section 1385. If at any time prior to the maximum period of time allowed for proceedings under this article, the regional center director concludes that the behavior of the defendant related to the defendant's criminal offense has been eliminated during time spent in court-ordered programs, the court may, upon recommendation of the regional center director, dismiss the criminal charges. The court shall transmit

a copy of any order of dismissal to the regional center director and to the executive director of the developmental center.

(e) For the purpose of this section, "secure treatment facility" shall not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.

SEC. 3. Section 4800 of the Welfare and Institutions Code is amended to read:

4800. (a) Every adult who is or has been admitted or committed to a state hospital, developmental center, community care facility, as defined in Section 1502 of the Health and Safety Code, health facility, as defined in Section 1250 of the Health and Safety Code, or any other appropriate placement permitted by law, as a developmentally disabled patient shall have a right to a hearing by writ of habeas corpus for his or her release from the hospital, developmental center, community care facility, or health facility after he or she or any person acting on his or her behalf makes a request for release to any member of the staff of the state hospital, developmental center, community care facility, or health facility or to any employee of a regional center.

(b) The member of the staff or regional center employee to whom a request for release is made shall promptly provide the person making the request for his or her signature or mark a copy of the form set forth below. The member of the staff, or regional center employee, as the case may be, shall fill in his or her own name and the date, and, if the person signs by mark, shall fill in the person's name, and shall then deliver the completed copy to the medical director of the state hospital or developmental center, the administrator or director of the community care facility, or the administrator or director of the health facility, as the case may be, or his or her designee, notifying him or her of the request. As soon as possible, the person notified shall inform the superior court for the appropriate county, as indicated in Section 4801, of the request for release and shall transmit a copy of the request for release to the person's parent or conservator together with a statement that notice of judicial proceedings taken pursuant to that request will be forwarded by the court. The copy of the request for release and the notice shall be sent by the person notified by registered or certified mail with proper postage prepaid, addressed to the addressee's last known address, and with a return receipt requested. The person notified shall also transmit a copy of the request for release and the name and address of the person's parent or conservator to the court.

(c) Any person who intentionally violates this section is guilty of a misdemeanor.

(d) The form for a request for release shall be substantially as follows:

(Name of the state hospital, developmental center, community care facility, or health facility or regional center) _____ day of _____ 19____

I, _____ (member of the staff of the state hospital, developmental center, community care facility, or health facility or employee of the regional center), have today received a request for the release from _____ (name of state hospital, developmental center, or community care facility) State Hospital, developmental center, community care facility, or health facility of _____ (name of patient) from the undersigned patient on his or her own behalf or from the undersigned person on behalf of the patient.

_____

Signature or mark of patient making request for release

_____

Signature or mark of person making request on behalf of patient

SEC. 4. Section 4801 of the Welfare and Institutions Code is amended to read:

4801. (a) Judicial review shall be in the superior court for the county in which the state hospital, developmental center, community care facility, or health facility is located, except that, if the adult has been found incompetent to stand trial and has been committed pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code, judicial review shall be in the superior court of the county that determined the question of the mental competence of the defendant. The adult requesting to be released shall be informed of his or her right to counsel by a member of the staff of the state hospital, developmental center, community care facility, or health facility and by the court; and if he or she does not have an attorney for the proceedings, the court shall immediately appoint the public defender or other attorney to assist him or her in the preparation of a petition for the writ of habeas corpus and to represent him or her in the proceedings. The person shall pay the costs of those legal services if he or she is able.

(b) At the time the petition for the writ of habeas corpus is filed with the court, the clerk of the court shall transmit a copy of the petition, together with notification as to the time and place of any evidentiary hearing in the matter, to the parent or conservator of the person seeking release or for whom release is sought and to the director of the appropriate regional center. Notice shall also be

provided to the director of the appropriate developmental center if the person seeking release or for whom release is sought resides in a developmental center. The notice shall be sent by registered or certified mail with proper postage prepaid, addressed to the addressee's last known address, and with a return receipt requested.

(c) The court shall either release the adult or order an evidentiary hearing to be held not sooner than five judicial days nor more than 10 judicial days after the petition and notice to the adult's parent or conservator and to the director of the appropriate regional center and developmental center are deposited in the United States mail pursuant to this section.

(1) Except as provided in paragraph (2), if the court finds (A) that the adult requesting release or for whom release is requested is not developmentally disabled, or (B) that he or she is developmentally disabled and that he or she is able to provide safely for his or her basic personal needs for food, shelter, and clothing, he or she shall be released within 72 hours. If the court finds that he or she is developmentally disabled and that he or she is unable to provide safely for his or her basic personal needs for food, shelter, or clothing, but that a responsible person or a regional center or other public or private agency is willing and able to provide therefor, the court shall release the developmentally disabled adult to the responsible person or regional center or other public or private agency, as the case may be, subject to any conditions that the court deems proper for the welfare of the developmentally disabled adult and that are consistent with the purposes of this division.

(2) If the person is charged with a violent felony and has been committed to his or her current placement pursuant to Section 1370.1 of the Penal Code or Section 6500, and the court finds (A) that the adult requesting release or for whom release is requested is not developmentally disabled or mentally retarded, or (B) that he or she is able to provide safely for his or her basic personal needs for food, shelter, and clothing, the court shall, before releasing the person, determine that the release will not pose a danger to the health or safety of others due to the person's known behavior. If the court finds there is no danger pursuant to the finding required by subparagraph (D) of paragraph (1) of subdivision (a) of Section 1370.1 of the Penal Code, the person shall be released within 72 hours. If the person's release poses a danger to the health or safety of others, the court may grant or deny the request, taking into account the danger to the health or safety of others posed by the person. If the court finds that release of the person can be made subject to conditions that the court deems proper for the preservation of public health and safety and the welfare of the person, the person shall be released subject to those conditions.

(d) If in any proceeding under this section, the court finds that the adult is developmentally disabled and has no parent or conservator, and is in need of a conservator, the court shall order the appropriate

regional center or the state department to initiate, or cause to be initiated, proceedings for the appointment of a conservator for the developmentally disabled adult.

(e) This section shall become operative January 1, 1988.

SEC. 5. Section 6500 of the Welfare and Institutions Code is amended to read:

6500. On and after July 1, 1971, no mentally retarded person may be committed to the State Department of Developmental Services pursuant to this article, unless he or she is a danger to himself or herself, or others. For the purposes of this article, dangerousness to self or others shall be considered to include, but not be limited to, a finding of incompetence to stand trial pursuant to the provisions of Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code when the defendant has been charged with murder, mayhem, aggravated mayhem, a violation of Section 207, 209, or 209.5 of the Penal Code in which the victim suffers intentionally inflicted great bodily injury, robbery perpetrated by torture or by a person armed with a dangerous or deadly weapon or in which the victim suffers great bodily injury, carjacking perpetrated by torture or by a person armed with a dangerous or deadly weapon or in which the victim suffers great bodily injury, a violation of subdivision (b) of Section 451 of the Penal Code, a violation of paragraph (1) or (2) of subdivision (a) of Section 262 or paragraph (2) or (3) of subdivision (a) of Section 261 of the Penal Code, a violation of Section 288 of the Penal Code, any of the following acts when committed by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person: a violation of paragraph (1) or (2) of subdivision (a) of Section 262 of the Penal Code, a violation of Section 264.1, 286, or 288a of the Penal Code, or a violation of subdivision (a) of Section 289 of the Penal Code; a violation of Section 459 of the Penal Code in the first degree, assault with intent to commit murder, a violation of Section 220 of the Penal Code in which the victim suffers great bodily injury, a violation of Section 12303.1, 12303.3, 12308, 12309, or 12310 of the Penal Code, or if the defendant has been charged with a felony involving death, great bodily injury, or an act which poses a serious threat of bodily harm to another person.

If the mentally retarded person is in the care or treatment of a state hospital, developmental center, or other facility at the time a petition for commitment is filed pursuant to this article, proof of a recent overt act while in the care and treatment of a state hospital, developmental center, or other facility is not required in order to find that the person is a danger to self or others.

Any order of commitment made pursuant to this article shall expire automatically one year after the order of commitment is made. This section shall not be construed to prohibit any party enumerated in Section 6502 from filing subsequent petitions for additional periods of commitment. In the event subsequent petitions are filed, the

procedures followed shall be the same as with an initial petition for commitment.

In any proceedings conducted under the authority of this article, the alleged mentally retarded person shall be informed of his or her right to counsel by the court, and if the person does not have an attorney for the proceedings, the court shall immediately appoint the public defender or other attorney to represent him or her. The person shall pay the cost for the legal services if he or she is able to do so. At any judicial proceeding under the provisions of this article, allegations that a person is mentally retarded and a danger to himself or herself or to others shall be presented by the district attorney for the county unless the board of supervisors, by ordinance or resolution, delegates this authority to the county counsel.

SEC. 6. Section 6504.5 of the Welfare and Institutions Code is amended to read:

6504.5. Wherever a petition is filed pursuant to this article, the court shall appoint the director of a regional center for the developmentally disabled established under Division 4.5 of this code, or the designee of the director, to examine the alleged mentally retarded person.

Within 15 judicial days after his or her appointment, the regional center director or designee shall submit to the court in writing a report containing his or her evaluation of the alleged mentally retarded person. The report shall contain a recommendation of a facility or facilities in which the alleged developmentally disabled person may be placed.

The report shall include a description of the least restrictive residential placement necessary to achieve the purposes of treatment. In determining the least restrictive residential placement, consideration shall be given to public safety. If placement into or out of a developmental center is recommended, the regional center director or designee simultaneously shall submit the report to the executive director of the developmental center or his or her designee. The executive director of the developmental center or his or her designee may, within 15 days of receiving the regional center report, submit to the court a written report evaluating the ability of the developmental center to achieve the purposes of treatment for this person and whether the developmental center placement can adequately provide the security measures or systems required to protect the public health and safety from the potential dangers posed by the person's known behaviors.

The reports prepared by the regional center director and developmental center director, if applicable, shall also address suitable interim placements for the person as provided for in Section 6506.

SEC. 7. Section 6506 of the Welfare and Institutions Code is amended to read:

6506. Pending the hearing, the court may order that the alleged dangerous mentally retarded person may be left in the charge of his or her parent, guardian, conservator, or other suitable person, or placed in a state hospital for the developmentally disabled, in the county psychiatric hospital, or in any other suitable placement as determined by the court. Prior to the issuance of an order under this section, the regional center and developmental center, if applicable, shall recommend to the court a suitable person or facility to care for the alleged mentally retarded person. The determination of a suitable person or facility shall be the least restrictive option that provides for the person's treatment needs and that has existing security systems or measures in place to adequately protect the public safety from any known dangers posed by the person. In determining whether the public safety will be adequately protected, the court shall make the finding required by subparagraph (D) of paragraph (1) of subdivision (a) of Section 1370.1 of the Penal Code.

Pending the hearing, the court may order that the person receive necessary habilitation, care, and treatment, including medical and dental treatment.

Orders made pursuant to this section shall expire at the time set for the hearing pursuant to Section 6503. If the court upon a showing of good cause grants a continuance of the hearing on the matter, it shall order that the person be detained pursuant to this section until the hearing on the petition is held.

SEC. 8. Section 6509 of the Welfare and Institutions Code is amended to read:

6509. If the court finds that the person is mentally retarded, and that he or she is a danger to himself, herself, or to others, the court may make an order that the person be committed to the State Department of Developmental Services for suitable treatment and habilitation services. Suitable treatment and habilitation services is defined as the least restrictive residential placement necessary to achieve the purposes of treatment. Care and treatment of a person committed to the State Department of Developmental Services may include placement in any state hospital, developmental center, any licensed community care facility, as defined in Section 1504, or any health facility, as defined in Section 1250, or any other appropriate placement permitted by law. The court shall hold a hearing as to the available placement alternatives and consider the reports of the regional center director or designee and the developmental center director or designee submitted pursuant to Section 6504.5. After hearing all the evidence, the court shall order that the person be committed to that placement that the court finds to be the most appropriate alternative. If the court finds that release of the person can be made subject to conditions that the court deems proper and adequate for the protection and safety of others and the welfare of the person, the person shall be released subject to those conditions.

The court, however, may commit a mentally retarded person who is not a resident of this state under Section 4460 for the purpose of transportation of the person to the state of his or her legal residence pursuant to Section 4461. The State Department of Developmental Services shall receive the person committed to it and shall place the person in the placement ordered by the court.

If the Department of Developmental Services decides that a change in placement is necessary, it shall notify in writing the court of commitment, the district attorney, and the attorney of record for the person and the regional center of its decision at least 15 days in advance of the proposed change in placement. The court may hold a hearing and (a) approve or disapprove of the change, or (b) take no action, in which case the change shall be deemed approved. At the request of the district attorney or of the attorney for the person, a hearing shall be held.

SEC. 8.5. Section 6509 of the Welfare and Institutions Code is amended to read:

6509. (a) If the court finds that the person is mentally retarded, and that he or she is a danger to himself, herself, or to others, the court may make an order that the person be committed to the State Department of Developmental Services for suitable treatment and habilitation services. Suitable treatment and habilitation services is defined as the least restrictive residential placement necessary to achieve the purposes of treatment. Care and treatment of a person committed to the State Department of Developmental Services may include placement in any state hospital, developmental center, any licensed community care facility, as defined in Section 1504, or any health facility, as defined in Section 1250, or any other appropriate placement permitted by law. The court shall hold a hearing as to the available placement alternatives and consider the reports of the regional center director or designee and the developmental center director or designee submitted pursuant to Section 6504.5. After hearing all the evidence, the court shall order that the person be committed to that placement that the court finds to be the most appropriate alternative. If the court finds that release of the person can be made subject to conditions that the court deems proper and adequate for the protection and safety of others and the welfare of the person, the person shall be released subject to those conditions.

The court, however, may commit a mentally retarded person who is not a resident of this state under Section 4460 for the purpose of transportation of the person to the state of his or her legal residence pursuant to Section 4461. The State Department of Developmental Services shall receive the person committed to it and shall place the person in the placement ordered by the court.

(b) If the person has at any time been found mentally incompetent pursuant to Chapter 6 (commencing with Section 1367) of Title 10 of Part 2 of the Penal Code arising out of a complaint charging a felony offense specified in Section 290 of the Penal Code,

the court shall order the State Department of Developmental Services to give notice of that finding to the designated placement facility and the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility.

(c) If the Department of Developmental Services decides that a change in placement is necessary, it shall notify in writing the court of commitment, the district attorney, and the attorney of record for the person and the regional center of its decision at least 15 days in advance of the proposed change in placement. The court may hold a hearing and (1) approve or disapprove of the change, or (2) take no action in which case the change shall be deemed approved. At the request of the district attorney or of the attorney for the person, a hearing shall be held.

SEC. 9. Section 6513 of the Welfare and Institutions Code is amended to read:

6513. (a) The State Department of Developmental Services shall pay for the costs, as defined in this section, of judicial proceedings, including commitment, placement, or release, under this article under both of the following conditions:

(1) The judicial proceedings are in a county within which a state hospital or developmental center maintains a treatment program for mentally retarded persons who are a danger to themselves or others.

(2) The judicial proceedings relate to a mentally retarded person who is at the time residing in the state hospital or developmental center located in the county of the proceedings.

(b) The county clerk of a county described in subdivision (a) may prepare a statement of all costs incurred by the county in the investigation, preparation for, and conduct of the proceeding, including any costs of the district attorney or county counsel and any public defender or court-appointed counsel representing the person, and including any costs incurred by the county for the guarding or keeping of the person while away from the state hospital and for transportation of the person to and from the hospital. The statement shall be certified to by a judge of the superior court and shall be sent to the State Department of Developmental Services. In lieu of sending statements after each proceeding, the statements may be held and submitted quarterly for the preceding three-month period.

SEC. 10. Section 1.5 of this bill incorporates amendments to Section 1370 of the Penal Code proposed by both this bill and AB 2104. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1370 of the Penal Code, and (3) this bill is enacted after AB 2104, in which case Section 1 of this bill shall not become operative.

SEC. 11. Section 2.5 of this bill incorporates amendments to Section 1370.1 of the Penal Code proposed by both this bill and AB 2104. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends

Section 1370.1 of the Penal Code, and (3) this bill is enacted after AB 2104, in which case Section 2 of this bill shall not become operative.

SEC. 12. Section 8.5 of this bill incorporates amendments to Section 6509 of the Welfare and Institutions Code proposed by both this bill and AB 2104. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 6509 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2104, in which case Section 8 of this bill shall not become operative.

SEC. 13. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

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

SEC. 14. This act shall become operative only if Assembly Bill 3130 of the 1995–96 Regular Session is enacted and becomes operative on or before January 1, 1997.

CHAPTER 1077

An act to amend Section 704.090 of the Code of Civil Procedure, to amend Sections 13960, 13962, 13963, 13965, 13966.01, 13967.2, 13967.5, 13968, 13969.3, and 13969.4 of the Government Code, to amend Section 4903 of the Labor Code, to amend Sections 166, 243, 262, 273.5, 273.6, 484.1, 1203.044, 1203.097, 1203.1, 1205, 1205.3, 1214, 1463.18, 1464, and 2900.5 of, and to repeal Section 1205.5 of, the Penal Code, to amend Section 42003 of the Vehicle Code, and to amend Sections 653.5, 654.3, 656, 729.7, 730.6, 1752.82, and 1766.1 of the Welfare and Institutions Code, relating to victims of crime.

[Approved by Governor September 29, 1996. Filed with Secretary of State September 30, 1996.]

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

SECTION 1. Section 704.090 of the Code of Civil Procedure is amended to read:

704.090. (a) The funds of a judgment debtor confined in a prison or facility under the jurisdiction of the Department of Corrections or the Department of the Youth Authority or confined in any county or city jail, road camp, industrial farm, or other local correctional facility, held in trust for or to the credit of the judgment debtor, in an inmate's trust account or similar account by the state, county, or city, or any agency thereof, are exempt without making a claim in the amount of one thousand dollars ($1,000). If the judgment debtor is married, each spouse is entitled to a separate exemption under this section or the spouses may combine their exemptions.

(b) Notwithstanding subdivision (a), if the judgment is for a restitution fine or order imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative on or before September 28, 1994, or Section 1203.04 of the Penal Code, as operative on or before August 2, 1995, or Section 1202.4 of the Penal Code, the funds held in trust for, or to the credit of, a judgment debtor described in subdivision (a) are exempt in the amount of three hundred dollars ($300) without making a claim.

SEC. 2. Section 13960 of the Government Code is amended to read:

13960. As used in this article:

(a) (1) "Victim" means a resident of the State of California, a member of the military stationed in California, or a family member living with a member of the military stationed in California who sustains injury or death as a direct result of a crime.

(2) "Derivative victim" means a resident of California who is one of the following:

(A) At the time of the crime was the parent, sibling, spouse, or child of the victim.

(B) At the time of the crime was living in the household of the victim.

(C) A person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).

(D) Is another family member of the victim, including the victim's fiancé, and witnessed the crime.

(b) "Injury" includes physical or emotional injury, or both. However, this article does not apply to emotional injury unless that injury is incurred by a victim who also sustains physical injury or threat of physical injury. For purposes of this article, a victim of a crime committed in violation of Section 261, 262, 271, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, or subdivision (a) or (c) of Section 311.4, of the Penal Code, who sustains emotional injury is presumed to have sustained physical injury. For purposes of this article, a victim of a

crime committed in violation of Section 270 of the Penal Code, as a result of conduct other than a failure to pay child support, who sustains emotional injury is presumed to have sustained physical injury if criminal charges were filed or a prosecuting attorney expresses the opinion that the child is a victim of that section.

(c) "Crime" means a crime or public offense that would constitute a misdemeanor or a felony if committed in California by a competent adult which results in injury to a resident of this state, including a crime or public offense, wherever it may take place, when the resident is temporarily absent from the state. "Crime" includes an act of terrorism, as defined in Section 2331 of Title 18 of the United States Code, committed against a resident of the state, whether or not the act occurs within the state. No act involving the operation of a motor vehicle, aircraft, or water vehicle which results in injury or death constitutes a crime for the purposes of this article, except that a crime shall include any of the following:

(1) Injury or death intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(2) Injury or death caused by a driver in violation of Section 20001 of the Vehicle Code.

(3) Injury or death caused by a person who is under the influence of any alcoholic beverage or drug.

(4) Injury or death caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated.

For the purpose of the limitations imposed by this article, a crime shall mean one act or series of related acts arising from the same course of conduct with the same perpetrator or perpetrators.

(d) "Pecuniary loss" means the following expenses for which the victim or derivative victim has not been and will not be reimbursed from any other source:

(1) The amount of medical or medical-related expenses incurred by the victim, including in-patient psychological or psychiatric expenses, and including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) The amount of out-patient psychiatric, psychological, or other mental health counseling related expenses which became necessary as a direct result of the crime. These counseling services may only be reimbursed if provided by any of the following individuals:

(A) A person licensed as a physician who is certified in psychiatry by the American Board of Psychiatry and Neurology or who has completed a residency in psychiatry.

(B) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(C) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.

(D) A person licensed as a marriage, family, and child counselor under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(E) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or board certified psychiatrist as required by Section 2913 of the Business and Professions Code.

(F) A person registered with the Board of Psychology who is providing services in a nonprofit community agency pursuant to subdivision (d) of Section 2909 of the Business and Professions Code.

(G) A person registered as a marriage, family, and child counselor intern who is under the supervision of a licensed marriage, family, and child counselor, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in Section 4980.44 of the Business and Professions Code.

(H) A person registered as an associate clinical social worker, as defined in Section 4996.18 of the Business and Professions Code, who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a board certified psychiatrist.

(3) The loss of income that the victim or the loss of support that the derivative victim has incurred or will incur as a direct result of an injury or death.

(4) Pecuniary loss also includes nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(5) The amount of family psychiatric, psychological, or mental health counseling expenses necessary as a direct result of the crime for the successful treatment of the victim, provided to family members of the victim in the presence of the victim, whether or not the family member relationship existed at the time of the crime.

(e) "Board" means the State Board of Control.

(f) "Victim centers" means those centers as specified in Section 13835.2 of the Penal Code.

(g) "Peer counselor" means a provider of mental health counseling services who has completed a specialized course in rape crisis counseling skills development, participates in continuing education in rape crisis counseling skills development, and provides rape crisis counseling in consultation with a mental health practitioner licensed within the State of California.

SEC. 3. Section 13962 of the Government Code is amended to read:

13962. (a) The staff of the board shall review all applications for assistance in order to ensure that they are complete. If an application is not complete, it shall be returned to the applicant with a brief statement of the additional information required. The applicant,

within 30 days of receipt thereof, may either supply the additional information or appeal the action to the board which shall review the application to determine whether or not it is complete.

(b) The board shall approve or deny applications accepted in accordance with subdivision (a) within an average of 90 calendar days. Each individual claim shall be approved or denied within 180 calendar days. These specified time periods shall operate from the date the claim is accepted by the board or local contract agency, to the date of approval or denial of the claim. Any verification of the claim which is deemed necessary shall be performed during these specified time periods. The verification process shall include sending supplemental forms to all hospitals, physicians, law enforcement officials, and other interested parties involved, verifying the treatment of the victim or derivative victim, circumstances of the crime, amounts paid or received by or for the victim or derivative victim, and other pertinent information as may be deemed necessary by the board. Verification forms shall be provided by the board and shall be returned to the board within 10 business days. All of this information shall be provided at no cost to the applicant, the board, or local victim centers. Verification forms shall require sufficient information to clearly identify the victim or derivative victim. The board shall include on the verification forms a statement certifying that a signed authorization by the applicant is retained in the applicant's file and that this certification constitutes actual authorization for the release of information, notwithstanding any other provision of law. Each request from the board to a physician for a copy or summary of medical records shall include a copy of the signed authorization for the release of information. The board shall include on the verification forms reference to this section with respect to the prompt return of the verification forms. The board, thereupon, shall consider the application at a hearing at a time and place of its choosing.

(c) The victim and the applicant, if other than the victim, shall cooperate with the staff of the board or the local victim center in the verification of the information contained in the application. Failure to cooperate shall be reported to the board, which, in its discretion, may reject the application on this ground alone.

(d) The board may contract with local victim centers to provide verification of claims processed by the centers pursuant to conditions stated in subdivision (b).

SEC. 4. Section 13963 of the Government Code is amended to read:

13963. (a) The board shall grant an applicant for benefits a hearing to contest a staff recommendation to deny an application for benefits or to deny an application to submit a late claim.

(b) The board shall notify all interested persons not less than five days prior to the date of the hearing.

(c) At the hearing, the applicant shall have the burden of establishing by a preponderance of the evidence that, as a direct result of a crime, the victim or derivative victim incurred an injury that resulted in a pecuniary loss.

(d) The hearing shall be informal and need not be conducted according to the technical rules relating to evidence and witnesses. The board may rely on any relevant evidence if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of the evidence over objection in a civil action.

(e) The board may rely on written reports prepared for the board, or other information received, from the law enforcement agency or other governmental agency responsible for investigating the crime.

(f) If the applicant or the applicant's representative chooses not to appear at the hearing, the board may act solely upon the application for assistance, the staff's report, and other evidence that appears in the record.

(g) Hearings shall be held in various locations with the frequency necessary to provide for the speedy adjudication of the applications. If the applicant's presence is required at the hearing, the board shall schedule the applicant's hearing in as convenient a location as possible.

(h) At the hearing, the board shall:

(1) Provide those claimants present with information on the rules, regulations, and any other procedures and guidelines used by the board at these hearings.

(2) Review the application for assistance and the report prepared thereon and any other evidence obtained as a result of the verification.

(3) Receive any other evidence as the board finds necessary or desirable properly to evaluate the application.

(i) The board may delegate the hearings of applications to hearing examiners.

SEC. 5. Section 13965 of the Government Code is amended to read:

13965. (a) If the application for assistance is approved, the board shall determine what type of state assistance will best aid the victim or derivative victim. The board may take any or all of the following actions:

(1) Reimburse the following persons for the expense of their out-patient mental health counseling when that mental health counseling is necessary as a direct result of the crime:

(A) A victim in an amount not to exceed ten thousand dollars ($10,000).

(B) A derivative victim who is the surviving parent, sibling, child, spouse, or fiancé of a victim of a crime which directly resulted in the

death of the victim in an amount not to exceed ten thousand dollars ($10,000).

(C) A derivative victim who is the primary caretaker of a minor victim of sexual or physical abuse whose claim is not denied or reduced pursuant to subdivision (b) or (d) of Section 13964 in a total amount not to exceed ten thousand dollars ($10,000) for not more than two derivative victims described in this subparagraph.

(D) A derivative victim not eligible for reimbursement pursuant to subparagraph (B) or (C) in an amount not to exceed three thousand dollars ($3,000).

The board may authorize a direct cash payment to a provider of psychological or psychiatric treatment or mental health counseling services, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or to either the victim or the derivative victim, equal to the pecuniary loss attributable to medical or medical-related expenses, including counseling, directly resulting from the injury. Reimbursement on the initial claim for any psychological, psychiatric, or mental health counseling services, including peer counseling services provided by a rape crisis center, shall, if the application has been approved, be paid by the board within 90 days of the date of receipt of the claim for payment, with subsequent payments to be made to the provider within one month of the receipt of a claim for payment. However, the board may not authorize without good cause a direct cash payment to a licensed health care provider or rape crisis center over the objection of the applicant.

When a public agency, including a court or district attorney or a police, county child protective services, or other state or local governmental agency, refers a victim of crime to a private nonprofit agency for treatment for that victim, the private nonprofit agency shall be reimbursed for those services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement shall not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for services under the victims of crime program and that other reimbursement or direct subsidies are not available to serve the victim.

Payments authorized pursuant to this paragraph for peer counseling services provided by a rape counseling center shall not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to individual, in-person counseling on a face-to-face basis for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) Authorize a cash payment to the victim equal to the pecuniary loss resulting from loss of wages directly resulting from the injury. Loss of wages shall not be paid by the board for more than two years following the crime. However, loss of wages may be extended for one

additional year if the victim is either enrolled in a program of retraining or other rehabilitation approved by the board or has established to the satisfaction of the board that because of his or her disability arising from the crime he or she is unable to participate in any retraining or rehabilitation. If the board determines, after review of an application for assistance, including the evaluation of a qualified provider, that pecuniary loss for which payment may be made under this paragraph is expected to continue more than six months after the date of approval of the victim's application for assistance, disbursement shall commence and continue on a monthly basis for the period of time pecuniary loss is expected to continue.

(3) Authorize a cash payment to a derivative victim described in subparagraphs (A) and (B) of paragraph (2) of subdivision (a) of Section 13960 who was legally dependent on the victim at the time of the crime for the loss of support incurred by that person as a direct result of the crime.

(A) Loss of support shall not be paid by the board for income lost by an adult for a period of more than two years and shall not extend more than three years following the date of the crime.

(B) Loss of support shall not be paid by the board on behalf of a minor for a period beyond the child's attaining the age of 18 years.

(C) The total amount payable to all derivative victims for loss of support pursuant to this paragraph as the result of one crime shall not exceed forty-six thousand dollars ($46,000).

(4) Authorize cash payments to or on behalf of the victim for job retraining or similar employment-oriented rehabilitative services.

(5) Obtain an independent examination and report from any provider of psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims. In cases where the crime involves child abuse or molestation, the provider shall have expertise in the needs of victims of child abuse or molestation, as appropriate. When a reevaluation is obtained, payments shall not be discontinued prior to completion of the reevaluation.

(6) When a victim dies as a direct result of a crime, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay, the medical or burial expenses incurred as a direct result of the crime for the medical or burial expenses incurred in an amount not to exceed the rates or limitations established by the board.

(7) The total award to or on behalf of the victim or a derivative victim shall not exceed twenty-three thousand dollars ($23,000), and may be increased only in accordance with this section.

(8) In the event that the victim requests that the board give priority to reimbursement of loss of wages, the board shall not pay medical expenses or mental health counseling expenses except upon

the request of the victim or after determining that payment of these expenses will not decrease the funds available to the victim for payment of loss of wages.

(9) The board may authorize a direct cash payment to a provider of services that are reimbursable pursuant to this article. However, the board may not, without good cause, authorize a direct cash payment to a provider over the objection of the victim or applicant.

(b) Assistance granted pursuant to this article shall not disqualify an otherwise eligible victim or derivative victim from participation in any other public assistance program.

(c) Cash payments made pursuant to this article may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of assistance according to the victim's or derivative victim's need, subject to the maximum limits provided in this section.

(d) The board shall pay attorney's fees representing the reasonable value of legal services rendered to the applicant, in an amount equal to 10 percent of the amount of the award, or five hundred dollars ($500), whichever is less for each victim and each derivative victim. An attorney receiving fees from another source may waive the right to receive fees under this section. Payments under this section shall be in addition to any amount authorized or ordered under subdivision (d) of Section 13969.1.

(e) No attorney shall charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this article except as awarded under this article.

(f) The maximum cash payments authorized in paragraph (7) of subdivision (a) shall be increased to forty-six thousand dollars ($46,000) if federal funds for those increases are available.

(g) Notwithstanding subdivisions (a) and (f), a victim injured between January 1, 1985, and December 31, 1985, shall be entitled to receive a maximum cash payment of forty-six thousand dollars ($46,000) if federal funds for these increases are available, but only for costs in excess of limitations provided for in subdivision (a) which are attributable to medical or medical-related expenses, except for psychological or psychiatric treatment, or mental health counseling services.

(h) Notwithstanding any conflicting provision of this chapter, the board may make additional payments for purposes described in paragraph (1) of subdivision (a) to any victim who filed an application with the board on or after December 1, 1982, who was a victim of a crime involving sexual assault, and who is a minor at the time the additional payments pursuant to this subdivision are made. The payments authorized by this subdivision shall not exceed the limits imposed by subdivisions (a) and (j).

(i) Reimbursement for any medical or medical-related services shall, if the victim's application has been approved, be paid by the board within an average of 90 days from receipt of the claim for

payment. Payments to a medical or mental health provider under this subdivision or paragraph (1) of subdivision (a) shall not be discontinued prior to completion of any reevaluation. Whether or not a reevaluation is obtained, if the board determines that payments to a provider shall be discontinued, the board shall notify the provider of their discontinuance within 30 days of its determination.

(j) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related expenses, including counseling expenses, for which restitution is requested pursuant to this section. For mental health and counseling services, rates shall not exceed the statewide average. The adoption, amendment, and repeal of these maximum rates shall not be subject to the Administrative Procedure Act under Chapter 3.5 (commencing with Section 11340) of Part 1. An informational copy of the maximum rates shall be filed with the Secretary of State upon adoption by the board. A provider who accepts payment from the program for a service shall accept the program's rates as payment in full and shall not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the board for that service.

To assure service limitations which are uniform and appropriate to the levels of treatment required by the victim or derivative victim, the board may review all claims for these services as necessary to ensure their medical necessity. The board may further require additional documentation, information, or medical review of cases of continuing treatment which are projected to exceed five thousand dollars ($5,000) to determine the need to continue treatment in excess of that amount. The board may accept or reject claims for the amount in excess of five thousand dollars ($5,000) by applying the same standards applicable to processing the initial claim or may approve a continuing treatment regimen for a specific interval or subject to periodic review as appropriate. All information requested of the treating therapist shall be provided at no cost to the applicant, the board, or to local victim centers, pursuant to subdivision (b) of Section 13962. Requests for additional information shall be made in a timely manner so as not to interfere with necessary treatment.

(k) The authority provided by this section shall not be construed to in any way diminish, enhance, or otherwise affect any authority which the board may have under current law except as explicitly provided in this section.

(*l*) The board, in its discretion, may make payments directly to providers prior to verification.

(m) Notwithstanding paragraph (1) of subdivision (a), the board may reimburse a victim or derivative victim for mental health counseling in excess of that authorized by that paragraph if the claim is based on dire or exceptional circumstances that require more extensive treatment, as approved by the board.

(n) Notwithstanding paragraph (1) of subdivision (a), if, as of December 31, 1993, a person has incurred mental health counseling expenses pursuant to this article in excess of one-half of the amount specified in that subdivision, the board may award, in addition to amounts awarded for previously incurred expenses, an amount equal to not more than one-half of the applicable maximum amount specified in that paragraph or any additional amounts as the board determines is necessary.

(o) The limitations on the amounts which the board may reimburse for loss of support and loss of wages pursuant to paragraphs (2) and (3) of subdivision (a) shall not apply to victims or derivative victims whose claims for loss of wages and loss of support had been approved prior to January 1, 1994.

SEC. 6. Section 13966.01 of the Government Code is amended to read:

13966.01. (a) The State of California shall be subrogated to the rights of the victim to whom cash payments are granted to the extent of the cash payments granted. The subrogation rights shall be against the perpetrator of the crime or any person liable for the pecuniary loss, including a carrier held liable in accordance with the provision of a policy of insurance issued pursuant to Section 11580.2 of the Insurance Code.

(b) The state shall also be entitled to a lien on the judgment, award, or settlement in the amount of the cash payments on any recovery made by or on behalf of the victim. The state may recover this amount in a separate action, or may intervene in an action brought by or on behalf of the victim. If a claim is filed within one year of the date of recovery, the state shall pay 25 percent of the amount of the recovery that is subject to a lien on the judgment, award, or settlement, to the victim responsible for recovery thereof from the perpetrator of the crime, provided the total amount of the lien is recovered. The remaining 75 percent of the amount and any amount not claimed within one year pursuant to this section, shall be deposited in the Restitution Fund.

(c) The board may compromise or settle and release any lien pursuant to this article if it is found that the action is in the best interest of the state or the collection would cause undue hardship upon the victim. Repayment obligations to the Restitution Fund shall be enforceable as a summary judgment.

(d) No judgment, award, or settlement in any action or claim by a victim to recover damages for injuries, where the state has an interest, shall be satisfied without first giving the board notice and a reasonable opportunity to perfect and satisfy the lien. The notice shall be given to the board in Sacramento except in cases where the board specifies that the notice shall be given otherwise. The notice shall include the complete terms of the award, settlement, or judgment and the name and address of any carrier directly or indirectly providing for the satisfaction.

(e) In the event that the victim, his or her guardian, personal representative, estate, or survivors, or any of them, bring an action or assert a claim for damages against the person or persons liable for the injury or death giving rise to an award by the board under this article, notice of institution of legal proceedings, notice of settlement, and all other notices required to be given to the judgment debtor pursuant to Chapters 1 (commencing with Section 681) and 2 (commencing with Section 714) of Title 9 of Part 2 of the Code of Civil Procedure, shall be given to the board in Sacramento except in cases where the board specifies that notice shall be given to the Attorney General. Notice of institution of legal proceedings shall be given to the board within 30 days of filing the action. All notices shall be given by the attorney employed to bring the action for damages or by the victim, his or her guardian, personal representative, estate, or survivors, if no attorney is employed. Notice shall include: the names of all parties to the claim or action; the address of all parties to the claim or action except for those persons represented by attorneys and in that case the name of the party and the name and address of the attorney; the nature of the claim asserted or action brought; in the case of actions before courts or administrative agencies the full title of the case including the identity of the court or agency, the names of the parties, and the case or docket number. When the victim or his or her attorney has reason to believe that a person from whom damages are sought is receiving a defense provided in whole or in part by a carrier, or is insured by a carrier for the injury caused to the victim, notice shall include statement of the fact and the name and address of the carrier. Upon request of the board a person obligated to provide notice shall provide the board with a copy of the current written claim or complaint.

(f) The state shall pay the county probation department or other county agency responsible for collection of funds owed to the Restitution Fund under Section 13967, as operative on or before September 28, 1994, Section 1202.4 of the Penal Code, Section 1203.04, as operative on or before August 2, 1995, of the Penal Code, or Section 730.6 of the Welfare and Institutions Code, 10 percent of the funds so owed and collected by the county agency and deposited in the Restitution Fund. This payment shall be made only when the funds are deposited in the Restitution Fund within 45 days of the end of the month in which the funds are collected. Receiving 10 percent of the moneys collected as being owed to the Restitution Fund shall be considered an incentive for collection efforts and shall be used for furthering these collection efforts. The 10 percent rebates shall be used to augment the budgets for the county agencies responsible for collection of funds owed to the Restitution Fund, as provided in Section 13967, as operative on or before September 28, 1994, Section 1202.4 of the Penal Code, Section 1203.04, as operative on or before August 2, 1995, of the Penal Code, or Section 730.6 of the Welfare and

Institutions Code. The 10 percent rebates shall not be used to supplant county funding.

SEC. 7. Section 13967.2 of the Government Code is amended to read:

13967.2. Upon entry of a restitution order under subdivision (c) of Section 13967, as operative on or before September 28, 1994, paragraph (3) of subdivision (a) of Section 1202.4 of the Penal Code, or Section 1203.04, as operative on or before August 2, 1995, of the Penal Code, the following shall apply:

(a) The court shall enter a separate order for income deduction upon determination of the defendant's ability to pay, regardless of the probation status, in accordance with Section 1203 of the Penal Code. Determination of a defendant's ability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating lack of his or her ability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required.

(b) (1) In any case in which the court enters a separate order for income deduction under this section, the order shall be stayed until the agency in the county responsible for collection of restitution determines that the defendant has failed to meet his or her obligation under the restitution order and the defendant has not provided the agency with good cause for the failure in accordance with paragraph (2).

(2) If the agency responsible for collection of restitution receives information that the defendant has failed to meet his or her obligation under the restitution order, the agency shall request the defendant to provide evidence indicating that timely payments have been made or provide information establishing good cause for the failure. If the defendant fails to provide the agency with the evidence or fails to establish good cause within five days of the request, the agency shall immediately inform the defendant of that fact, and shall inform the clerk of the court in order that an income deduction order shall be served pursuant to subdivision (f) following a 15-day appeal period. The defendant may apply for a hearing to contest the lifting of the stay pursuant to subdivision (f).

(c) The income deduction order shall direct a payer to deduct from all income due and payable to the defendant the amount required by the court to meet the defendant's obligation.

(d) The income deduction order shall be effective so long as the order for restitution upon which it is based is effective or until further order of the court.

(e) When the court orders the income deduction, the court shall furnish to the defendant a statement of his or her rights, remedies, and duties in regard to the income deduction order. The statement shall state the following:

(1) All fees or interest that shall be imposed.

(2) The total amount of income to be deducted for each pay period.

(3) That the income deduction order applies to current and subsequent payers and periods of employment.

(4) That a copy of the income deduction order will be served on the defendant's payer or payers.

(5) That enforcement of the income deduction order may only be contested on the ground of mistake of fact regarding the amount of restitution owed.

(6) That the defendant is required to notify the clerk of the court within seven days after changes in the defendant's address, payers, and the addresses of his or her payers.

(7) That the court order will be stayed in accordance with subdivision (b) and that a hearing is available in accordance with subdivision (f).

(f) (1) Upon receiving the notice described in paragraph (2) of subdivision (b), the clerk of the court or officer of the agency responsible for collection of restitution shall serve an income deduction order and the notice to payer on the defendant's payer unless the defendant has applied for a hearing to contest the enforcement of the income deduction order.

(2) (A) Service by or upon any person who is a party to a proceeding under this section shall be made in the manner prescribed for service upon parties in a civil action.

(B) Service upon the defendant's payer or successor payer under this section shall be made by prepaid certified mail, return receipt requested.

(3) The defendant, within 15 days after being informed that the order staying the income deduction order shall be lifted, may apply for a hearing to contest the enforcement of the income deduction order on the ground of mistake of fact regarding the amount of restitution owed or on the ground that the defendant has established good cause for the nonpayment. The timely request for a hearing shall stay the service of an income deduction order on all payers of the defendant until a hearing is held and a determination is made as to whether the enforcement of the income deduction order is proper.

(4) The notice to payer shall contain only information necessary for the payer to comply with the income deduction order. The notice shall do all of the following:

(A) Require the payer to deduct from the defendant's income the amount specified in the income deduction order, and to pay that amount to the clerk of the court.

(B) Instruct the payer to implement the income deduction order no later than the first payment date that occurs more than 14 days after the date the income deduction order was served on the payer.

(C) Instruct the payer to forward, within two days after each payment date, to the clerk of the court the amount deducted from the defendant's income and a statement as to whether the amount

totally or partially satisfies the periodic amount specified in the income deduction order.

(D) Specify that if a payer fails to deduct the proper amount from the defendant's income, the payer is liable for the amount the payer should have deducted, plus costs, interest, and reasonable attorney's fees.

(E) Provide that the payer may collect up to five dollars ($5) against the defendant's income to reimburse the payer for administrative costs for the first income deduction and up to one dollar ($1) for each deduction thereafter.

(F) State that the income deduction order and the notice to payer are binding on the payer until further notice by the court or until the payer no longer provides income to the defendant.

(G) Instruct the payer that, when he or she no longer provides income to the defendant, he or she shall notify the clerk of the court and shall also provide the defendant's last known address and the name and address of the defendant's new payer, if known, and that, if the payer violates this provision, the payer is subject to a civil penalty not to exceed two hundred fifty dollars ($250) for the first violation or five hundred dollars ($500) for any subsequent violation.

(H) State that the payer shall not discharge, refuse to employ, or take disciplinary action against the defendant because of an income deduction order and shall state that a violation of this provision subjects the payer to a civil penalty not to exceed two hundred fifty dollars ($250) for the first violation or five hundred dollars ($500) for any subsequent violation.

(I) Inform the payer that when he or she receives income deduction orders requiring that the income of two or more defendants be deducted and sent to the same clerk of a court, he or she may combine the amounts that are to be paid to the depository in a single payment as long as he or she identifies that portion of the payment attributable to each defendant.

(J) Inform the payer that if the payer receives more than one income deduction order against the same defendant, he or she shall contact the court for further instructions.

(5) The clerk of the court shall enforce income deduction orders against the defendant's successor payer who is located in this state in the same manner prescribed in this subdivision for the enforcement of an income deduction order against a payer.

(6) A person may not discharge, refuse to employ, or take disciplinary action against an employee because of the enforcement of an income deduction order. An employer who violates this provision is subject to a civil penalty not to exceed two hundred fifty dollars ($250) for the first violation or five hundred dollars ($500) for any subsequent violation.

(7) When a payer no longer provides income to a defendant, he or she shall notify the clerk of the court and shall provide the defendant's last known address and the name and address of the

defendant's new payer, if known. A payer who violates this provision is subject to a civil penalty not to exceed two hundred fifty dollars ($250) for the first violation or five hundred dollars ($500) for a subsequent violation.

(g) As used in this section, "good cause" for failure to meet an obligation or "good cause" for nonpayment means, but shall not be limited to, any of the following:

(1) That there has been a substantial change in the defendant's economic circumstances, such as involuntary unemployment, involuntary cost-of-living increases, or costs incurred as the result of medical circumstances or a natural disaster.

(2) That the defendant reasonably believes there has been an administrative error with regard to his or her obligation for payment.

(3) Any other similar and justifiable reasons.

SEC. 8. Section 13967.5 of the Government Code is amended to read:

13967.5. (a) The restitution fine imposed pursuant to subdivision (a) of Section 13967, as operative on or before September 28, 1994, subparagraph (B) of paragraph (2) of subdivision (a) of Section 1203.04, as operative on or before August 2, 1995, of the Penal Code, or Section 1202.4 of the Penal Code shall be payable to the clerk of the court, the probation officer, or any other person responsible for the collection of criminal fines. If the defendant is unable or otherwise fails to pay that fine in a felony case and there is an amount unpaid of one thousand dollars ($1,000) or more within 60 days after the imposition of sentence, or in a case in which probation is granted, within the period of probation, the clerk of the court, probation officer, or other person to whom the fine is to be paid shall forward to the Controller the abstract of judgment along with any information which may be relevant to the present and future location of the defendant and his or her assets, if any, and any verifiable amount which the defendant may have paid to the victim as a result of the crime.

(b) A restitution fine shall be deemed a debt of the defendant owing to the state for the purposes of Sections 12418 and 12419.5 of the Government Code, excepting any amounts the defendant has paid to the victim as a result of the crime. Upon request by the Controller, the district attorney of a county or the Attorney General may take any necessary action to recover amounts owing on a restitution fine. The amount of the recovery shall be increased by a sum sufficient to cover any costs incurred by any state or local agency in the administration of this section. The remedies provided by this subdivision are in addition to any other remedies provided by law for the enforcement of a judgment.

SEC. 9. Section 13968 of the Government Code is amended to read:

13968. (a) The board is hereby authorized to make all needful rules and regulations for the purposes of carrying into effect this

article. All rules and regulations adopted pursuant to this subdivision shall be adopted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3.

(b) It shall be the duty of every hospital licensed under the laws of this state to display prominently in its emergency room posters giving notification of the existence and general provisions of this chapter, and the existence and locations of local victim centers. The board, in cooperation with local victim centers, shall set standards for the location of a display and shall provide posters, application forms, and general information regarding the provisions of this chapter to each hospital and physician licensed to practice in the State of California.

(c) It shall be the duty of every local law enforcement agency to inform victims of crimes of the provisions of this chapter, of the existence of local victim centers, and in counties where no local victim center exists, to provide application forms to victims who desire to seek assistance pursuant to this article. The board shall provide application forms and all other documents which local law enforcement agencies and victim centers may require to comply with this section. The board, in cooperation with local victim centers shall set standards to be followed by local law enforcement agencies for this purpose and may require them to file with the board a description of the procedures adopted by each agency to comply.

(d) Notwithstanding Section 827 of the Welfare and Institutions Code or any other provision of law, every law enforcement and social service agency in the state shall provide to the board or to the designated local victim centers, upon request, a copy of a petition filed in a juvenile court proceeding, reports of the probation officer, any other document made available to the probation officer or to the judge, referee, or other hearing officer, a complete copy of the report regarding the incident and any supplemental reports involving the crime, public offense, or incident giving rise to a claim, for the specific purpose of the submission of a claim or the determination of eligibility to submit a claim filed pursuant to this article. The board or designated local victim centers shall refuse to allow inspection of a document that personally identifies a minor by anyone other than the minor who is so identified, his or her custodial parent or guardian, the attorneys for those parties, and any other persons as may be designated by court order of the judge of the juvenile court. Any information received pursuant to this section shall be received in confidence for the limited purpose for which it was provided and shall not be further disseminated. A violation of this subdivision is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(e) The law enforcement agency supplying the information may, at its discretion, withhold the names of witnesses or informants from the board, if the release of such names would be detrimental to the parties or to an investigation currently in progress.

(f) Notwithstanding any other provision of law, every state agency, department, division, board, or commission, upon receipt of a copy of a release signed in accordance with the Information Practices Act of 1977 by the applicant or other authorized representative, shall provide to the board or local victim center the information necessary to complete the verification of an application filed pursuant to this article.

(g) The Department of Justice shall furnish, upon application of the board, all information necessary to verify the eligibility of any applicant for benefits pursuant to Section 13960.2, to recover any restitution fine or order obligations that are owed to the Restitution Fund or to any victim of crime, or to evaluate the status of any criminal disposition.

SEC. 10. Section 13969.3 of the Government Code is amended to read:

13969.3. A person who has been overpaid or on whose behalf any provider or other person has been overpaid under this chapter is liable for that amount unless both of the following facts exist:

(a) The overpayment was not due to fraud, misrepresentation, or willful nondisclosure on the part of the recipient.

(b) The overpayment was received without fault on the part of the recipient, and its recovery would be against equity and good conscience.

For overpayments which are not in excess of two thousand dollars ($2,000), the board may authorize the executive officer to establish limits for the administration of this section. For overpayments which are in excess of two thousand dollars ($2,000), the board shall report to the Legislature in the manner prescribed by Section 13928 and the relief from liability described above shall be subject to legislative approval.

SEC. 11. Section 13969.4 of the Government Code is amended to read:

13969.4. The executive officer or his or her designees, subject to this article, may do the following to recover moneys owed to the Restitution Fund:

(a) File a civil action against the liable person for the recovery of the amount of moneys owed. This action shall be filed within one year of either of the following events, or within three years of either of the following events if the liable person was overpaid benefits due to fraud, misrepresentation, or nondisclosure as described in Section 13969.3:

(1) The mailing or personal service of the notice of the moneys owed if the person affected does not file an appeal with the board or person designated by the board.

(2) The mailing of the decision of the board if the person affected does not initiate a further appeal.

(b) Initiate proceedings for a summary judgment against the liable person. However, this subdivision shall apply only where the

executive officer has found, pursuant to Section 13969.3, that the overpayment may not be waived. The executive officer may, not later than three years after the overpayment became final, file with the clerk of the proper court in the county from which the overpayment of benefits was paid or in the county in which the claimant resides, a certificate containing all of the following:

(1) The amount due, plus interest from the date that the initial determination of the moneys owed was made.

(2) A statement that the executive officer has complied with all the provisions of this article prior to the filing of the certificate.

(3) A request that the judgment be entered against the liable person in the amount set forth in the certificate.

The clerk, immediately upon the filing of the certificate, shall enter a judgment for the state against the liable person in the amount set forth in the certificate.

SEC. 12. Section 4903 of the Labor Code is amended to read:

4903. The appeals board may determine, and allow as liens against any sum to be paid as compensation, any amount determined as hereinafter set forth in subdivisions (a) through (i). If more than one lien is allowed, the appeals board may determine the priorities, if any, between the liens allowed. The liens which may be allowed hereunder are as follows:

(a) A reasonable attorney's fee for legal services pertaining to any claim for compensation either before the appeals board or before any of the appellate courts, and the reasonable disbursements in connection therewith. No fee for legal services shall be awarded to any representative who is not an attorney, except with respect to those claims for compensation for which an application, pursuant to Section 5501, has been filed with the appeals board on or before December 31, 1991, or for which a disclosure form, pursuant to Section 4906, has been sent to the employer, or insurer or third-party administrator, if either is known, on or before December 31, 1991.

(b) The reasonable expense incurred by or on behalf of the injured employee, as provided by Article 2 (commencing with Section 4600) and, to the extent the employee is entitled to reimbursement under Section 4621, medical-legal expenses as provided by Article 2.5 (commencing with Section 4620) of Chapter 2 of Part 2.

(c) The reasonable value of the living expenses of an injured employee or of his or her dependents, subsequent to the injury.

(d) The reasonable burial expenses of the deceased employee, not to exceed the amount provided for by Section 4701.

(e) The reasonable living expenses of the spouse or minor children of the injured employee, or both, subsequent to the date of the injury, where the employee has deserted or is neglecting his or her family. These expenses shall be allowed in the proportion that the appeals board deems proper, under application of the spouse, guardian of the minor children, or the assignee, pursuant to

subdivision (a) of Section 11477 of the Welfare and Institutions Code, of the spouse, a former spouse, or minor children. A collection received as a result of a lien against a workers' compensation award imposed pursuant to this subdivision for payment of child support ordered by a court shall be credited as provided in Section 695.221 of the Code of Civil Procedure.

(f) The amount of unemployment compensation disability benefits that have been paid under or pursuant to the Unemployment Insurance Code in those cases where, pending a determination under this division there was uncertainty whether the benefits were payable under the Unemployment Insurance Code or payable hereunder; provided, however, that any lien under this subdivision shall be allowed and paid as provided in Section 4904.

(g) The amount of unemployment compensation benefits and extended duration benefits paid to the injured employee for the same day or days for which he or she receives, or is entitled to receive, temporary total disability indemnity payments under this division; provided, however, that any lien under this subdivision shall be allowed and paid as provided in Section 4904.

(h) The amount of indemnification granted by the California Victims of Crime Program pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code.

(i) The amount of compensation, including expenses of medical treatment, and recoverable costs that have been paid by the Asbestos Workers' Account pursuant to the provisions of Chapter 11 (commencing with Section 4401) of Part 1.

SEC. 13. Section 166 of the Penal Code is amended to read:

166. (a) Except as provided in subdivisions (b) and (c), every person guilty of any contempt of court, of any of the following kinds, is guilty of a misdemeanor:

(1) Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority.

(2) Behavior as specified in paragraph (1) committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law.

(3) Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any court.

(4) Willful disobedience of any process or order lawfully issued by any court.

(5) Resistance willfully offered by any person to the lawful order or process of any court.

(6) The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question.

(7) The publication of a false or grossly inaccurate report of the proceedings of any court.

(8) Presenting to any court having power to pass sentence upon any prisoner under conviction, or to any member of the court, any affidavit or testimony or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon the prisoner, except as provided in this code.

(b) (1) Any person who is guilty of contempt of court under paragraph (4) of subdivision (a) by willfully contacting a victim by phone, mail, or directly and who has been previously convicted of a violation of Section 646.9 shall be punished by imprisonment in a county jail for not more than one year, by a fine of five thousand dollars ($5,000), or by both that fine and imprisonment.

(2) For the purposes of sentencing under this subdivision, each contact shall constitute a separate violation of this subdivision.

(3) The present incarceration of a person who makes contact with a victim in violation of paragraph (1) is not a defense to a violation of this subdivision.

(c) (1) Notwithstanding paragraph (4) of subdivision (a), any willful and knowing violation of any protective order or stay away court order issued pursuant to Section 136.2, in a pending criminal proceeding involving domestic violence, as defined in Section 13700, or issued as a condition of probation after a conviction in a criminal proceeding involving domestic violence, as defined in Section 13700, which is an order described in paragraph (3), shall constitute contempt of court, a misdemeanor, punishable by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and the fine.

(2) If a violation of paragraph (1) results in a physical injury, the person shall be imprisoned in a county jail for at least 48 hours, whether a fine or imprisonment is imposed, or the sentence is suspended.

(3) Paragraphs (1) and (2) shall apply to the following court orders:

(A) An order enjoining any party from molesting, attacking, striking, threatening, sexually assaulting, battering, harassing, contacting repeatedly by mail with the intent to harass, or disturbing the peace of the other party, or other named family and household members.

(B) An order excluding one party from the family dwelling or from the dwelling of the other.

(C) An order enjoining a party from specified behavior that the court determined was necessary to effectuate the orders described in paragraph (1).

(4) A second or subsequent conviction for a violation of any order described in paragraph (1) occurring within seven years of a prior conviction for a violation of any of those orders and involving an act of violence or "a credible threat" of violence, as provided in subdivisions (c) and (d) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months or two or three years.

(5) The prosecuting agency of each county shall have the primary responsibility for the enforcement of the orders described in paragraph (1).

(d) (1) If probation is granted upon conviction of a violation of subdivision (c), the court shall require participation in a batterer's treatment program as a condition of probation, unless, considering all of the facts and circumstances, the court finds participating in a batterer's treatment program inappropriate for the defendant.

(2) If probation is granted upon conviction of a violation of subdivision (c), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of one thousand dollars ($1,000).

(B) That the defendant provide restitution to reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(3) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision or subdivision (c), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support.

(4) Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of subdivision (c), the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this subdivision, until all separate property of the offending spouse is exhausted.

(5) Any person violating any order described in subdivision (c), may be punished for any substantive offenses described under Section 136.1 or 646.9. No finding of contempt shall be a bar to prosecution for a violation of Section 136.1 or 646.9. However, any person held in contempt for a violation of subdivision (c) shall be entitled to credit for any punishment imposed as a result of that violation against any sentence imposed upon conviction of an offense described in Section 136.1 or 646.9. Any conviction or acquittal for any

substantive offense under Section 136.1 or 646.9 shall be a bar to a subsequent punishment for contempt arising out of the same act.

SEC. 13.1. Section 166 of the Penal Code is amended to read:

166. (a) Except as provided in subdivisions (b) and (c), every person guilty of any contempt of court, of any of the following kinds, is guilty of a misdemeanor:

(1) Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority.

(2) Behavior as specified in paragraph (1) committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law.

(3) Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any court.

(4) Willful disobedience of any process or order lawfully issued by any court.

(5) Resistance willfully offered by any person to the lawful order or process of any court.

(6) The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question.

(7) The publication of a false or grossly inaccurate report of the proceedings of any court.

(8) Presenting to any court having power to pass sentence upon any prisoner under conviction, or to any member of the court, any affidavit or testimony or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon the prisoner, except as provided in this code.

(b) (1) Any person who is guilty of contempt of court under paragraph (4) of subdivision (a) by willfully contacting a victim by phone, mail, or directly and who has been previously convicted of a violation of Section 646.9 shall be punished by imprisonment in a county jail for not more than one year, by a fine of five thousand dollars ($5,000), or by both that fine and imprisonment.

(2) For the purposes of sentencing under this subdivision, each contact shall constitute a separate violation of this subdivision.

(3) The present incarceration of a person who makes contact with a victim in violation of paragraph (1) is not a defense to a violation of this subdivision.

(c) (1) Notwithstanding paragraph (4) of subdivision (a), any willful and knowing violation of any protective order or stay away court order issued pursuant to Section 136.2, in a pending criminal proceeding involving domestic violence, as defined in Section 13700, or issued as a condition of probation after a conviction in a criminal proceeding involving domestic violence, as defined in Section 13700,

which is an order described in paragraph (3), shall constitute contempt of court, a misdemeanor, punishable by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and the fine.

(2) If a violation of paragraph (1) results in a physical injury, the person shall be imprisoned in a county jail for at least 48 hours, whether a fine or imprisonment is imposed, or the sentence is suspended.

(3) Paragraphs (1) and (2) shall apply to the following court orders:

(A) Any order issued pursuant to Section 6320 of the Family Code.

(B) An order excluding one party from the family dwelling or from the dwelling of the other.

(C) An order enjoining a party from specified behavior that the court determined was necessary to effectuate the orders described in paragraph (1).

(4) A second or subsequent conviction for a violation of any order described in paragraph (1) occurring within seven years of a prior conviction for a violation of any of those orders and involving an act of violence or "a credible threat" of violence, as provided in subdivisions (c) and (d) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months or two or three years.

(5) The prosecuting agency of each county shall have the primary responsibility for the enforcement of the orders described in paragraph (1).

(d) (1) If probation is granted upon conviction of a violation of subdivision (c), the court shall require participation in a batterer's treatment program as a condition of probation, unless, considering all of the facts and circumstances, the court finds participating in a batterer's treatment program inappropriate for the defendant.

(2) If probation is granted upon conviction of a violation of subdivision (c), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of one thousand dollars ($1,000).

(B) That the defendant provide restitution to reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(3) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision or subdivision (c), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support.

(4) Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of subdivision (c), the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this subdivision, until all separate property of the offending spouse is exhausted.

(5) Any person violating any order described in subdivision (c), may be punished for any substantive offenses described under Section 136.1 or 646.9. No finding of contempt shall be a bar to prosecution for a violation of Section 136.1 or 646.9. However, any person held in contempt for a violation of subdivision (c) shall be entitled to credit for any punishment imposed as a result of that violation against any sentence imposed upon conviction of an offense described in Section 136.1 or 646.9. Any conviction or acquittal for any substantive offense under Section 136.1 or 646.9 shall be a bar to a subsequent punishment for contempt arising out of the same act.

SEC. 13.2. Section 166 of the Penal Code is amended to read:

166. (a) Except as provided in subdivisions (b) and (c), every person guilty of any contempt of court, of any of the following kinds, is guilty of a misdemeanor:

(1) Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in immediate view and presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority.

(2) Behavior as specified in paragraph (1) committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law.

(3) Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any court.

(4) Willful disobedience of any process or order lawfully issued by any court.

(5) Resistance willfully offered by any person to the lawful order or process of any court.

(6) The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question.

(7) The publication of a false or grossly inaccurate report of the proceedings of any court.

(8) Presenting to any court having power to pass sentence upon any prisoner under conviction, or to any member of the court, any affidavit or testimony or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon the prisoner, except as provided in this code.

(b) (1) Any person who is guilty of contempt of court under paragraph (4) of subdivision (a) by willfully contacting a victim by phone, mail, or directly and who has been previously convicted of a violation of Section 646.9 shall be punished by imprisonment in a county jail for not more than one year, by a fine of five thousand dollars ($5,000), or by both that fine and imprisonment.

(2) For the purposes of sentencing under this subdivision, each contact shall constitute a separate violation of this subdivision.

(3) The present incarceration of a person who makes contact with a victim in violation of paragraph (1) is not a defense to a violation of this subdivision.

(c) (1) Notwithstanding paragraph (4) of subdivision (a), any willful and knowing violation of any protective order or stay away court order issued pursuant to Section 136.2, in a pending criminal proceeding involving domestic violence, as defined in Section 13700, or issued as a condition of probation after a conviction in a criminal proceeding involving domestic violence, as defined in Section 13700, which is an order described in paragraph (3), shall constitute contempt of court, a misdemeanor, punishable by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and the fine.

(2) If a violation of paragraph (1) results in a physical injury, the person shall be imprisoned in a county jail for at least 48 hours, whether a fine or imprisonment is imposed, or the sentence is suspended.

(3) Paragraphs (1) and (2) shall apply to the following court orders:

(A) An order enjoining any party from molesting, attacking, striking, threatening, sexually assaulting, battering, harassing, contacting repeatedly by mail with the intent to harass, or disturbing the peace of the other party, or other named family and household members.

(B) An order excluding one party from the family dwelling or from the dwelling of the other.

(C) An order enjoining a party from specified behavior that the court determined was necessary to effectuate the orders described in paragraph (1).

(4) (A) A second or subsequent conviction for a violation of any order described in paragraph (1), occurring within seven years of a prior conviction for a violation of any of those orders, is punishable by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months or two or three years.

(B) A felony conviction under subparagraph (A) shall not constitute a current felony conviction for purposes of subdivisions (b) to (i), inclusive, of Section 667 or Section 1170.12.

(5) The prosecuting agency of each county shall have the primary responsibility for the enforcement of the orders described in paragraph (1).

(d) (1) If probation is granted upon conviction of a violation of subdivision (c), the court shall require participation in a batterer's treatment program as a condition of probation, unless, considering all of the facts and circumstances, the court finds participating in a batterer's treatment program inappropriate for the defendant.

(2) If probation is granted upon conviction of a violation of subdivision (c), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of one thousand dollars ($1,000).

(B) That the defendant provide restitution to reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(3) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision or subdivision (c), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support.

(4) Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of subdivision (c), the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this subdivision, until all separate property of the offending spouse is exhausted.

(5) Any person violating any order described in subdivision (c), may be punished for any substantive offenses described under Section 136.1 or 646.9. No finding of contempt shall be a bar to prosecution for a violation of Section 136.1 or 646.9. However, any person held in contempt for a violation of subdivision (c) shall be entitled to credit for any punishment imposed as a result of that violation against any sentence imposed upon conviction of an offense described in Section 136.1 or 646.9. Any conviction or acquittal for any substantive offense under Section 136.1 or 646.9 shall be a bar to a subsequent punishment for contempt arising out of the same act.

SEC. 13.3. Section 166 of the Penal Code is amended to read:

166. (a) Except as provided in subdivisions (b) and (c), every person guilty of any contempt of court, of any of the following kinds, is guilty of a misdemeanor:

(1) Disorderly, contemptuous, or insolent behavior committed during the sitting of any court of justice, in immediate view and

presence of the court, and directly tending to interrupt its proceedings or to impair the respect due to its authority.

(2) Behavior as specified in paragraph (1) committed in the presence of any referee, while actually engaged in any trial or hearing, pursuant to the order of any court, or in the presence of any jury while actually sitting for the trial of a cause, or upon any inquest or other proceedings authorized by law.

(3) Any breach of the peace, noise, or other disturbance directly tending to interrupt the proceedings of any court.

(4) Willful disobedience of any process or order lawfully issued by any court.

(5) Resistance willfully offered by any person to the lawful order or process of any court.

(6) The contumacious and unlawful refusal of any person to be sworn as a witness; or, when so sworn, the like refusal to answer any material question.

(7) The publication of a false or grossly inaccurate report of the proceedings of any court.

(8) Presenting to any court having power to pass sentence upon any prisoner under conviction, or to any member of the court, any affidavit or testimony or representation of any kind, verbal or written, in aggravation or mitigation of the punishment to be imposed upon the prisoner, except as provided in this code.

(b) (1) Any person who is guilty of contempt of court under paragraph (4) of subdivision (a) by willfully contacting a victim by phone, mail, or directly and who has been previously convicted of a violation of Section 646.9 shall be punished by imprisonment in a county jail for not more than one year, by a fine of five thousand dollars ($5,000), or by both that fine and imprisonment.

(2) For the purposes of sentencing under this subdivision, each contact shall constitute a separate violation of this subdivision.

(3) The present incarceration of a person who makes contact with a victim in violation of paragraph (1) is not a defense to a violation of this subdivision.

(c) (1) Notwithstanding paragraph (4) of subdivision (a), any willful and knowing violation of any protective order or stay away court order issued pursuant to Section 136.2, in a pending criminal proceeding involving domestic violence, as defined in Section 13700, or issued as a condition of probation after a conviction in a criminal proceeding involving domestic violence, as defined in Section 13700, which is an order described in paragraph (3), shall constitute contempt of court, a misdemeanor, punishable by imprisonment in a county jail for not more than one year, by a fine of not more than one thousand dollars ($1,000), or by both that imprisonment and the fine.

(2) If a violation of paragraph (1) results in a physical injury, the person shall be imprisoned in a county jail for at least 48 hours,

whether a fine or imprisonment is imposed, or the sentence is suspended.

(3) Paragraphs (1) and (2) shall apply to the following court orders:

(A) Any order issued pursuant to Section 6320 of the Family Code.

(B) An order excluding one party from the family dwelling or from the dwelling of the other.

(C) An order enjoining a party from specified behavior that the court determined was necessary to effectuate the orders described in paragraph (1).

(4) (A) A second or subsequent conviction for a violation of any order described in paragraph (1) occurring within seven years of a prior conviction for a violation of any of those orders, is punishable by imprisonment in a county jail not to exceed one year, or in the state prison for 16 months or two or three years.

(B) A felony conviction under subparagraph (A) shall not constitute a current felony conviction for purposes of subdivisions (b) to (i), inclusive, of Section 667 or Section 1170.12.

(5) The prosecuting agency of each county shall have the primary responsibility for the enforcement of the orders described in paragraph (1).

(d) (1) If probation is granted upon conviction of a violation of subdivision (c), the court shall require participation in a batterer's treatment program as a condition of probation, unless, considering all of the facts and circumstances, the court finds participating in a batterer's treatment program inappropriate for the defendant.

(2) If probation is granted upon conviction of a violation of subdivision (c), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of one thousand dollars ($1,000).

(B) That the defendant provide restitution to reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(3) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision or subdivision (c), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support.

(4) Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of subdivision (c), the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured

spouse and dependents, required by this subdivision, until all separate property of the offending spouse is exhausted.

(5) Any person violating any order described in subdivision (c), may be punished for any substantive offenses described under Section 136.1 or 646.9. No finding of contempt shall be a bar to prosecution for a violation of Section 136.1 or 646.9. However, any person held in contempt for a violation of subdivision (c) shall be entitled to credit for any punishment imposed as a result of that violation against any sentence imposed upon conviction of an offense described in Section 136.1 or 646.9. Any conviction or acquittal for any substantive offense under Section 136.1 or 646.9 shall be a bar to a subsequent punishment for contempt arising out of the same act.

SEC. 14. Section 243 of the Penal Code is amended to read:

243. (a) A battery is punishable by a fine of not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding six months, or by both the fine and imprisonment.

(b) When a battery is committed against the person of a peace officer, custodial officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a peace officer, custodial officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, the battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

(c) When a battery is committed against a peace officer, custodial officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a peace officer, custodial officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard,

process server, traffic officer, or animal control officer engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, and an injury is inflicted on that victim, the battery is punishable by imprisonment in a county jail for a period of not more than one year, or by a fine of not more than two thousand dollars ($2,000), or by imprisonment in the state prison for 16 months, or two or three years.

(d) When a battery is committed against any person and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in a county jail for a period of not more than one year or imprisonment in the state prison for two, three, or four years.

(e) (1) When a battery is committed against a noncohabiting former spouse, fiancé, fiancée, or a person with whom the defendant currently has, or has previously had, a dating relationship, the battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail for a period of not more than one year, or by both. If probation is granted, or the execution or imposition of the sentence is suspended, it shall be a condition thereof that the defendant participate in, for no less than one year, and successfully complete, a batterer's treatment program, as defined in Section 1203.097, or if none is available, another appropriate counseling program designated by the court. However, this provision shall not be construed as requiring a city, a county, or a city and county to provide a new program or higher level of service as contemplated by Section 6 of Article XIII B of the California Constitution.

(2) Upon conviction of a violation of this subdivision, if probation is granted, the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000).

(B) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

(3) Upon conviction of a violation of this subdivision, if probation is granted or the execution or imposition of the sentence is suspended and the person has been previously convicted of a violation of this subdivision and sentenced under paragraph (1), the person shall be imprisoned for not less than 48 hours in addition to the conditions in paragraph (1). However, the court, upon a showing of good cause, may elect not to impose the mandatory minimum imprisonment as required by this subdivision and may, under these circumstances, grant probation or order the suspension of the execution or imposition of the sentence.

The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence so as to display society's condemnation for these crimes of violence upon victims with whom a close relationship has been formed.

(f) As used in this section:

(1) "Peace officer" means any person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) "Emergency medical technician" means a person possessing a valid course completion certificate from a program approved by the State Department of Health Services for the medical training and education of ambulance personnel, and who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(3) "Mobile intensive care paramedic" means any person who meets the standards set forth in Section 1797.84 of, and Division 2.5 (commencing with Section 1797) of, the Health and Safety Code.

(4) "Nurse" means a person who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(5) "Serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(6) "Injury" means any physical injury which requires professional medical treatment.

(7) "Custodial officer" means any person who has the responsibilities and duties described in Section 831 and who is employed by a law enforcement agency of any city or county or who performs those duties as a volunteer.

(8) "Lifeguard" means a person defined in paragraph (5) of subdivision (c) of Section 241.

(9) "Traffic officer" means any person employed by a city, county, or city and county, to monitor and enforce state laws and local ordinances relating to parking and the operation of vehicles.

(10) "Animal control officer" means any person employed by a city, county, or city and county for purposes of enforcing animal control laws or regulations.

(11) "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations.

It is the intent of the Legislature by amendments to this section at the 1981–82 and 1983–84 Regular Sessions to abrogate the holdings in cases such as People v. Corey, 21 Cal. 3d 738, and Cervantez v. J.C. Penney Co., 24 Cal. 3d 579, and to reinstate prior judicial interpretations of this section as they relate to criminal sanctions for battery on peace officers who are employed, on a part-time or casual basis, while wearing a police uniform as private security guards or patrolmen and to allow the exercise of peace officer powers concurrently with that employment.

SEC. 14.5. Section 243 of the Penal Code is amended to read:

243. (a) A battery is punishable by a fine of not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding six months, or by both the fine and imprisonment.

(b) When a battery is committed against the person of a peace officer, custodial officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a peace officer, custodial officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, the battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

(c) When a battery is committed against a peace officer, custodial officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard, process server, traffic officer, or animal control officer engaged in the performance of his or her duties, whether on or off duty, including when the peace officer is in a police uniform and is concurrently performing the duties required of him or her as a peace officer while also employed in a private capacity as a part-time or casual private security guard or patrolman, or a physician or nurse engaged in rendering emergency medical care outside a hospital, clinic, or other health care facility, and the person committing the offense knows or reasonably should know that the victim is a peace officer, custodial officer, firefighter, emergency medical technician, mobile intensive care paramedic, lifeguard,

process server, traffic officer, or animal control officer engaged in the performance of his or her duties, or a physician or nurse engaged in rendering emergency medical care, and an injury is inflicted on that victim, the battery is punishable by imprisonment in a county jail for a period of not more than one year, or by a fine of not more than two thousand dollars ($2,000), or by imprisonment in the state prison for 16 months, or two or three years.

(d) When a battery is committed against any person and serious bodily injury is inflicted on the person, the battery is punishable by imprisonment in a county jail for a period of not more than one year or imprisonment in the state prison for two, three, or four years.

(e) (1) When a battery is committed against a spouse, person with whom the defendant is cohabiting, person who is the parent of the defendant's child, noncohabiting former spouse, fiancé, fiancée, or a person with whom the defendant currently has, or has previously had, a dating relationship, the battery is punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in a county jail for a period of not more than one year, or by both. If probation is granted, or the execution or imposition of the sentence is suspended, it shall be a condition thereof that the defendant participate in, for no less than one year, and successfully complete, a batterer's treatment program, as defined in Section 1203.097, or if none is available, another appropriate counseling program designated by the court. However, this provision shall not be construed as requiring a city, a county, or a city and county to provide a new program or higher level of service as contemplated by Section 6 of Article XIII B of the California Constitution.

(2) Upon conviction of a violation of this subdivision, if probation is granted, the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000).

(B) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the

injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

(3) Upon conviction of a violation of this subdivision, if probation is granted or the execution or imposition of the sentence is suspended and the person has been previously convicted of a violation of this subdivision and sentenced under paragraph (1), the person shall be imprisoned for not less than 48 hours in addition to the conditions in paragraph (1). However, the court, upon a showing of good cause, may elect not to impose the mandatory minimum imprisonment as required by this subdivision and may, under these circumstances, grant probation or order the suspension of the execution or imposition of the sentence.

The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence so as to display society's condemnation for these crimes of violence upon victims with whom a close relationship has been formed.

(f) As used in this section:

(1) "Peace officer" means any person defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) "Emergency medical technician" means a person possessing a valid course completion certificate from a program approved by the State Department of Health Services for the medical training and education of ambulance personnel, and who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(3) "Mobile intensive care paramedic" means any person who meets the standards set forth in Section 1797.84 of, and Division 2.5 (commencing with Section 1797) of, the Health and Safety Code.

(4) "Nurse" means a person who meets the standards of Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(5) "Serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.

(6) "Injury" means any physical injury which requires professional medical treatment.

(7) "Custodial officer" means any person who has the responsibilities and duties described in Section 831 and who is employed by a law enforcement agency of any city or county or who performs those duties as a volunteer.

(8) "Lifeguard" means a person defined in paragraph (5) of subdivision (c) of Section 241.

(9) "Traffic officer" means any person employed by a city, county, or city and county, to monitor and enforce state laws and local ordinances relating to parking and the operation of vehicles.

(10) "Animal control officer" means any person employed by a city, county, or city and county for purposes of enforcing animal control laws or regulations.

(11) "Dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations.

It is the intent of the Legislature by amendments to this section at the 1981–82 and 1983–84 Regular Sessions to abrogate the holdings in cases such as People v. Corey, 21 Cal. 3d 738, and Cervantez v. J.C. Penney Co., 24 Cal. 3d 579, and to reinstate prior judicial interpretations of this section as they relate to criminal sanctions for battery on peace officers who are employed, on a part-time or casual basis, while wearing a police uniform as private security guards or patrolmen and to allow the exercise of peace officer powers concurrently with that employment.

SEC. 15. Section 262 of the Penal Code is amended to read:

262. (a) Rape of a person who is the spouse of the perpetrator is an act of sexual intercourse accomplished under any of the following circumstances:

(1) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

(2) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known, by the accused.

(3) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(A) Was unconscious or asleep.

(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(4) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(5) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency who has the authority, as part of that position,

to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(b) Section 800 shall apply to this section. However, no prosecution shall be commenced under this section unless the violation was reported to medical personnel, a member of the clergy, an attorney, a shelter representative, a counselor, a judicial officer, a rape crisis agency, a prosecuting agency, a law enforcement officer, or a firefighter within one year after the date of the violation. This reporting requirement shall not apply if the victim's allegation of the offense is corroborated by independent evidence that would otherwise be admissible during trial.

(c) As used in this section, "duress" means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in apprising the existence of duress.

(d) As used in this section, "menace" means any threat, declaration, or act that shows an intention to inflict an injury upon another.

(e) If probation is granted upon conviction of a violation of this section, the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter, up to a maximum of one thousand dollars ($1,000).

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

SEC. 16. Section 273.5 of the Penal Code is amended to read:

273.5. (a) Any person who willfully inflicts upon his or her spouse, or any person who willfully inflicts upon any person with whom he or she is cohabiting, or any person who willfully inflicts

upon any person who is the mother or father of his or her child, corporal injury resulting in a traumatic condition, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars ($6,000) or by both.

(b) Holding oneself out to be the husband or wife of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this section.

(c) As used in this section, "traumatic condition" means a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by a physical force.

(d) For the purpose of this section, a person shall be considered the father or mother of another person's child if the alleged male parent is presumed the natural father under Sections 7611 and 7612 of the Family Code.

(e) In any case in which a person is convicted of violating this section and probation is granted, the court shall require participation in a batterer's treatment program as a condition of probation, as specified in Section 1203.097.

(f) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under subdivision (a) who previously has been convicted under subdivision (a) for an offense that occurred within seven years of the offense of the second conviction, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than 96 hours and that he or she participate in, for no less than one year, and successfully complete, a batterer's treatment program, as designated by the court pursuant to Section 1203.097. However, the court, upon a showing of good cause, may find that the mandatory minimum imprisonment, as required by this subdivision, shall not be imposed and grant probation or the suspension of the execution or imposition of a sentence.

(g) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under subdivision (a) who previously has been convicted of two or more violations of subdivision (a) for offenses that occurred within seven years of the most recent conviction, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than 30 days and that he or she participate in for no less than one year, and successfully complete, a batterer's treatment program as designated by the court pursuant to Section 1203.097. However, the court, upon a showing of good cause, may find that the mandatory minimum imprisonment, as required by this subdivision, shall not be imposed and grant probation or the suspension of the execution or imposition of a sentence.

(h) If probation is granted upon conviction of a violation of subdivision (a), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000), pursuant to Section 1203.097.

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

SEC. 16.5. Section 273.5 of the Penal Code is amended to read:

273.5. (a) (1) Any person who willfully inflicts upon any of the following persons corporal injury resulting in a traumatic condition, is guilty of a felony:

(A) His or her spouse.

(B) A person with whom he or she is cohabiting.

(C) A person who is the mother or father of his or her child.

(D) A person described in paragraph (1) of subdivision (e) of Section 243.

(2) A person convicted of violating paragraph (1) shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars ($6,000), or by both that fine and imprisonment.

(b) Holding oneself out to be the husband or wife of the person with whom one is cohabiting is not necessary to constitute cohabitation as the term is used in this section.

(c) As used in this section, "traumatic condition" means a condition of the body, such as a wound or external or internal injury, whether of a minor or serious nature, caused by a physical force.

(d) For the purpose of this section, a person shall be considered the father or mother of another person's child if the alleged male parent is presumed the natural father under Sections 7611 and 7612 of the Family Code.

(e) If a person is convicted of violating this section and probation is granted, the court shall require participation in a batterer's treatment program as a condition of probation, as specified in Section 1203.097.

(f) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under subdivision (a) who previously has been convicted under subdivision (a) for an offense that occurred within seven years of the offense of the second conviction, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than 96 hours and that he or she participate in for no less than one year, and successfully complete, a batterer's treatment program, as designated by the court pursuant to Section 1203.097. However, the court, upon a showing of good cause, may find that the mandatory minimum imprisonment, as required by this subdivision, shall not be imposed and grant probation or the suspension of the execution or imposition of a sentence.

(g) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under subdivision (a) who previously has been convicted of two or more violations of subdivision (a) for offenses that occurred within seven years of the most recent conviction, it shall be a condition thereof that he or she be imprisoned in a county jail for not less than 30 days and that he or she participate in for no less than one year, and successfully complete, a batterer's treatment program as designated by the court pursuant to Section 1203.097. However, the court, upon a showing of good cause, may find that the mandatory minimum imprisonment, as required by this subdivision, shall not be imposed and grant probation or the suspension of the execution or imposition of a sentence.

(h) If probation is granted upon conviction of a violation of subdivision (a), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000), pursuant to Section 1203.097.

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

SEC. 17. Section 273.6 of the Penal Code is amended to read:

273.6. (a) Any intentional and knowing violation of a protective order, as defined in Section 6218 of the Family Code, or of an order issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure is a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in a county jail for not more than one year, or by both the fine and imprisonment.

(b) In the event of a violation of subdivision (a) which results in physical injury, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both the fine and imprisonment. However, if the person is imprisoned in a county jail for at least 48 hours, the court may, in the interests of justice and for reasons stated on the record, reduce or eliminate the 30-day minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(c) Subdivisions (a) and (b) shall apply to the following court orders:

(1) An order enjoining any party from molesting, attacking, striking, threatening, sexually assaulting, battering, harassing, contacting repeatedly by mail with the intent to harass, or disturbing the peace of the other party, or other named family and household members.

(2) An order excluding one party from the family dwelling or from the dwelling of the other.

(3) An order enjoining a party from specified behavior which the court determined was necessary to effectuate the order under subdivision (a).

(d) A subsequent conviction for a violation of an order described in subdivision (a), occurring within seven years of a prior conviction for a violation of an order described in subdivision (a) and involving an act of violence or "a credible threat" of violence, as defined in subdivision (c) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or in the state prison.

(e) In the event of a subsequent conviction for a violation of an order described in subdivision (a) for an act occurring within one year of a prior conviction for a violation of an order described in subdivision (a) which results in physical injury to the same victim, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than six months nor more than one year, by both that fine and imprisonment, or by imprisonment in the state prison. However, if

the person is imprisoned in a county jail for at least 30 days, the court may, in the interests of justice and for reasons stated in the record, reduce or eliminate the six-month minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(f) The prosecuting agency of each county shall have the primary responsibility for the enforcement of orders issued pursuant to subdivisions (a), (b), (d), and (e).

(g) The court may order a person convicted under this section to undergo counseling, and, if appropriate, to complete a batterer's treatment program.

(h) If probation is granted upon conviction of a violation of subdivision (a), (b), or (c), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000), pursuant to Section 1203.097.

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(i) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under subdivision (e), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

SEC. 17.1. Section 273.6 of the Penal Code is amended to read:

273.6. (a) Any intentional and knowing violation of a protective order, as defined in Section 6218 of the Family Code, or of an order issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure is a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in a county jail for not more than one year, or by both the fine and imprisonment.

(b) In the event of a violation of subdivision (a) which results in physical injury, the person shall be punished by a fine of not more

than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both the fine and imprisonment. However, if the person is imprisoned in a county jail for at least 48 hours, the court may, in the interests of justice and for reasons stated on the record, reduce or eliminate the 30-day minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(c) Subdivisions (a) and (b) shall apply to the following court orders:

(1) Any order issued pursuant to Section 6320 of the Family Code.

(2) An order excluding one party from the family dwelling or from the dwelling of the other.

(3) An order enjoining a party from specified behavior which the court determined was necessary to effectuate the order under subdivision (a).

(d) A subsequent conviction for a violation of an order described in subdivision (a), occurring within seven years of a prior conviction for a violation of an order described in subdivision (a) and involving an act of violence or "a credible threat" of violence, as defined in subdivision (c) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or in the state prison.

(e) In the event of a subsequent conviction for a violation of an order described in subdivision (a) for an act occurring within one year of a prior conviction for a violation of an order described in subdivision (a) that results in physical injury to the same victim, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than six months nor more than one year, by both that fine and imprisonment, or by imprisonment in the state prison. However, if the person is imprisoned in a county jail for at least 30 days, the court may, in the interests of justice and for reasons stated in the record, reduce or eliminate the six-month minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(f) The prosecuting agency of each county shall have the primary responsibility for the enforcement of orders issued pursuant to subdivisions (a), (b), (d), and (e).

(g) The court may order a person convicted under this section to undergo counseling, and, if appropriate, to complete a batterer's treatment program.

(h) If probation is granted upon conviction of a violation of subdivision (a), (b), or (c), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000), pursuant to Section 1203.097.

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(i) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under subdivision (e), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

SEC. 17.2. Section 273.6 of the Penal Code is amended to read:

273.6. (a) Any intentional and knowing violation of a protective order, as defined in Section 6218 of the Family Code, or of an order issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure is a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in a county jail for not more than one year, or by both the fine and imprisonment.

(b) In the event of a violation of subdivision (a) which results in physical injury, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both the fine and imprisonment. However, if the person is imprisoned in a county jail for at least 48 hours, the court may, in the interests of justice and for reasons stated on the record, reduce or eliminate the 30-day minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(c) Subdivisions (a) and (b) shall apply to the following court orders:

(1) An order enjoining any party from molesting, attacking, striking, threatening, sexually assaulting, battering, harassing, contacting repeatedly by mail with the intent to harass, or disturbing the peace of the other party, or other named family and household members.

(2) An order excluding one party from the family dwelling or from the dwelling of the other.

(3) An order enjoining a party from specified behavior which the court determined was necessary to effectuate the order under subdivision (a).

(d) (1) A subsequent conviction for a violation of an order described in subdivision (a), occurring within seven years of a prior conviction for a violation of an order described in subdivision (a), is punishable by imprisonment in a county jail not to exceed one year, or in the state prison.

(2) A felony conviction under paragraph (1) shall not constitute a current felony conviction for purposes of subdivisions (b) to (i), inclusive, of Section 667 or Section 1170.12.

(e) In the event of a subsequent conviction for a violation of an order described in subdivision (a) for an act occurring within one year of a prior conviction for a violation of an order described in subdivision (a) that results in physical injury to the same victim, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than six months nor more than one year, by both that fine and imprisonment, or by imprisonment in the state prison. However, if the person is imprisoned in a county jail for at least 30 days, the court may, in the interests of justice and for reasons stated in the record, reduce or eliminate the six-month minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(f) The prosecuting agency of each county shall have the primary responsibility for the enforcement of orders issued pursuant to subdivisions (a), (b), (d), and (e).

(g) The court may order a person convicted under this section to undergo counseling, and, if appropriate, to complete a batterer's treatment program.

(h) If probation is granted upon conviction of a violation of subdivision (a), (b), or (c), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000), pursuant to Section 1203.097.

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(i) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under subdivision (e), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

SEC. 17.3. Section 273.6 of the Penal Code is amended to read:

273.6. (a) Any intentional and knowing violation of a protective order, as defined in Section 6218 of the Family Code, or of an order issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure is a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in a county jail for not more than one year, or by both the fine and imprisonment.

(b) In the event of a violation of subdivision (a) which results in physical injury, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both the fine and imprisonment. However, if the person is imprisoned in a county jail for at least 48 hours, the court may, in the interests of justice and for reasons stated on the record, reduce or eliminate the 30-day minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(c) Subdivisions (a) and (b) shall apply to the following court orders:

(1) Any order issued pursuant to Section 6320 of the Family Code.

(2) An order excluding one party from the family dwelling or from the dwelling of the other.

(3) An order enjoining a party from specified behavior which the court determined was necessary to effectuate the order under subdivision (a).

(d) (1) A subsequent conviction for a violation of an order described in subdivision (a), occurring within seven years of a prior conviction for a violation of an order described in subdivision (a), is punishable by imprisonment in a county jail not to exceed one year, or in the state prison.

(2) A felony conviction under paragraph (1) shall not constitute a current felony conviction for purposes of subdivisions (b) to (i), inclusive, of Section 667 or Section 1170.12.

(e) In the event of a subsequent conviction for a violation of an order described in subdivision (a) for an act occurring within one year of a prior conviction for a violation of an order described in subdivision (a) that results in physical injury to the same victim, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than six months nor more than one year, by both that fine and imprisonment, or by imprisonment in the state prison. However, if the person is imprisoned in a county jail for at least 30 days, the court may, in the interests of justice and for reasons stated in the record, reduce or eliminate the six-month minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(f) The prosecuting agency of each county shall have the primary responsibility for the enforcement of orders issued pursuant to subdivisions (a), (b), (d), and (e).

(g) The court may order a person convicted under this section to undergo counseling, and, if appropriate, to complete a batterer's treatment program.

(h) If probation is granted upon conviction of a violation of subdivision (a), (b), or (c), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000), pursuant to Section 1203.097.

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(i) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under subdivision (e), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make

payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

SEC. 18. Section 484.1 of the Penal Code is amended to read:

484.1. (a) Any person who knowingly gives false information or provides false verification as to the person's true identity or as to the person's ownership interest in property or the person's authority to sell property in order to receive money or other valuable consideration from a pawnbroker or secondhand dealer and who receives money or other valuable consideration from the pawnbroker or secondhand dealer is guilty of theft.

(b) Upon conviction of the offense described in subdivision (a), the court may require, in addition to any sentence or fine imposed, that the defendant make restitution to the pawnbroker or secondhand dealer in an amount not exceeding the actual losses sustained pursuant to the provisions of subdivision (c) of Section 13967, as operative on or before September 28, 1994, of the Government Code, if the defendant is denied probation, or Section 1203.04, as operative on or before August 2, 1995, if the defendant is granted probation or Section 1202.4.

SEC. 18.5. Section 484.1 of the Penal Code is amended to read:

484.1. (a) Any person who knowingly gives false information or provides false verification as to the person's true identity or as to the person's ownership interest in property or the person's authority to sell property in order to receive money or other valuable consideration from a pawnbroker or secondhand dealer and who receives money or other valuable consideration from the pawnbroker or secondhand dealer is guilty of theft.

(b) Upon conviction of the offense described in subdivision (a), the court may require, in addition to any sentence or fine imposed, that the defendant make restitution to the pawnbroker or secondhand dealer in an amount not exceeding the actual losses sustained pursuant to the provisions of subdivision (c) of Section 13967 of the Government Code, as operative on or before September 28, 1994, if the defendant is denied probation, or Section 1203.04, as operative on or before August 2, 1995, if the defendant is granted probation or Section 1202.4.

(c) Upon the setting of a court hearing date for sentencing of any person convicted under this section, the probation officer, if one is assigned, shall notify the pawnbroker or secondhand dealer or coin dealer of the time and place of the hearing.

SEC. 19. Section 1203.044 of the Penal Code is amended to read:

1203.044. (a) This section shall apply only to a defendant convicted of a felony for theft of an amount exceeding fifty thousand dollars ($50,000) in a single transaction or occurrence. This section shall not apply unless the fact that the crime involved the theft of an amount exceeding fifty thousand dollars ($50,000) in a single transaction or occurrence is charged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact. Aggregate losses from more than one criminal act shall not be considered in determining if this section applies.

(b) Notwithstanding any other law, probation shall not be granted to a defendant convicted of a crime to which subdivision (a) applies if the defendant was previously convicted of an offense for which an enhancement pursuant to Section 12022.6 was found true even if that enhancement was not imposed by the sentencing court. The prior conviction shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact.

(c) In deciding whether to grant probation to a defendant convicted of a crime to which subdivision (a) applies, the court shall consider all relevant information, including the extent to which the defendant has attempted to pay restitution to the victim between the date upon which the defendant was convicted and the date of sentencing. A defendant claiming inability to pay restitution before the date of sentencing shall provide a statement of assets, income, and liabilities, as set forth in subdivision (j) to the court, the probation department, and the prosecution.

(d) In addition to the restrictions on probation imposed by subdivisions (b) and (c), probation shall not be granted to any person convicted of theft in an amount exceeding one hundred thousand dollars ($l00,000) in a single transaction or occurrence, except in unusual cases if the interests of justice would best be served if the person is granted probation. The fact that the theft was of an amount exceeding one hundred thousand dollars ($100,000) in a single transaction or occurrence, shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact. This subdivision shall not authorize a grant of probation otherwise prohibited under subdivision (b) or (c). If probation is granted pursuant to this subdivision, the court shall specify on the record and shall enter on the minutes the circumstances indicating that the interests of justice would best be served by that disposition. Aggregate losses from more than one criminal act shall not be considered in determining whether this subdivision applies.

(e) Subject to subdivision (f), if a defendant is convicted of a crime to which subdivision (a) applies and the court grants probation, a court shall impose at least a 90-day sentence in a county jail as a condition of probation. If the defendant was convicted of a crime to

which subdivision (d) applies, and the court grants probation, the court shall impose at least a 180-day sentence in a county jail as a condition of probation.

(f) The court shall designate a portion of any sentence imposed pursuant to subdivision (e) as a mandatory in-custody term. For the purpose of this section only, "mandatory in-custody term" means that the defendant shall serve that term, notwithstanding credits pursuant to Section 4019, in custody in the county jail. The defendant shall not be allowed release on any program during that term, including work furlough, work release, public service program, or electronic monitoring. The court shall designate the mandatory in-custody term as follows:

(1) If the defendant was convicted of a crime to which subdivision (a) applies, the mandatory in-custody term shall be no less than 30 days. If the person serves a mandatory in-custody term of at least 30 days, the court may, in the interests of justice, and for reasons stated in the record, reduce the mandatory minimum 90-day sentence required by subdivision (e).

(2) If the defendant was convicted of a crime to which subdivision (d) applies, the mandatory in-custody term shall be no less than 60 days. If the person serves a mandatory in-custody term of at least 60 days, the court may, in the interests of justice, and for reasons stated in the record, reduce the mandatory minimum 180-day sentence required by subdivision (e).

(g) If a defendant is convicted of a crime to which subdivision (a) applies, and the court grants probation, the court shall require the defendant as a condition of probation to pay restitution to the victim and to pay a surcharge to the county in the amount of 20 percent of the restitution ordered by the court, as follows:

(1) The surcharge is not subject to any assessments otherwise imposed by Section 1464. The surcharge shall be paid into the county treasury and placed in the general fund to be used exclusively for the investigation and prosecution of white collar crime offenses and to pay the expenses incurred by the county in administering this section, including increased costs incurred as a result of offenders serving mandatory in-custody terms pursuant to this section.

(2) The court shall also enter an income deduction order as provided in Section 13967.2 of the Government Code to secure payment of the surcharge. That order may be enforced to secure payment of the surcharge as provided by those provisions.

(3) The county board of supervisors shall not charge the fee provided for by Section 1203.1, subdivision (*l*) of Section 1202.4, or subdivision (d) of Section 13967, as operative on or before September 28, 1994, of the Government Code for the collection of restitution or any restitution fine.

(4) The defendant shall not be required to pay the costs of probation as otherwise required by subdivision (b) of Section 1203.1.

(h) Notwithstanding any other law, if a defendant is convicted of a crime to which subdivision (a) applies and the court grants probation, as a condition of probation, within 30 court days after being granted probation, and annually thereafter, the defendant shall provide the county financial officer with all of the following documents and records:

(1) True and correct copies of all income tax and personal property tax returns for the previous tax year, including W-2 forms filed on the defendant's behalf with any state tax agency. If the defendant is unable to supply a copy of a state tax return, the defendant shall provide a true and correct copy of all income tax returns for the previous tax year filed on his or her behalf with the federal government. The defendant is not required to provide any particular document if to do so would violate federal law or the law of the state in which the document was filed. However, this section shall supersede all other laws in this state concerning the right to privacy with respect to tax returns filed with this state. If, during the term of probation, the defendant intentionally fails to provide the county financial officer with any document that he or she knows is required to be provided under this subdivision, that failure shall constitute a violation of probation.

(2) A statement of income, assets, and liabilities as defined in subdivision (j).

(i) The submission by the defendant of any tax document pursuant to paragraph (1) of subdivision (h) that the defendant knows does not accurately state the defendant's income, or if required, the defendant's personal property, if the inaccuracy is material, constitutes a violation of probation.

(j) A statement of income, assets, and liabilities form, that is consistent with the disclosure requirements of this section, may be established by the financial officer of each county. That statement shall require the defendant to furnish relevant financial information identifying the defendant's income, assets, possessions, or liabilities, actual or contingent. The statement may include the following:

(1) All real property in which the defendant has any interest.

(2) Any item of personal property worth more than three thousand dollars ($3,000) in which the defendant has any interest, including, but not limited to, vehicles, airplanes, boats, computers, and consumer electronics. Any collection of jewelry, coins, silver, china, artwork, antiques, or other collectibles in which the defendant has any interest, if that collection is worth more than three thousand dollars ($3,000).

(3) All domestic and foreign assets in the defendant's name, or in the name of the defendant's spouse or minor children, of a value over three thousand dollars ($3,000) and in whatever form, including, but not limited to, bank accounts, securities, stock options, bonds, mutual funds, money market funds, certificates of deposits, annuities,

commodities, precious metals, deferred compensation accounts, individual retirement accounts, and related or analogous accounts.

(4) All insurance policies in which the defendant or the defendant's spouse or minor children retain a cash value.

(5) All pension funds in which the defendant has a vested right.

(6) All insurance policies of which the defendant is a beneficiary.

(7) All contracts, agreements, judgments, awards, or prizes granting the defendant the right to receive money or real or personal property in the future, including alimony and child support.

(8) All trusts of which the defendant is a beneficiary.

(9) All unrevoked wills of a decedent if the defendant or defendant's spouse or minor child is a beneficiary.

(10) All lawsuits currently maintained by the defendant or by or against a corporation in which the defendant owns more than a 25 percent interest if the suit includes a prayer for damages.

(11) All corporations of which the defendant is an officer. If the defendant is an officer in a corporation sole, subchapter S corporation, or closely held corporation, and controls more equity of that corporation than any other individual, the county financial officer shall have authority to request other records of the corporation.

(12) All debts in excess of three thousand dollars ($3,000) owed by the defendant to any person or entity.

(13) Copies of all applications for loans made by the defendant during the last year.

(14) All encumbrances on any real and personal property in which the defendant has any interest.

(15) All sales, transfers, assignments, quitclaims, conveyances, or encumbrances of any interest in real or personal property of a value exceeding three thousand dollars ($3,000) made by the defendant during the period beginning one year before charges were filed to the present, including the identity of the recipient of same, and relationship, if any, to the defendant.

(k) The information contained in the statement of income, assets, and liabilities shall not be available to the public. Information received pursuant to this subdivision shall not be disclosed to any member of the public. Any disclosure in violation of this section shall be a contempt of court punishable by a fine not exceeding one thousand dollars ($1,000), and shall also create a civil cause of action for damages.

(*l*) After providing the statement of income, assets, and liabilities, the defendant shall provide the county financial officer with copies of any documents representing or reflecting the financial information set forth in subdivision (j) as requested by that officer.

(m) The defendant shall sign the statement of income, assets, and liabilities under penalty of perjury. The provision of information known to be false, or the intentional failure to provide material

information knowing that it was required to have been provided, shall constitute a violation of probation.

(n) The Franchise Tax Board and the Employment Development Department shall release copies of income tax returns filed by the defendant and other information concerning the defendant's current income and place of employment to the county financial officer upon request. That information shall be kept confidential and shall not be made available to any member of the public. Any unauthorized release shall be subject to subdivision (k). The county shall reimburse the reasonable administrative expenses incurred by those agencies in providing this information.

(o) During the term of probation, the defendant shall notify the county financial officer in writing within 30 days, after receipt from any source of any money or real or personal property that has a value of over five thousand dollars ($5,000), apart from the salary from the defendant's and the defendant's spouse's regular employment. The defendant shall report the source and value of the money or real or personal property received. This information shall not be made available to the public or the victim. Any unauthorized release shall be subject to subdivision (k).

(p) The term of probation in all cases shall be 10 years. However, after the defendant has served five years of probation, the defendant shall be released from all terms and conditions of probation except those terms and conditions included within this section. A court may not revoke or otherwise terminate probation within 10 years unless and until the defendant has satisfied both the restitution judgment and the surcharge, or the defendant is imprisoned for a violation of probation. Upon satisfying the restitution judgment, the defendant is entitled to a court order vacating that judgment and removing it from the public record. Amounts owing on the surcharge are forgiven upon completion of the term of probation.

(q) The county financial officer shall establish a suggested payment schedule each year to ensure that the defendant remits amounts to make restitution to the victim and pay the surcharge. The county financial officer shall evaluate the defendant's current earnings, future earning capacity, assets (including assets that are in trust or in accounts where penalties may be incurred upon premature withdrawal of funds), and liabilities, and set payments to the county based upon the defendant's ability to pay. The defendant shall bear the burden of demonstrating the lack of his or her ability to pay. If the defendant objects to the suggested payment schedule, the court shall set the schedule. Express findings by the court as to the factors bearing on the payment schedule shall not be required. After the payment schedule is set, a defendant may request a change in the schedule upon a change of circumstances. The restitution schedule shall set a reasonable payment amount and shall not set payments in an amount that is likely to cause severe financial hardship to the defendant or his or her family.

(r) The willful failure to pay the amounts required by the payment schedule or to comply with the requirements of the county financial officer or the probation department pursuant to this section, if the defendant is able to pay or comply, is a violation of probation.

(s) In determining the defendant's ability to pay, the court shall consider whether the annual payment required, including any money or property seized to satisfy the restitution judgment, exceeds 15 percent of the defendant's taxable income for the previous year as identified on the defendant's tax return for the defendant's state of residence or on the defendant's federal tax return. If the defendant has filed a joint return, the defendant's income for purposes of this section shall be presumed to be the total of all wages earned by the defendant, plus one-half of all other nonsalary income listed on the tax return and accompanying schedules, unless the defendant demonstrates otherwise. The court shall also consider the defendant's current income and future earning capacity. A defendant shall bear the burden of demonstrating lack of his or her ability to pay. Express findings by the court as to the factors bearing on the payment schedule shall not be required.

(t) The defendant shall personally appear at any hearing held pursuant to any provision of this section unless the defendant is incarcerated or otherwise excused by the court, in which case the defendant may appear through counsel.

(u) Notwithstanding subdivision (d) of Section 1203.1, the county financial officer shall distribute proceeds collected by the county pursuant to this section as follows:

(1) If the restitution judgment has been satisfied, but the surcharge remains outstanding, all amounts paid by the defendant shall be kept by the county and applied to the surcharge.

(2) If the surcharge has been satisfied, but the restitution judgment has not been satisfied, all amounts submitted to the county shall be remitted to the victim.

(3) If neither judgment has been satisfied, the county shall remit 70 percent of the amounts collected to the victim. Those amounts shall be credited to the restitution judgment. The remaining 30 percent shall be retained by the county and credited toward the surcharge.

(v) Neither this section, nor the amendments to Section 12022.6 of the Penal Code enacted pursuant to Chapter 104 of the Statutes of 1992, are intended to lessen or otherwise mitigate sentences that could otherwise be imposed under any law in effect when the offense was committed.

(w) For the purpose of this section, a county may designate an appropriate employee of the county probation department, the department revenue, or any other analogous county department to act as the county financial officer pursuant to this section.

(x) This act shall be known as the Economic Crime Act of 1992.

SEC. 20. Section 1203.097 of the Penal Code is amended to read:

1203.097. (a) If a person is granted probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, the terms of probation shall include all of the following:

(1) A minimum period of probation of 36 months, which may include a period of summary probation as appropriate.

(2) A criminal court protective order protecting the victim from further acts of violence, threats, stalking, sexual abuse, and harassment, and, if appropriate, containing residence exclusion or stay-away conditions.

(3) Notice to the victim of the disposition of the case.

(4) Booking the defendant within one week of sentencing if the defendant has not already been booked.

(5) The defendant shall pay a minimum of a two-hundred-dollar ($200) payment to be disbursed as specified in this paragraph. If, after a hearing in court on the record, the court finds that the defendant does not have the ability to pay, the court may reduce or waive this fee.

Out of moneys deposited with the county treasurer pursuant to this section, one-third shall be retained by counties and deposited in the domestic violence programs special fund created pursuant to Section 18305 of the Welfare and Institutions Code to be expended for the purposes of Chapter 5 (commencing with Section 18290) of Part 6 of Division 9 of the Welfare and Institutions Code. The remainder shall be transferred, once a month, to the Controller for deposit in the Domestic Violence Fund, which is hereby created, in an amount equal to two-thirds of funds collected during the preceding month. Moneys deposited in the Domestic Violence Fund pursuant to this section shall be available upon appropriation by the Legislature, and shall be distributed as follows:

(A) One-half shall be distributed to the counties, based on the number of restraining orders issued and registered in the state domestic violence restraining order registry maintained by the Department of Justice, for the development and maintenance of the domestic violence restraining order data bank system.

(B) One-half shall support the development of a statewide training and education program to increase public awareness of domestic violence and to improve the scope and quality of services provided to the victims of domestic violence. Grants to support this program shall be awarded on a competitive basis and be administered by the State Department of Health Services, in consultation with the statewide domestic violence coalition, which is eligible to receive funding under this section.

(6) Successful completion of a batterer's program, as defined in subdivision (c), or if none is available, another appropriate counseling program designated by the court, for a period not less than one year with periodic progress reports by the program to the court every three months or less and weekly sessions of a minimum of two hours classtime duration.

(7) (A) The court shall order the defendant to comply with all probation requirements, including the requirements to attend counseling, keep all program appointments, and pay program fees based upon the ability to pay.

(B) Upon request by the batterer's program, the court shall provide the defendant's arrest report, prior incidents of violence, and treatment history to the program.

(8) The court also shall order the defendant to perform a specified amount of appropriate community service, as designated by the court. The defendant shall present the court with proof of completion of community service and the court shall determine if the community service has been satisfactorily completed. If sufficient staff and resources are available, the community service shall be performed under the jurisdiction of the local agency overseeing a community service program.

(9) If the program finds that the defendant is unsuitable, the program shall immediately contact the probation department or the court. The probation department or court shall either recalendar the case for hearing or refer the defendant to an appropriate alternative batterer's program.

(10) (A) Upon recommendation of the program, a court shall require a defendant to participate in additional sessions throughout the probationary period, unless it finds that it is not in the interests of justice to do so, states its reasons on the record, and enters them into the minutes. In deciding whether the defendant would benefit from more sessions, the court shall consider whether any of the following conditions exist:

(i) The defendant has been violence free for a minimum of six months.

(ii) The defendant has cooperated and participated in the batterer's program.

(iii) The defendant demonstrates an understanding of and practices positive conflict resolution skills.

(iv) The defendant blames, degrades, or has committed acts that dehumanize the victim or puts at risk the victim's safety, including, but not limited to, molesting, stalking, striking, attacking, threatening, sexually assaulting, or battering the victim.

(v) The defendant demonstrates an understanding that the use of coercion or violent behavior to maintain dominance is unacceptable in an intimate relationship.

(vi) The defendant has made threats to harm anyone in any manner.

(vii) The defendant has complied with applicable requirements under paragraph (6) of subdivision (c) or subparagraph (C) to receive alcohol counseling, drug counseling, or both.

(viii) The defendant demonstrates acceptance of responsibility for the abusive behavior perpetrated against the victim.

(B) The program shall immediately report any violation of the terms of the protective order, including any new acts of violence or failure to comply with the program requirements, to the court, the prosecutor, and, if formal probation has been ordered, to the probation department. The probationer shall file proof of enrollment in a batterer's program with the court within 30 days of conviction.

(C) Concurrent with other requirements under this section, in addition to, and not in lieu of, the batterer's program, and unless prohibited by the referring court, the probation department or the court may make provisions for a defendant to use his or her resources to enroll in a chemical dependency program or to enter voluntarily a licensed chemical dependency recovery hospital or residential treatment program that has a valid license issued by the state to provide alcohol or drug services to receive program participation credit, as determined by the court. The probation department shall document evidence of this hospital or residential treatment participation in the defendant's program file.

(11) The conditions of probation may include, in lieu of a fine, but not in lieu of the fund payment required under paragraph (5), one or more of the following requirements:

(A) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000).

(B) That the defendant reimburse the victim for reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, to make payments to a battered women's shelter, or to pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. Determination of a defendant's ability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating lack of his or her ability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property shall not be used to discharge the liability of the offending spouse for restitution to the injured spouse, as required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse, until all separate property of the offending spouse is exhausted.

(12) If it appears to the prosecuting attorney, the court, or the probation department that the defendant is performing unsatisfactorily in the assigned program, is not benefiting from counseling, or has engaged in criminal conduct, upon request of the probation officer, the prosecuting attorney, or on its own motion, the

court, as a priority calendar item, shall hold a hearing to determine whether further sentencing should proceed. The court may consider factors, including, but not limited to, any violence by the defendant against the former or a new victim while on probation and noncompliance with any other specific condition of probation. If the court finds that the defendant is not performing satisfactorily in the assigned program, is not benefiting from the program, has not complied with a condition of probation, or has engaged in criminal conduct, the court shall terminate the defendant's participation in the program and shall proceed with further sentencing.

(b) If a person is granted formal probation for a crime in which the victim is a person defined in Section 6211 of the Family Code, in addition to the terms specified in subdivision (a), all of the following shall apply:

(1) The probation department shall make an investigation and take into consideration the defendant's age, medical history, employment and service records, educational background, community and family ties, prior incidents of violence, police report, treatment history, if any, demonstrable motivation, and other mitigating factors in determining which batterer's program would be appropriate for the defendant. This information shall be provided to the batterer's program if it is requested. The probation department shall also determine which community programs the defendant would benefit from and which of those programs would accept the defendant. The probation department shall report its findings and recommendations to the court.

(2) The court shall advise the defendant that the failure to report to the probation department for the initial investigation, as directed by the court, or the failure to enroll in a specified program, as directed by the court or the probation department, shall result in possible further incarceration. The court, in the interests of justice, may relieve the defendant from the prohibition set forth in this subdivision based upon the defendant's mistake or excusable neglect. Application for this relief shall be filed within 20 court days of the missed deadline. This time limitation may not be extended. A copy of any application for relief shall be served on the office of the prosecuting attorney.

(3) After the court orders the defendant to a batterer's program, the probation department shall conduct an initial assessment of the defendant, including, but not limited to, all of the following:

(A) Social, economic, and family background.
(B) Education.
(C) Vocational achievements.
(D) Criminal history.
(E) Medical history.
(F) Substance abuse history.
(G) Consultation with the probation officer.

(H) Verbal consultation with the victim, only if the victim desires to participate.

(I) Assessment of the future probability of the defendant committing murder.

(4) The probation department shall attempt to notify the victim regarding the requirements for the defendant's participation in the batterer's program, as well as regarding available victim resources. The victim also shall be informed that attendance in any program does not guarantee that an abuser will not be violent.

(c) The court or the probation department shall refer defendants only to batterer's programs that follow standards outlined in paragraph (1), which may include, but are not limited to, lectures, classes, group discussions, and counseling. The probation department shall design and implement an approval and renewal process for batterer's programs and shall solicit input from criminal justice agencies and domestic violence victim advocacy programs.

(1) The goal of a batterer's program under this section shall be to stop domestic violence. A batterer's program shall consist of the following components:

(A) Strategies to hold the defendant accountable for the violence in a relationship, including, but not limited to, providing the defendant with a written statement that the defendant shall be held accountable for acts or threats of domestic violence.

(B) A requirement that the defendant participate in ongoing same-gender group sessions.

(C) An initial intake that provides written definitions to the defendant of physical, emotional, sexual, economic, and verbal abuse, and the techniques for stopping these types of abuse.

(D) Procedures to inform the victim regarding the requirements for the defendant's participation in the intervention program as well as regarding available victim resources. The victim also shall be informed that attendance in any program does not guarantee that an abuser will not be violent.

(E) A requirement that the defendant attend group sessions free of chemical influence.

(F) Educational programming that examines, at a minimum, gender roles, socialization, the nature of violence, the dynamics of power and control, and the effects of abuse on children and others.

(G) A requirement that excludes any couple counseling or family counseling, or both.

(H) Procedures that give the program the right to assess whether or not the defendant would benefit from the program and refuse to enroll the defendant if it is determined the defendant would not benefit from the program, so long as the refusal is not because of the defendant's inability to pay. If possible, the program shall suggest an appropriate alternative program.

(I) Program staff who, to the extent possible, have specific knowledge regarding, but not limited to, spousal abuse, child abuse,

sexual abuse, substance abuse, the dynamics of violence and abuse, the law, and procedures of the legal system.

(J) Program staff who are encouraged to utilize the expertise, training, and assistance of local domestic violence centers.

(K) A requirement that the defendant enter into a written agreement with the program that shall include an outline of the contents of the program, the attendance requirements, the requirement to attend group sessions free of chemical influence, and a statement that the defendant may be removed from the program if it is determined that the defendant is not benefiting from the program or is disruptive to the program.

(L) A requirement that the defendant sign a confidentiality statement prohibiting disclosure of any information obtained through participating in the program or during group sessions regarding other participants in the program.

(M) Program content that provides cultural and ethnic sensitivity.

(N) A requirement of a written referral from the court or probation department prior to permitting the defendant to enroll in the program. The written referral shall state the number of minimum sessions required by the court.

(O) Procedures for submitting to the probation department all of the following uniform written responses:

(i) Proof of enrollment, to be submitted to the court and the probation department and to include the fee determined to be charged to the defendant, based upon the ability to pay, for each session.

(ii) Periodic progress reports that include attendance, fee payment history, and program compliance.

(iii) Final evaluation that includes the program's evaluation of the defendant's progress, using the criteria set forth in paragraph (4) of subdivision (a) and recommendation for either successful or unsuccessful termination or continuation in the program.

(P) A sliding fee schedule based on the defendant's ability to pay. The batterer's program shall develop and utilize a sliding fee scale that recognizes both the defendant's ability to pay and the necessity of programs to meet overhead expenses. An indigent defendant may negotiate a deferred payment schedule, but shall pay a nominal fee, if the defendant has the ability to pay the nominal fee. Upon a hearing and a finding by the court that the defendant does not have the financial ability to pay the nominal fee, the court shall waive this fee. The payment of the fee shall be made a condition of probation if the court determines the defendant has the present ability to pay the fee. The fee shall be paid during the term of probation unless the program sets other conditions. The acceptance policies shall be in accordance with the scaled fee system.

(2) The court shall refer persons only to batterer programs that have been approved by the probation department pursuant to

paragraph (5). The probation department shall do all of the following:

(A) Provide for the issuance of a provisional approval, provided that the applicant is in substantial compliance with applicable laws and regulations and an urgent need for approval exists. A provisional approval shall be considered an authorization to provide services and shall not be considered a vested right.

(B) If the probation department determines that a program is not in compliance with standards set by the department, the department shall provide written notice of the noncompliant areas to the program. The program shall submit a written plan of corrections within 14 days from the date of the written notice on noncompliance. A plan of correction shall include, but not be limited to, a description of each corrective action and timeframe for implementation. The department shall review and approve all or any part of the plan of correction and notify the program of approval or disapproval in writing. If the program fails to submit a plan of correction or fails to implement the approved plan of correction, the department shall consider whether to revoke or suspend approval and, upon revoking or suspending approval, shall have the option to cease referrals of defendants under this section.

(3) No program, regardless of its source of funding, shall be approved unless it meets all of the following standards:

(A) The establishment of guidelines and criteria for education services, including standards of services that may include lectures, classes, and group discussions.

(B) Supervision of the defendant for the purpose of evaluating the person's progress in the program.

(C) Adequate reporting requirements to ensure that all persons who, after being ordered to attend and complete a program, may be identified for either failure to enroll in, or failure to successfully complete, the program or for the successful completion of the program as ordered. The program shall notify the court and the probation department in writing within the period of time and in the manner specified by the court of any person who fails to complete the program. Notification shall be given if the program determines that the defendant is performing unsatisfactorily or if the defendant is not benefiting from the education, treatment, or counseling.

(D) No victim shall be compelled to participate in a program or counseling and no program may condition a defendant's enrollment on participation by the victim.

(4) In making referrals of indigent defendants to approved batterer programs, the probation department shall apportion these referrals evenly among the approved programs.

(5) The probation department shall have the sole authority to approve a batterer's program for probation. The program shall be required to obtain only one approval but shall renew that approval annually.

(A) The procedure for the approval of a new or existing program shall include all of the following:

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

(ii) The demonstration by the program that it possesses adequate administrative and operational capability to operate a batterer's treatment program. The program shall provide documentation to prove that the program has conducted batterer's programs for at least one year prior to application. This requirement may be waived under subparagraph (A) of paragraph (2), if there is no existing batterer's program in the city, county, or city and county.

(iii) The on-site review of the program, including monitoring of a session to determine that the program adheres to applicable statutes and regulations.

(iv) The payment of the approval fee.

(B) The probation department shall fix a fee for approval not to exceed two hundred fifty dollars ($250) and for approval renewal not to exceed two hundred fifty dollars ($250) every year in an amount sufficient to cover its cost in administering the approval process under this section. No fee shall be charged for the approval of local governmental entities.

(C) The probation department has the sole authority to approve the issuance, denial, suspension, or revocation of approval and to cease new enrollments or referrals to a batterer's program under this section. The probation department shall review information relative to a program's performance or failure to adhere to standards, or both. The probation department may suspend or revoke any approval issued under this subdivision or deny an application to renew an approval or to modify the terms and conditions of approval, based on grounds established by probation, including, but not limited to, any of the following:

(i) Violation of this section by any person holding approval or by a program employee in a program under this section.

(ii) Misrepresentation of any material fact in obtaining the approval.

(6) For defendants who are chronic users or serious abusers of drugs or alcohol, standard components in the program shall include concurrent counseling for substance abuse and violent behavior, and in appropriate cases, detoxification and abstinence from the abused substance.

(7) The program shall conduct an exit conference that reflects the defendant's progress during the defendant's participation in the batterer's program.

SEC. 21. Section 1203.1 of the Penal Code is amended to read:

1203.1. (a) The court, or judge thereof, in the order granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding the maximum possible term of the

sentence, except as hereinafter set forth, and upon those terms and conditions as it shall determine. The court, or judge thereof, in the order granting probation and as a condition thereof, may imprison the defendant in a county jail for a period not exceeding the maximum time fixed by law in the case.

However, where the maximum possible term of the sentence is five years or less, then the period of suspension of imposition or execution of sentence may, in the discretion of the court, continue for not over five years. The following shall apply to this subdivision:

(1) The court may fine the defendant in a sum not to exceed the maximum fine provided by law in the case.

(2) The court may, in connection with granting probation, impose either imprisonment in a county jail or a fine, both, or neither.

(3) The court shall provide for restitution in proper cases.

(4) The court may require bonds for the faithful observance and performance of any or all of the conditions of probation.

(b) The court shall consider whether the defendant as a condition of probation shall make restitution to the victim or the Restitution Fund. Any restitution payment received by a probation department in the form of cash or money order shall be forwarded to the victim within 30 days from the date the payment is received by the department. Any restitution payment received by a probation department in the form of a check or draft shall be forwarded to the victim within 45 days from the date the payment is received by the department, provided, that payment need not be forwarded to a victim until 180 days from the date the first payment is received, if the restitution payments for that victim received by the probation department total less than fifty dollars ($50). In cases where the court has ordered the defendant to pay restitution to multiple victims and where the administrative cost of disbursing restitution payments to multiple victims involves a significant cost, any restitution payment received by a probation department shall be forwarded to multiple victims when it is cost effective to do so, but in no event shall restitution disbursements be delayed beyond 180 days from the date the payment is received by the probation department.

(c) In counties or cities and counties where road camps, farms, or other public work is available the court may place the probationer in the road camp, farm, or other public work instead of in jail. In this case, Section 25359 of the Government Code shall apply to probation and the court shall have the same power to require adult probationers to work, as prisoners confined in the county jail are required to work, at public work. Each county board of supervisors may fix the scale of compensation of the adult probationers in that county.

(d) In all cases of probation the court may require as a condition of probation that the probationer go to work and earn money for the support of his or her dependents or to pay any fine imposed or reparation condition, to keep an account of his or her earnings, to

report them to the probation officer and apply those earnings as directed by the court.

(e) The court shall also consider whether the defendant as a condition of probation shall make restitution to a public agency for the costs of an emergency response pursuant to Article 8 (commencing with Section 53150) of Chapter 1 of Part 1 of Division 2 of the Government Code.

(f) In all cases in which, as a condition of probation, a judge of the superior court sitting by authority of law elsewhere than at the county seat requires a convicted person to serve his or her sentence at intermittent periods the sentence may be served on the order of the judge at the city jail nearest to the place at which the court is sitting, and the cost of his or her maintenance shall be a county charge.

(g) (1) The court and prosecuting attorney shall consider whether any defendant who has been convicted of a nonviolent or nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the removal of graffiti in the performance of the community service. For the purpose of this subdivision, a nonserious offense shall not include the following:

(A) Offenses in violation of the Dangerous Weapons' Control Law (Chapter 1 (commencing with Section 12000) of Title 2 of Part 4).

(B) Offenses involving the use of a dangerous or deadly weapon, including all violations of Section 417.

(C) Offenses involving the use or attempted use of violence against the person of another or involving injury to a victim.

(D) Offenses involving annoying or molesting children.

(2) Notwithstanding subparagraph (A) of paragraph (1), any person who violates Section 12101 shall be ordered to perform not less than 100 hours and not more than 500 hours of community service as a condition of probation.

(3) The court and the prosecuting attorney need not consider a defendant pursuant to paragraph (1) if the following circumstances exist:

(A) The defendant was convicted of any offense set forth in subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.

(B) The judge believes that the public safety may be endangered if the person is ordered to do community service or the judge believes that the facts or circumstances or facts and circumstances call for imposition of a more substantial penalty.

(h) The probation officer or his or her designated representative shall consider whether any defendant who has been convicted of a nonviolent and nonserious offense and ordered to participate in community service as a condition of probation shall be required to engage in the performance of house repairs or yard services for senior citizens and the performance of repairs to senior centers through

contact with local senior service organizations in the performance of the community service.

(i) Upon conviction of any offense involving child abuse or neglect, the court may require, in addition to any or all of the above-mentioned terms of imprisonment, fine, and other reasonable conditions, that the defendant shall participate in counseling or education programs, or both, including, but not limited to, parent education or parenting programs operated by community colleges, school districts, other public agencies, or private agencies.

(j) The court may impose and require any or all of the above-mentioned terms of imprisonment, fine, and conditions, and other reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer, and that should the probationer violate any of the terms or conditions imposed by the court in the matter, it shall have authority to modify and change any and all the terms and conditions and to reimprison the probationer in the county jail within the limitations of the penalty of the public offense involved. Upon the defendant being released from the county jail under the terms of probation as originally granted or any modification subsequently made, and in all cases where confinement in a county jail has not been a condition of the grant of probation, the court shall place the defendant or probationer in and under the charge of the probation officer of the court, for the period or term fixed for probation. However, upon the payment of any fine imposed and the fulfillment of all conditions of probation, probation shall cease at the end of the term of probation, or sooner, in the event of modification. In counties and cities and counties in which there are facilities for taking fingerprints, those of each probationer shall be taken and a record of them kept and preserved.

(k) Notwithstanding any other provisions of law to the contrary, except as provided in Section 13967, as operative on or before September 28, 1994, of the Government Code and Section 13967.5 of the Government Code and Sections 1202.4, 1463.16, paragraph (1) of subdivision (a) of Section 1463.18, and Section 1464, and Section 1203.04, as operative on or before August 2, 1995, all fines collected by a county probation officer in any of the courts of this state, as a condition of the granting of probation or as a part of the terms of probation, shall be paid into the county treasury and placed in the general fund for the use and benefit of the county.

(*l*) If the court orders restitution to be made to the victim, the board of supervisors may add a fee to cover the actual administrative cost of collecting restitution but not to exceed 10 percent of the total amount ordered to be paid. The fees shall be paid into the general fund of the county treasury for the use and benefit of the county.

SEC. 22. Section 1205 of the Penal Code is amended to read:

1205. (a) A judgment that the defendant pay a fine, with or without other punishment, may also direct that he or she be imprisoned until the fine is satisfied and may further direct that the imprisonment begin at and continue after the expiration of any imprisonment imposed as a part of the punishment or of any other imprisonment to which he or she may theretofore have been sentenced. Each of these judgments shall specify the extent of the imprisonment for nonpayment of the fine, which shall not be more than one day for each thirty dollars ($30) of the fine, nor exceed in any case the term for which the defendant might be sentenced to imprisonment for the offense of which he or she has been convicted. A defendant held in custody for nonpayment of a fine shall be entitled to credit on the fine for each day he or she is so held in custody, at the rate specified in the judgment. When the defendant has been convicted of a misdemeanor, a judgment that the defendant pay a fine may also direct that he or she pay the fine within a limited time or in installments on specified dates and that in default of payment as therein stipulated he or she be imprisoned in the discretion of the court either until the defaulted installment is satisfied or until the fine is satisfied in full; but unless the direction is given in the judgment, the fine shall be payable forthwith.

(b) Except as otherwise provided in case of fines imposed, including restitution fines or restitution orders, as conditions of probation, the defendant shall pay the fine to the clerk of the court, or to the judge thereof if there is no clerk, unless the defendant is taken into custody for nonpayment of the fine, in which event payments made while he or she is in custody shall be made to the officer who holds him or her in custody and all amounts so paid shall be forthwith paid over by the officer to the court which rendered the judgment. The clerk shall report to the court every default in payment of a fine or any part thereof, or if there is no clerk, the court shall take notice of the default. If time has been given for payment of a fine or it has been made payable in installments, the court shall, upon any default in payment, immediately order the arrest of the defendant and order him or her to show cause why he or she should not be imprisoned until the fine or installment thereof, as the case may be, is satisfied in full. If the fine, restitution fine, restitution order, or installment, is payable forthwith and it is not so paid, the court shall without further proceedings, immediately commit the defendant to the custody of the proper officer to be held in custody until the fine or installment thereof, as the case may be, is satisfied in full.

(c) This section applies to any violation of any of the codes or statutes of this state punishable by a fine or by a fine and imprisonment.

Nothing in this section shall be construed to prohibit the clerk of the court, or the judge thereof if there is no clerk, from turning these accounts over to another county department or a collecting agency for processing and collection.

(d) The defendant shall pay to the clerk of the court or the collecting agency a fee for the processing of installment accounts. This fee shall equal the administrative and clerical costs, as determined by the board of supervisors, except that the fee shall not exceed thirty-five dollars ($35). The Legislature hereby authorizes the establishment of the following program described in this section, to be implemented in any county, upon the adoption of a resolution by the board of supervisors authorizing it. The board of supervisors in any county may establish a fee for the processing of accounts receivable that are not to be paid in installments. The defendant shall pay to the clerk of the court or the collecting agency the fee established for the processing of the accounts. The fee shall equal the administrative and clerical costs, as determined by the board of supervisors, except that the fee shall not exceed thirty dollars ($30).

(e) This section shall only apply to restitution fines and restitution orders if the defendant has defaulted on the payment of other fines.

SEC. 23. Section 1205.3 of the Penal Code is amended to read:

1205.3. In any case in which a defendant is convicted of an offense and granted probation, and the court orders the defendant either to pay a fine or to perform specified community service work as a condition of probation, the court shall specify that if community service work is performed, it shall be performed in place of the payment of all fines and restitution fines on a proportional basis, and the court shall specify in its order the amount of the fine and restitution fine and the number of hours of community service work that shall be performed as an alternative to payment of the fine.

SEC. 24. Section 1205.5 of the Penal Code is repealed.

SEC. 25. Section 1214 of the Penal Code is amended to read:

1214. (a) If the judgment is for a fine, including a restitution fine ordered pursuant to Section 1202.4 or Section 1203.04, as operative on or before August 2, 1995, or Section 13967, as operative on or before September 28, 1994, of the Government Code, with or without imprisonment, the judgment may be enforced in the manner provided for the enforcement of money judgments generally.

(b) In any case in which a defendant is ordered to pay restitution, the order to pay restitution is deemed a money judgment if the defendant was informed of his or her right to have a judicial determination of the amount and was provided with a hearing, waived a hearing, or stipulated to the amount of the restitution ordered, and shall constitute a civil judgment enforceable in the same manner as is provided for the enforcement of any other money judgment. Upon the victim's request, the court shall provide the victim in whose favor the order of restitution is entered with a certified copy of that order. In addition, upon request, the court shall provide the State Board of Control with a certified copy of any order imposing a restitution fine or order.

(c) Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure shall not apply to a

judgment for any fine or restitution ordered pursuant to Section 1202.4 or Section 1203.04, as operative on or before August 2, 1995, or Section 13967 of the Government Code, as operative on or before September 28, 1994.

SEC. 25.5. Section 1214 of the Penal Code is amended to read:

1214. (a) If the judgment is for a fine, including a restitution fine ordered pursuant to Section 1202.4 or Section 1203.04, as operative on or before August 2, 1995, or Section 13967 of the Government Code, as operative on or before September 28, 1994, with or without imprisonment, the judgment may be enforced in the manner provided for the enforcement of money judgments generally.

(b) In any case in which a defendant is ordered to pay restitution, the order to pay restitution (1) is deemed a money judgment if the defendant was informed of his or her right to have a judicial determination of the amount and was provided with a hearing, waived a hearing, or stipulated to the amount of the restitution ordered, and (2) shall be fully enforceable by a victim as if the restitution order were a civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment. Upon the victim's request, the court shall provide the victim in whose favor the order of restitution is entered with a certified copy of that order. In addition, upon request, the court shall provide the State Board of Control with a certified copy of any order imposing a restitution fine or order. A victim shall have access to all resources available under the law to enforce the restitution order, including, but not limited to, access to the defendant's financial records, use of wage garnishment and lien procedures, information regarding the defendant's assets, and the ability to apply for restitution from any fund established for the purpose of compensating victims in civil cases. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation or parole is enforceable by the victim pursuant to this section. Victims and the State Board of Control shall inform the court whenever an order to pay restitution is satisfied.

(c) Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure shall not apply to a judgment for any fine or restitution ordered pursuant to Section 1202.4 or Section 1203.04, as operative on or before August 2, 1995, or Section 13967 of the Government Code, as operative on or before September 28, 1994.

SEC. 26. Section 1463.18 of the Penal Code is amended to read:

1463.18. (a) Notwithstanding the provisions of Section 1463, moneys which are collected for a conviction of a violation of Section 23152 or 23153 of the Vehicle Code and which are required to be deposited with the county treasurer pursuant to Section 1463 shall be allocated as follows:

(1) The first twenty dollars ($20) of any amount collected for a conviction shall be transferred to the Restitution Fund. This amount

shall be aggregated by the county treasurer and transferred to the State Treasury once per month for deposit in the Restitution Fund.

(2) The balance of the amount collected, if any, shall be deposited by the county treasurer pursuant to Section 1463.

(b) The amount transferred to the Restitution Fund pursuant to this section shall be in addition to any amount of any additional fine or assessment imposed pursuant to Sections 1202.4 and 1203.04, as operative on or before August 3, 1995, or Section 13967, as operative on or before September 28, 1994, of the Government Code. The amount deposited to the Restitution Fund pursuant to this section shall be used for the purpose of indemnification of victims pursuant to Section 13965 of the Government Code, with priority given to victims of alcohol-related traffic offenses.

SEC. 27. Section 1464 of the Penal Code is amended to read:

1464. (a) Subject to Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code, there shall be levied a state penalty, in an amount equal to ten dollars ($10) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses, except parking offenses as defined in subdivision (i) of Section 1463, involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code. Any bail schedule adopted pursuant to Section 1269b may include the necessary amount to pay the state penalties established by this section and Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code for all matters where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

(b) Where multiple offenses are involved, the state penalty shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the state penalty shall be reduced in proportion to the suspension.

(c) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making the deposit shall also deposit a sufficient amount to include the state penalty prescribed by this section for forfeited bail. If bail is returned, the state penalty paid thereon pursuant to this section shall also be returned.

(d) In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the state penalty, the payment of which would work a hardship on the person convicted or his or her immediate family.

(e) After a determination by the court of the amount due, the clerk of the court shall collect the penalty and transmit it to the county treasury. The portion thereof attributable to Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code shall be deposited in the appropriate county fund and the balance

shall then be transmitted to the State Treasury, with 70 percent to be deposited in the State Penalty Fund, which is hereby created, and 30 percent to remain on deposit in the General Fund. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

(f) The moneys so deposited in the State Penalty Fund shall be distributed as follows:

(1) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.33 percent of the state penalty funds deposited in the State Penalty Fund during the preceding month, except that the total amount shall not be less than the state penalty levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. These moneys shall be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(2) Once a month there shall be transferred into the Restitution Fund an amount equal to 32.02 percent of the state penalty funds deposited in the State Penalty Fund during the preceding month. Those funds shall be made available in accordance with Section 13967 of the Government Code.

(3) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 23.99 percent of the state penalty funds deposited in the State Penalty Fund during the preceding month.

(4) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 25.70 percent of the state penalty funds deposited in the State Penalty Fund during the preceding month.

(5) Once a month there shall be transferred into the Corrections Training Fund an amount equal to 7.88 percent of the state penalty funds deposited in the State Penalty Fund during the preceding month. Money in the Corrections Training Fund is not continuously appropriated and shall be appropriated in the Budget Act.

(6) Once a month there shall be transferred into the Local Public Prosecutors and Public Defenders Training Fund established pursuant to Section 11503 an amount equal to 0.78 percent of the state penalty funds deposited in the State Penalty Fund during the preceding month. The amount so transferred shall not exceed the sum of eight hundred fifty thousand dollars ($850,000) in any fiscal year. The remainder in excess of eight hundred fifty thousand dollars ($850,000) shall be transferred to the Restitution Fund.

(7) Once a month there shall be transferred into the Victim-Witness Assistance Fund an amount equal to 8.64 percent of the state penalty funds deposited in the State Penalty Fund during the preceding month.

(8) (A) Once a month there shall be transferred into the Traumatic Brain Injury Fund, created pursuant to Section 4358 of the

Welfare and Institutions Code, an amount equal to 0.66 percent of the state penalty funds deposited into the State Penalty Fund during the preceding month, until the amount deposited in the Traumatic Brain Injury Fund, as determined by the Department of Finance, for any fiscal year equals five hundred thousand dollars ($500,000). All moneys in excess of that amount shall be distributed pro rata pursuant to paragraphs (1) to (7), inclusive, and utilized in accordance with this subdivision.

(B) Any moneys deposited in the State Penalty Fund attributable to the assessments made pursuant to subdivision (i) of Section 27315 of the Vehicle Code on or after the date that Chapter 6.6 (commencing with Section 5564) of Part 1 of Division 5 of the Welfare and Institutions Code is repealed shall be utilized in accordance with paragraphs (1) to (8), inclusive, of this subdivision.

SEC. 27.5. Section 1464 of the Penal Code is amended to read:

1464. (a) Subject to Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code, there shall be levied a state penalty, in an amount equal to ten dollars ($10) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses, except parking offenses as defined in subdivision (i) of Section 1463, involving a violation of a section of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code. Any bail schedule adopted pursuant to Section 1269b may include the necessary amount to pay the state penalties established by this section and Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code for all matters where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine.

(b) Where multiple offenses are involved, the state penalty shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the state penalty shall be reduced in proportion to the suspension.

(c) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making the deposit shall also deposit a sufficient amount to include the state penalty prescribed by this section for forfeited bail. If bail is returned, the state penalty paid thereon pursuant to this section shall also be returned.

(d) In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the state penalty, the payment of which would work a hardship on the person convicted or his or her immediate family.

(e) After a determination by the court of the amount due, the clerk of the court shall collect the penalty and transmit it to the county treasury. The portion thereof attributable to Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code

shall be deposited in the appropriate county fund and the balance shall then be transmitted to the State Treasury, with 70 percent to be deposited in the State Penalty Fund, which is hereby created, and 30 percent to remain on deposit in the General Fund. The transmission to the State Treasury shall be carried out in the same manner as fines collected for the state by a county.

(f) The moneys so deposited in the State Penalty Fund shall be distributed as follows:

(1) Once a month there shall be transferred into the Fish and Game Preservation Fund an amount equal to 0.33 percent of the state penalty funds deposited in the State Penalty Fund during the preceding month, except that the total amount shall not be less than the state penalty levied on fines or forfeitures for violation of state laws relating to the protection or propagation of fish and game. These moneys shall be used for the education or training of department employees which fulfills a need consistent with the objectives of the Department of Fish and Game.

(2) Once a month there shall be transferred into the Restitution Fund an amount equal to 32.02 percent of the state penalty funds deposited in the State Penalty Fund during the preceding month. Those funds shall be made available in accordance with Section 13967 of the Government Code.

(3) Once a month there shall be transferred into the Peace Officers' Training Fund an amount equal to 23.99 percent of the state penalty funds deposited in the State Penalty Fund during the preceding month.

(4) Once a month there shall be transferred into the Driver Training Penalty Assessment Fund an amount equal to 25.70 percent of the state penalty funds deposited in the State Penalty Fund during the preceding month.

(5) Once a month there shall be transferred into the Corrections Training Fund an amount equal to 7.88 percent of the state penalty funds deposited in the State Penalty Fund during the preceding month. Money in the Corrections Training Fund is not continuously appropriated and shall be appropriated in the Budget Act.

(6) Once a month there shall be transferred into the Local Public Prosecutors and Public Defenders Training Fund established pursuant to Section 11503 an amount equal to 0.78 percent of the state penalty funds deposited in the State Penalty Fund during the preceding month. The amount so transferred shall not exceed the sum of eight hundred fifty thousand dollars ($850,000) in any fiscal year. The remainder in excess of eight hundred fifty thousand dollars ($850,000) shall be transferred to the Restitution Fund.

(7) Once a month there shall be transferred into the Victim-Witness Assistance Fund an amount equal to 8.64 percent of the state penalty funds deposited in the State Penalty Fund during the preceding month.

(8) (A) Once a month there shall be transferred into the Traumatic Brain Injury Fund, created pursuant to Section 4358 of the Welfare and Institutions Code, an amount equal to 0.66 percent of the state penalty funds deposited into the State Penalty Fund during the preceding month. However, the amount of funds transferred into the Traumatic Brain Injury Fund for the 1996–97 fiscal year shall not exceed the amount of five hundred thousand dollars ($500,000). Thereafter, funds shall be transferred pursuant to the requirements of this section.

(B) Any moneys deposited in the State Penalty Fund attributable to the assessments made pursuant to subdivision (i) of Section 27315 of the Vehicle Code on or after the date that Chapter 6.6 (commencing with Section 5564) of Part 1 of Division 5 of the Welfare and Institutions Code is repealed shall be utilized in accordance with paragraphs (1) to (8), inclusive, of this subdivision.

SEC. 28. Section 2900.5 of the Penal Code, as amended by Section 7 of Chapter 770 of the Statutes of 1994, is amended to read:

2900.5. (a) In all felony and misdemeanor convictions, either by plea or by verdict, when the defendant has been in custody, including, but not limited to, any time spent in a jail, camp, work furlough facility, halfway house, rehabilitation facility, hospital, prison, juvenile detention facility, or similar residential institution, all days of custody of the defendant, including days served as a condition of probation in compliance with a court order, and including days credited to the period of confinement pursuant to Section 4019, shall be credited upon his or her term of imprisonment, or credited to any fine on a proportional basis, including, but not limited to, base fines and restitution fines, which may be imposed, at the rate of not less than thirty dollars ($30) per day, or more, in the discretion of the court imposing the sentence. If the total number of days in custody exceeds the number of days of the term of imprisonment to be imposed, the entire term of imprisonment shall be deemed to have been served. In any case where the court has imposed both a prison or jail term of imprisonment and a fine, any days to be credited to the defendant shall first be applied to the term of imprisonment imposed, and thereafter the remaining days, if any, shall be applied to the fine on a proportional basis, including, but not limited to, base fines and restitution fines.

(b) For the purposes of this section, credit shall be given only where the custody to be credited is attributable to proceedings related to the same conduct for which the defendant has been convicted. Credit shall be given only once for a single period of custody attributable to multiple offenses for which a consecutive sentence is imposed.

(c) For the purposes of this section, "term of imprisonment" includes any period of imprisonment imposed as a condition of probation or otherwise ordered by a court in imposing or suspending the imposition of any sentence, and also includes any term of

imprisonment, including any period of imprisonment prior to release on parole and any period of imprisonment and parole, prior to discharge, whether established or fixed by statute, by any court, or by any duly authorized administrative agency.

(d) It shall be the duty of the court imposing the sentence to determine the date or dates of any admission to, and release from, custody prior to sentencing and the total number of days to be credited pursuant to this section. The total number of days to be credited shall be contained in the abstract of judgment provided for in Section 1213.

(e) It shall be the duty of any agency to which a person is committed to apply the credit provided for in this section for the period between the date of sentencing and the date the person is delivered to the agency.

(f) Notwithstanding any other provision of this code as it pertains to the sentencing of convicted offenders, nothing in this section is to be construed as authorizing the sentencing of convicted offenders to any of the facilities or programs mentioned herein.

(g) This section shall become operative on January 1, 1999.

SEC. 28.5. Section 2900.5 of the Penal Code, as amended by Section 7 of Chapter 770 of the Statutes of 1994, is amended to read:

2900.5. (a) (1) In all felony and misdemeanor convictions, either by plea or by verdict, when the defendant has been in custody, including, but not limited to, any time spent in a jail, camp, work furlough facility, halfway house, rehabilitation facility, hospital, prison, juvenile detention facility, or similar residential institution, all days of custody of the defendant, including days served as a condition of probation in compliance with a court order, and including days credited to the period of confinement pursuant to Section 4019, shall be credited upon his or her term of imprisonment, or credited to any fine on a proportional basis, including, but not limited to, base fines and restitution fines, which may be imposed, at the rate of not less than thirty dollars ($30) per day, or more, in the discretion of the court imposing the sentence. If the total number of days in custody exceeds the number of days of the term of imprisonment to be imposed, the entire term of imprisonment shall be deemed to have been served. In any case where the court has imposed both a prison or jail term of imprisonment and a fine, any days to be credited to the defendant shall first be applied to the term of imprisonment imposed, and thereafter the remaining days, if any, shall be applied to the fine on a proportional basis, including, but not limited to, base fines, and restitution fines.

(2) Notwithstanding, and in addition to, paragraph (1), any person convicted of a misdemeanor who has been under the custody of the County Correctional Administrator, including, custody as provided in paragraph (1) or placement in any community-based punishment program authorized under Chapter 2 (commencing with Section 8050) of Title 9 of Part 3, shall have all days of that

custody credited upon his or her term of imprisonment, or credited to any fine which may be imposed, as provided in paragraph (1). Credit under this paragraph for days in custody shall apply to any mandatory minimum term of imprisonment.

(b) For the purposes of this section, credit shall be given only where the custody to be credited is attributable to proceedings related to the same conduct for which the defendant has been convicted. Credit shall be given only once for a single period of custody attributable to multiple offenses for which a consecutive sentence is imposed.

(c) For the purposes of this section, "term of imprisonment" includes any period of imprisonment imposed as a condition of probation or otherwise ordered by a court in imposing or suspending the imposition of any sentence, and also includes any term of imprisonment, including any period of imprisonment prior to release on parole and any period of imprisonment and parole, prior to discharge, whether established or fixed by statute, by any court, or by any duly authorized administrative agency.

(d) It shall be the duty of the court imposing the sentence to determine the date or dates of any admission to, and release from, custody prior to sentencing and the total number of days to be credited pursuant to this section. The total number of days to be credited shall be contained in the abstract of judgment provided for in Section 1213.

(e) It shall be the duty of any agency to which a person is committed to apply the credit provided for in this section for the period between the date of sentencing and the date the person is delivered to the agency.

(f) Notwithstanding any other provision of this code as it pertains to the sentencing of convicted offenders, nothing in this section is to be construed as authorizing the sentencing of convicted offenders to any of the facilities or programs mentioned herein.

(g) This section shall become operative on January 1, 1999.

SEC. 29. Section 2900.5 of the Penal Code, as amended by Section 6 of Chapter 770 of the Statutes of 1994, is amended to read:

2900.5. (a) In all felony and misdemeanor convictions, either by plea or by verdict, when the defendant has been in custody, including, but not limited to, any time spent in a jail, camp, work furlough facility, halfway house, rehabilitation facility, hospital, prison, juvenile detention facility, similar residential institution, or home detention program, all days of custody of the defendant, including days served as a condition of probation in compliance with a court order, and including days credited to the period of confinement pursuant to Section 4019, shall be credited upon his or her term of imprisonment, or credited to any fine on a proportional basis, including, but not limited to, base fines and restitution fines, which may be imposed, at the rate of not less than thirty dollars ($30) per day, or more, in the discretion of the court imposing the sentence.

If the total number of days in custody exceeds the number of days of the term of imprisonment to be imposed, the entire term of imprisonment shall be deemed to have been served. In any case where the court has imposed both a prison or jail term of imprisonment and a fine, any days to be credited to the defendant shall first be applied to the term of imprisonment imposed, and thereafter the remaining days, if any, shall be applied to the fine on a proportional basis, including, but not limited to, base fines and restitution fines.

(b) For the purposes of this section, credit shall be given only where the custody to be credited is attributable to proceedings related to the same conduct for which the defendant has been convicted. Credit shall be given only once for a single period of custody attributable to multiple offenses for which a consecutive sentence is imposed.

(c) For the purposes of this section, "term of imprisonment" includes any period of imprisonment imposed as a condition of probation or otherwise ordered by a court in imposing or suspending the imposition of any sentence, and also includes any term of imprisonment, including any period of imprisonment prior to release on parole and any period of imprisonment and parole, prior to discharge, whether established or fixed by statute, by any court, or by any duly authorized administrative agency.

(d) It shall be the duty of the court imposing the sentence to determine the date or dates of any admission to and release from custody prior to sentencing, and the total number of days to be credited pursuant to this section. The total number of days to be credited shall be contained in the abstract of judgment provided for in Section 1213.

(e) It shall be the duty of any agency to which a person is committed to apply the credit provided for in this section for the period between the date of sentencing and the date the person is delivered to the agency.

(f) If a defendant serves time in a camp, work furlough facility, halfway house, rehabilitation facility, hospital, juvenile detention facility, similar residential facility, or home detention program in lieu of imprisonment in county jail, and the statute under which the defendant is sentenced requires a mandatory minimum period of time in jail, the time spent in these facilities or programs shall qualify as mandatory time in jail.

(g) Notwithstanding any other provision of this code as it pertains to the sentencing of convicted offenders, nothing in this section is to be construed as authorizing the sentencing of convicted offenders to any of the facilities or programs mentioned herein.

(h) This section shall remain operative until January 1, 1999, and as of that date is repealed.

SEC. 29.5. Section 2900.5 of the Penal Code, as amended by Section 6 of Chapter 770 of the Statutes of 1994, is amended to read:

2900.5. (a) (1) In all felony and misdemeanor convictions, either by plea or by verdict, when the defendant has been in custody, including, but not limited to, any time spent in a jail, camp, work furlough facility, halfway house, rehabilitation facility, hospital, prison, juvenile detention facility, similar residential institution, or home detention program, all days of custody of the defendant, including days served as a condition of probation in compliance with a court order, and including days credited to the period of confinement pursuant to Section 4019, shall be credited upon his or her term of imprisonment, or credited to any fine on a proportional basis, including, but not limited to, base fines and restitution fines, which may be imposed, at the rate of not less than thirty dollars ($30) per day, or more, in the discretion of the court imposing the sentence. If the total number of days in custody exceeds the number of days of the term of imprisonment to be imposed, the entire term of imprisonment shall be deemed to have been served. In any case where the court has imposed both a prison or jail term of imprisonment and a fine, any days to be credited to the defendant shall first be applied to the term of imprisonment imposed, and thereafter the remaining days, if any, shall be applied to the fine on a proportional basis, including, but not limited to, base fines and restitution fines.

(2) Notwithstanding, and in addition to, paragraph (1), any person convicted of a misdemeanor who has been under the custody of the County Correctional Administrator, including, custody as provided in paragraph (1) or placement in any community-based punishment program authorized under Chapter 2 (commencing with Section 8050) of Title 9 of Part 3, shall have all days of that custody credited upon his or her term of imprisonment, or credited to any fine which may be imposed, as provided in paragraph (1). Credit under this paragraph for days in custody shall apply to any mandatory minimum term of imprisonment.

(b) For the purposes of this section, credit shall be given only where the custody to be credited is attributable to proceedings related to the same conduct for which the defendant has been convicted. Credit shall be given only once for a single period of custody attributable to multiple offenses for which a consecutive sentence is imposed.

(c) For the purposes of this section, "term of imprisonment" includes any period of imprisonment imposed as a condition of probation or otherwise ordered by a court in imposing or suspending the imposition of any sentence, and also includes any term of imprisonment, including any period of imprisonment prior to release on parole and any period of imprisonment and parole, prior to discharge, whether established or fixed by statute, by any court, or by any duly authorized administrative agency.

(d) It shall be the duty of the court imposing the sentence to determine the date or dates of any admission to and release from

custody prior to sentencing, and the total number of days to be credited pursuant to this section. The total number of days to be credited shall be contained in the abstract of judgment provided for in Section 1213.

(e) It shall be the duty of any agency to which a person is committed to apply the credit provided for in this section for the period between the date of sentencing and the date the person is delivered to the agency.

(f) If a defendant serves time in a camp, work furlough facility, halfway house, rehabilitation facility, hospital, juvenile detention facility, similar residential facility, or home detention program in lieu of imprisonment in county jail, and the statute under which the defendant is sentenced requires a mandatory minimum period of time in jail, the time spent in these facilities or programs shall qualify as mandatory time in jail.

(g) Notwithstanding any other provision of this code as it pertains to the sentencing of convicted offenders, nothing in this section is to be construed as authorizing the sentencing of convicted offenders to any of the facilities or programs mentioned herein.

(h) This section shall remain operative until January 1, 1999, and as of that date is repealed.

SEC. 30. Section 42003 of the Vehicle Code is amended to read:

42003. (a) A judgment that a person convicted of an infraction be punished by a fine may also provide for the payment to be made within a specified time or in specified installments. A judgment granting a defendant time to pay the fine shall order that if the defendant fails to pay the fine or any installment thereof on the date that it is due, he or she shall appear in court on that date for further proceedings. Willful violation of the order is punishable as contempt.

(b) A judgment that a person convicted of any other violation of this code be punished by a fine may also order, adjudge, and decree that the person be imprisoned until the fine is satisfied. In all of these cases, the judgment shall specify the extent of the imprisonment which shall not exceed one day for every thirty dollars ($30) of the fine, nor extend in this case beyond the term for which the defendant might be sentenced to imprisonment for the offense of which he or she was convicted.

(c) In any case when a person appears before a traffic referee or judge of the municipal court or superior court for adjudication of a violation of this code, the court, upon request of the defendant, shall consider the defendant's ability to pay. Consideration of a defendant's ability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating lack of his or her ability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. The reasonable cost of these services and of probation shall not exceed the amount determined to be the actual average cost thereof. The court shall order the defendant to appear before a county officer

designated by the court to make an inquiry into the ability of the defendant to pay all or a portion of those costs or the court or traffic referee may make this determination at a hearing. At that hearing, the defendant shall be entitled to have, but shall not be limited to, the opportunity to be heard in person, to present witnesses and other documentary evidence, to confront and cross-examine adverse witnesses, to disclosure of the evidence against him or her, and to a written statement of the findings of the court or the county officer. If the court determines that the defendant has the ability to pay all or part of the costs, the court shall set the amount to be reimbursed and order the defendant to pay that sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability; or, with the consent of a defendant who is placed on probation, the court shall order the probation officer to set the amount of payment, which shall not exceed the maximum amount set by the court, and the manner in which the payment shall be made to the county. In making a determination of whether a defendant has the ability to pay, the court shall take into account the amount of any fine imposed upon the defendant and any amount the defendant has been ordered to pay in restitution.

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

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

(d) The term "ability to pay" means the overall capability of the defendant to reimburse the costs, or a portion of the costs, of conducting the presentence investigation, preparing the presentence report, and probation, and includes, but is not limited to, all of the following regarding the defendant:

(1) Present financial position.

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

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

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

(e) At any time during the pendency of the judgment rendered according to the terms of this section, a defendant against whom a judgment has been rendered may petition the rendering court to modify or vacate its previous judgment on the grounds of a change

of circumstances with regard to the defendant's ability to pay the judgment. The court shall advise the defendant of this right at the time of rendering of the judgment.

SEC. 31. Section 653.5 of the Welfare and Institutions Code is amended to read:

653.5. (a) Whenever any person applies to the probation officer to commence proceedings in the juvenile court, the application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Section 602, or that a minor committed an offense described in Section 602 within the county, and setting forth facts in support thereof. The probation officer shall immediately make any investigation he or she deems necessary to determine whether proceedings in the juvenile court shall be commenced.

(b) Except as provided in subdivision (c), if the probation officer determines that proceedings pursuant to Section 650 should be commenced to declare a person to be a ward of the juvenile court on the basis that he or she is a person described in Section 602, the probation officer shall cause the affidavit to be taken to the prosecuting attorney.

(c) Notwithstanding subdivision (b), the probation officer shall cause the affidavit to be taken within 48 hours to the prosecuting attorney in all of the following cases:

(1) If it appears to the probation officer that the minor has been referred to the probation officer for any violation of an offense listed in subdivision (b), paragraph (2) of subdivision (d), or subdivision (e) of Section 707.

(2) If it appears to the probation officer that the minor is under 14 years of age at the date of the offense and that the offense constitutes a second felony referral to the probation officer.

(3) If it appears to the probation officer that the minor was 14 years of age or older at the date of the offense and that the offense constitutes a felony referral to the probation officer.

(4) If it appears to the probation officer that the minor has been referred to the probation officer for the sale or possession for sale of a controlled substance as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(5) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 11350 or 11377 of the Health and Safety Code where the violation takes place at a public or private elementary, vocational, junior high school, or high school, or a violation of Section 245.5, 626.9, or 626.10 of the Penal Code.

(6) If it appears to the probation officer that the minor has been referred to the probation officer for a violation of Section 186.22 of the Penal Code.

(7) If it appears to the probation officer that the minor has previously been placed in a program of informal probation pursuant to Section 654.

(8) If it appears to the probation officer that the minor has committed an offense in which the restitution owed to the victim exceeds one thousand dollars ($1,000). For purposes of this paragraph, the definition of "victim" in paragraph (1) of subdivision (a) of Section 730.6 and "restitution" in subdivision (h) of Section 730.6 shall apply.

Except for offenses listed in paragraph (5), the provisions of subdivision (c) shall not apply to a narcotics and drug offense set forth in Section 1000 of the Penal Code.

The prosecuting attorney shall within his or her discretionary power institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 and Section 26500 of the Government Code. However, if it appears to the prosecuting attorney that the affidavit was not properly referred, that the offense for which the minor was referred should be charged as a misdemeanor, or that the minor may benefit from a program of informal supervision, he or she shall refer the matter to the probation officer for whatever action the probation officer may deem appropriate.

(d) In all matters where the minor is not in custody and is already a ward of the court or a probationer under Section 602, the prosecuting attorney, within five judicial days of receipt of the affidavit from the probation officer, shall institute proceedings in accordance with his or her role as public prosecutor pursuant to subdivision (b) of Section 650 of this code and Section 26500 of the Government Code, unless it appears to the prosecuting attorney that the affidavit was not properly referred or that the offense for which the minor was referred requires additional substantiating information, in which case he or she shall immediately notify the probation officer of what further action he or she is taking.

(e) This section shall become operative on January 1, 1997.

SEC. 32. Section 654.3 of the Welfare and Institutions Code is amended to read:

654.3. No minor shall be eligible for the program of supervision set forth in Section 654 or 654.2 in the following cases, except in an unusual case where the interests of justice would best be served and the court specifies on the record the reasons for its decision:

(a) A petition alleges that the minor has violated an offense listed in subdivision (b) or (e) or paragraph (2) of subdivision (d) of Section 707.

(b) A petition alleges that the minor has sold or possessed for sale a controlled substance as defined in Chapter 2 (commencing with Section 11053) of Division 10 of the Health and Safety Code.

(c) A petition alleges that the minor has violated Section 11350 or 11377 of the Health and Safety Code where the violation takes place

at a public or private elementary, vocational, junior high school, or high school, or a violation of Section 245.5, 626.9, or 626.10 of the Penal Code.

(d) A petition alleges that the minor has violated Section 186.22 of the Penal Code.

(e) The minor has previously participated in a program of supervision pursuant to Section 654.

(f) The minor has previously been adjudged a ward of the court pursuant to Section 602.

(g) A petition alleges that the minor has violated an offense in which the restitution owed to the victim exceeds one thousand dollars ($1,000). For purposes of this subdivision, the definition of "victim" in paragraph (1) of subdivision (a) of Section 730.6 and "restitution" in subdivision (h) of Section 730.6 shall apply.

SEC. 33. Section 656 of the Welfare and Institutions Code is amended to read:

656. A petition to commence proceedings in the juvenile court to declare a minor a ward of the court shall be verified and shall contain all of the following:

(a) The name of the court to which it is addressed.

(b) The title of the proceeding.

(c) The code section and subdivision under which the proceedings are instituted.

(d) The name, age, and address, if any, of the minor upon whose behalf the petition is brought.

(e) The names and residence addresses, if known to the petitioner, of both of the parents and any guardian of the minor. If there is no parent or guardian residing within the state, or if his or her place of residence is not known to the petitioner, the petition shall also contain the name and residence address, if known, of any adult relative residing within the county, or, if there are none, the adult relative residing nearest to the location of the court.

(f) A concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted.

(g) The fact that the minor upon whose behalf the petition is brought is detained in custody or is not detained in custody, and if he or she is detained in custody, the date and the precise time the minor was taken into custody.

(h) A notice to the father, mother, spouse, or other person liable for support of the minor child, that: (1) Section 903 may make that person, the estate of that person, and the estate of the minor child, liable for the cost of the care, support, and maintenance of the minor child in any county institution or any other place in which the child is placed, detained, or committed pursuant to an order of the juvenile court; (2) Section 903.1 may make that person, the estate of that person, and the estate of the minor child, liable for the cost to the

county of legal services rendered to the minor by a private attorney or a public defender appointed pursuant to the order of the juvenile court; (3) Section 903.2 may make that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of the probation supervision of the minor child by the probation officer pursuant to the order of the juvenile court; and (4) the liabilities established by these sections are joint and several.

(i) In a proceeding alleging that the minor comes within Section 601, notice to the parent, guardian, or other person having control or charge of the minor that failure to comply with the compulsory school attendance laws is an infraction, which may be charged and prosecuted before the juvenile court judge sitting as a municipal court judge. In those cases, the petition shall also include notice that the parent, guardian, or other person having control or charge of the minor has the right to a hearing on the infraction before a judge different than the judge who has heard or is to hear the proceeding pursuant to Section 601. The notice shall explain the provisions of Section 170.6 of the Code of Civil Procedure.

(j) If a proceeding is pending against a minor child for a violation of Section 594.2, 640.5, 640.6, or 640.7 of the Penal Code, a notice to the parent or legal guardian of the minor that if the minor is found to have violated either or both of these provisions that (1) any community service which may be required of the minor may be performed in the presence, and under the direct supervision, of the parent or legal guardian pursuant to either or both of these provisions; and (2) if the minor is personally unable to pay any fine levied for the violation of either or both of these provisions, that the parent or legal guardian of the minor shall be liable for payment of the fine pursuant to those sections.

(k) A notice to the parent or guardian of the minor that if the minor is ordered to make restitution to the victim pursuant to Section 729.6, as operative on or before August 2, 1995, Section 731.1, as operative on or before August 2, 1995, or Section 730.6, or to pay fines or penalty assessments, the parent or guardian may be liable for the payment of restitution, fines, or penalty assessments.

SEC. 34. Section 729.7 of the Welfare and Institutions Code is amended to read:

729.7. At the request of the victim, the probation officer shall assist in mediating a service contract between the victim and the minor under which the amount of restitution owed to the victim by the minor pursuant to Section 729.6, as operative on or before August 2, 1995, or Section 730.6 may be paid by performance of specified services. If the court approves of the contract, the court may make performance of services under the terms of the contract a condition of probation. Successful performance of service shall be credited as payment of restitution in accordance with the terms of the contract approved by the court.

SEC. 35. Section 730.6 of the Welfare and Institutions Code is amended to read:

730.6. (a) (1) It is the intent of the Legislature that a victim of conduct for which a minor is found to be a person described in Section 602 who incurs any economic loss as a result of the minor's conduct shall receive restitution directly from that minor.

(2) Upon a minor being found to be a person described in Section 602, the court shall consider levying a fine in accordance with Section 730.5. In addition, the court shall order the minor to pay, in addition to any other penalty provided or imposed under the law, both of the following:

(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (h).

(b) In every case where a minor is found to be a person described in Section 602, the court shall impose a separate and additional restitution fine. The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense as follows:

(1) If the minor is found to be a person described in Section 602 by reason of the commission of one or more felony offenses, the restitution fine shall not be less than one hundred dollars ($100) and not more than one thousand dollars ($1,000). A separate hearing for the fine shall not be required.

(2) If the minor is found to be a person described in Section 602 by reason of the commission of one or more misdemeanor offenses, the restitution fine shall not exceed one hundred dollars ($100). A separate hearing for the fine shall not be required.

(c) The restitution fine shall be in addition to any other disposition or fine imposed and shall be imposed regardless of the minor's present ability to pay. This fine shall be deposited in the Restitution Fund, the proceeds of which shall be distributed pursuant to Section 13967 of the Government Code.

(d) (1) In setting the amount of the fine pursuant to subparagraph (A) of paragraph (2) of subdivision (a), the court shall consider any relevant factors including, but not limited to, the minor's ability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the minor as a result of the offense, and the extent to which others suffered losses as a result of the offense. The losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses such as psychological harm caused by the offense.

(2) The consideration of a minor's ability to pay may include his or her future earning capacity. A minor shall bear the burden of demonstrating a lack of his or her ability to pay.

(e) Express findings of the court as to the factors bearing on the amount of the fine shall not be required.

(f) Except as provided in subdivision (g), under no circumstances shall the court fail to impose the separate and additional restitution fine required by subparagraph (A) of paragraph (2) of subdivision (a). This fine shall not be subject to penalty assessments pursuant to Section 1464 of the Penal Code.

(g) In a case in which the minor is a person described in Section 602 by reason of having committed a felony offense, if the court finds that there are compelling and extraordinary reasons, the court may waive imposition of the restitution fine required by subparagraph (A) of paragraph (2) of subdivision (a). When a waiver is granted, the court shall state on the record all reasons supporting the waiver.

(h) Restitution ordered pursuant to subparagraph (B) of paragraph (2) of subdivision (a) shall be imposed in the amount of the losses, as determined. The court shall order full restitution unless it finds clear and compelling reasons for not doing so, and states them on the record. A restitution order pursuant to subparagraph (B) of paragraph (2) of subdivision (a), to the extent possible, shall be of a dollar amount sufficient to fully reimburse the victim or victims for all determined economic losses incurred as the result of the minor's conduct for which the minor was found to be a person described in Section 602, including all of the following:

(1) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(2) Medical expenses.

(3) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor.

(4) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution.

(i) A restitution order imposed pursuant to subparagraph (B) of paragraph (2) of subdivision (a) shall identify the losses to which it pertains, and shall be enforceable as a civil judgment. The making of a restitution order pursuant to this subdivision shall not affect the right of a victim to recovery from the Restitution Fund in the manner provided elsewhere, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the minor arising out of the offense for which the minor was found to be a person described in Section 602.

(j) For purposes of this section, "victim" shall include the immediate surviving family of the actual victim.

(k) Nothing in this section shall prevent a court from ordering restitution to any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental

subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of an offense.

(*l*) Upon a minor being found to be a person described in Section 602, the court shall require as a condition of probation the payment of restitution fines and orders imposed under this section.

(m) Probation shall not be revoked for failure of a person to make restitution pursuant to this section as a condition of probation unless the court determines that the person has willfully failed to pay or failed to make sufficient bona fide efforts to legally acquire the resources to pay.

(n) If the court finds and states on the record compelling and extraordinary reasons why restitution should not be required as provided in paragraph (2) of subdivision (a), the court shall order, as a condition of probation, that the minor perform specified community service.

(o) The court may avoid ordering community service as a condition of probation only if it finds and states on the record compelling and extraordinary reasons not to order community service in addition to the finding that restitution pursuant to paragraph (2) of subdivision (a) should not be required.

(p) When a minor is committed to the Department of the Youth Authority, the court shall order restitution to be paid to the victim or victims, if any. Payment of restitution to the victim or victims pursuant to this subdivision shall take priority in time over payment of any other restitution fine imposed pursuant to this section.

(q) At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

SEC. 36. Section 1752.82 of the Welfare and Institutions Code is amended to read:

1752.82. (a) Whenever an adult or minor is committed to or housed in a Youth Authority facility and he or she owes restitution to a victim or a restitution fine imposed pursuant to Section 13967, as operative on or before September 28, 1994, of the Government Code, or Section 1202.4 of the Penal Code, or Section 1203.04, as operative on or before August 2, 1994, of the Penal Code, or pursuant to Section 729.6, as operative on or before August 2, 1995, Section 730.6 or 731.1, as operative on or before August 2, 1995, the director may deduct a reasonable amount not to exceed 50 percent from the wages of that adult or minor and the amount so deducted, exclusive of the costs of administering this section, which shall be retained by the director, shall be transferred to the State Board of Control for deposit in the Restitution Fund in the State Treasury in the case of a restitution fine, or, in the case of a restitution order, and upon the request of the victim, shall be paid directly to the victim. Any amount so deducted

shall be credited against the amount owing on the fine or to the victim. The committing court shall be provided a record of any payments.

(b) A victim who has requested that restitution payments be paid directly to him or her pursuant to subdivision (a) shall provide a current address to the Youth Authority to enable the Youth Authority to send restitution payments collected on the victim's behalf to the victim.

(c) In the case of a restitution order, whenever the victim has died, cannot be located, or has not requested the restitution payment, the director may deduct a reasonable amount not to exceed 50 percent of the wages of that adult or minor and the amount so deducted, exclusive of the costs of administering this section, which shall be retained by the director, shall be transferred to the State Board of Control, pursuant to subdivision (d), after one year has elapsed from the time the ward is discharged by the Youthful Offender Parole Board. Any amount so deducted shall be credited against the amount owing to the victim. The funds so transferred shall be deposited in the Restitution Fund.

(d) Where the Youth Authority has collected restitution payments on behalf of a victim, the victim shall request those payments no later than one year after the ward has been discharged by the Youthful Offender Parole Board. Any victim who fails to request those payments within that time period shall have relinquished all rights to the payments, unless he or she can show reasonable cause for failure to request those payments within that time period.

(e) The director shall transfer to the State Board of Control all restitution payments collected prior to the effective date of this section on behalf of victims who have died, cannot be located, or have not requested restitution payments. The State Board of Control shall deposit these amounts in the Restitution Fund.

(f) For purposes of this section, "victim" includes a victim's immediate surviving family member, on whose behalf restitution has been ordered.

SEC. 37. Section 1766.1 of the Welfare and Institutions Code is amended to read:

1766.1. When permitting an adult or minor committed to the Youth Authority his or her liberty pursuant to subdivision (a) of Section 1766, the Youthful Offender Parole Board shall impose as a condition thereof that the adult or minor pay in full any restitution fine or restitution order imposed pursuant to Section 13967, as operative on or before September 28, 1994, of the Government Code, or Section 1202.4 of the Penal Code, or Section 1203.4, as operative on or before August 2, 1994, of the Penal Code, or Section 730.6 or 731.1, as operative on or before August 2, 1995. Payment shall be in installments set in an amount consistent with the adult's or minor's ability to pay.

SEC. 38. (a) Section 13.1 of this bill incorporates amendments to Section 166 of the Penal Code proposed by both this bill and AB 2224. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 166 of the Penal Code, (3) AB 3246 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2224, in which case Sections 13, 13.2, and 13.3 of this bill shall not become operative.

(b) Section 13.2 of this bill incorporates amendments to Section 166 of the Penal Code proposed by both this bill and AB 3246. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 166 of the Penal Code, (3) AB 2224 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 3246, in which case Sections 13, 13.1, and 13.3 of this bill shall not become operative.

(c) Section 13.3 of this bill incorporates amendments to Section 166 of the Penal Code proposed by this bill, AB 2224, and AB 3246. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1997, (2) all three bills amend Section 166 of the Penal Code, and (3) this bill is enacted after AB 2224 and AB 3246, in which case Sections 13, 13.1, and 13.2 of this bill shall not become operative.

SEC. 39. Section 14.5 of this bill incorporates amendments to Section 243 of the Penal Code proposed by both this bill and AB 2224. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 243 of the Penal Code, and (3) this bill is enacted after AB 2224, in which case Section 14 of this bill shall not become operative.

SEC. 40. Section 16.5 of this bill incorporates amendments to Section 273.5 of the Penal Code proposed by both this bill and AB 720. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 273.5 of the Penal Code, and (3) this bill is enacted after AB 720, in which case Section 16 of this bill shall not become operative.

SEC. 41. (a) Section 17.1 of this bill incorporates amendments to Section 273.6 of the Penal Code proposed by both this bill and AB 2224. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 273.6 the Penal Code, (3) AB 3246 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2224, in which case Sections 17, 17.2, and 17.3 of this bill shall not become operative.

(b) Section 17.2 of this bill incorporates amendments to Section 273.6 of the Penal Code proposed by both this bill and AB 3246. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 273.6 of the Penal Code, (3) AB 2224 is not enacted or as enacted does

not amend that section, and (4) this bill is enacted after AB 3246, in which case Sections 17, 17.1, and 17.3 of this bill shall not become operative.

(c) Section 17.3 of this bill incorporates amendments to Section 273.6 of the Penal Code proposed by this bill, AB 2224, and AB 3246. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1997, (2) all three bills amend Section 273.6 of the Penal Code, and (3) this bill is enacted after AB 2224 and AB 3246, in which case Sections 17, 17.1, and 17.2 of this bill shall not become operative.

SEC. 42. Section 18.5 of this bill incorporates amendments to Section 484.1 of the Penal Code proposed by both this bill and AB 2759. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 484.1 of the Penal Code, and (3) this bill is enacted after AB 2759, in which case Section 18 of this bill shall not become operative.

SEC. 43. Section 25.5 of this bill incorporates amendments to Section 1214 of the Penal Code proposed by both this bill and SB 1685. It shall become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1214 of the Penal Code, and (3) this bill is enacted after SB 1685, in which case Section 25 of this bill shall not become operative.

SEC. 44. Section 27.5 of this bill incorporates amendments to Section 1464 of the Penal Code proposed by both this bill and SB 1446. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 1464 of the Penal Code, and (3) this bill is enacted after SB 1446, in which case Section 27 of this bill shall not become operative.

SEC. 45. (a) Section 28.5 of this bill incorporates amendments to Section 2900.5 of the Penal Code, as amended by Section 7 of Chapter 770 of the Statutes of 1994, proposed by both this bill and AB 126. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 2900.5 of the Penal Code, as amended by Section 7 of Chapter 770 of the Statutes of 1994, and (3) this bill is enacted after AB 126, in which case Section 28 of this bill shall not become operative.

(b) Section 29.5 of this bill incorporates amendments to Section 2900.5 of the Penal Code, as amended by Section 6 of Chapter 770 of the Statutes of 1994, proposed by both this bill and AB 126. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1997, (2) each bill amends Section 2900.5 of the Penal Code, as amended by Section 6 of Chapter 770 of the Statutes of 1994, and (3) this bill is enacted after AB 126, in which case Section 29 of this bill shall not become operative.